

# Anchors Awry: The Jones Act Debate

**F**or nearly 100 years the Jones Act has restricted the transportation of cargo between two points in the United States to ships that are U.S.-built, U.S.-crewed, U.S.-owned, and U.S.-flagged. In December, Cato's Project on Jones Act Reform hosted a daylong conference bringing together industry and policy experts to discuss the law and its consequences. The day's discussions concluded with a debate between a defender of the Jones Act, George Landrith, president and CEO of the Frontiers of Freedom Institute, and reform advocate Rob Quartel, CEO and chairman of NTELX.

**GEORGE LANDRITH:** I'd like to begin by placing the Merchant Marine Act of 1920 in context very quickly. After World War I, Congress felt that the United States had been unprepared, and that they didn't want to be unprepared again. So they put in place what's become known as the Jones Act. It was designed to make sure we had sufficient shipbuilding and ship repairing capacity, as well as a robust merchant marine, so that we would be better prepared for potential conflicts in the future.

The Jones Act applies to the movement of goods *within* the United States. About 98 percent of the goods that come into the United States come in on foreign-flagged ships; they can do that. But what they can't do is then make other stops at U.S. ports. To do that you have to be a U.S.-built and U.S.-flagged ship, and you also have to be crewed by Americans. This policy has its roots in our Founding. This is not some relatively new kind of big-government program. The first cabotage law was passed as the fourth act of the very first Congress. That Congress included many of the signers the Declaration of Independence and the Constitution. These were not big-government types. But they understood the importance of developing a sea-faring capability.

Adam Smith, the father of modern free-market economics, and obviously a great promoter of free trade, supported the British version of the Jones Act. In *The Wealth of Nations*, he talks about it. It was the British Nav-

igation Act, and he said that it was important for defense because they would need capable sailors, and they'd need the ability to ship military ships and maintain a navy. I'm very comfortable standing with Adam Smith and the Founders on this issue.

Now the question is, does the Jones Act significantly increase costs to consumers as some of its detractors claim? There really is no clear evidence of that. I understand that, in theory, there can be some modest costs, but they're difficult to determine with any reasonable certainty. One of the reasons is that any alleged costs are very small and it's hard to detect and track those kinds of minuscule movements. A Government Accountability Office report found that it was entirely unclear what, if any, impact the Jones Act had on costs.

When detractors say cost differentials are large, it's usually because they take the shipping rates from South Korea and then compare them to our shipping rates and they say, in effect, "Theirs are lower. So that's the price we would get." But of course, if they start shipping within the United States they'll have to comply with U.S. laws, regulations, taxes, and other things, so their prices would go up. So this methodology is faulty and creates false and entirely unreliable comparisons.

Now, I want to get to why the Jones Act actually makes a lot of sense. It's important from a national security perspective. Vice Chair of the Joint Chiefs of Staff Paul Selva

supports the Jones Act. After pointing to the benefits, such as a vibrant shipbuilding industry and that we have these qualified mariners, he asked the question, "Why would I tamper with that?" General James McAdoo of the Air Force Reserve points out that the sealift capability is important, and that without that they really can't supply our soldiers and make sure they are in the place they need to be. Coast Guard Commandant Paul Zukunft, who recently retired, argues that repealing the Jones Act would eventually lead to our shipbuilding industry going away, and that eventually our fleet would not have the things that it needs to prevail. These are America's top generals and admirals saying we need the Jones Act to maintain our defenses.

History also teaches this lesson. Napoleon left Paris with almost 700,000 troops—the finest army the world had ever seen. His military was superior to every opponent they faced while marching toward Moscow. But because they had a long supply chain that was not able to maintain itself, they slowly wore down and began to meet with defeat from inferior forces. They began a full retreat and by the time they got back to Paris, he only had about 27,000 troops who could fight. That's pretty amazing—the world's greatest army was so resoundingly defeated because it could not supply itself. And it changed the balance of power in Europe for the next hundred years.

So the point is, the Jones Act is important; it's not just some silly, antiquated idea. We must be able to supply our troops with the things that they need to defend us and to prevail. In today's world, that means having a shipbuilding and ship repairing industry and having trained and experienced mariners.

The Jones Act is also taxpayer friendly. The Navy has all sorts of warships. They've got submarines. They've got aircraft carriers. But what they don't have is a lot of ships

that are designed to carry goods to the troops. So when we mobilize, we need these ships, and to build that capability, it has been estimated, would be a \$65 billion proposition. Right now, we get that essentially at whatever nominal cost we see in shipping rates, and that's very important.

Since September 11th, the Jones Act has taken on some other importance: it helps us with homeland security. The Coast Guard points out that without the Jones Act their job would be much more difficult. We have frontline ports that are used for international trade, and that's where we put most of our assets to protect the country and to make sure that we're keeping an eye on what's coming and going. Once you get inland, you're inside that defensive ring where we don't put a lot of assets, so we rely on our Jones Act vessels. There are about 40,000 Jones Act vessels of various sizes and shapes. Their crews are trained, background checked, and vetted, and they are keeping an eye out for suspicious activity. That becomes an important part of our nation's layered homeland defense.

Joan Mileski, head of the maritime administration department at Texas A&M University, argues that if you were to have foreign-flagged ships just sailing with an unknown crew anywhere in the United States, up the Mississippi, for example, homeland security becomes a real problem.

The Coast Guard points out that repealing the Jones Act would leave us vulnerable to terrorist acts within our ports and waterways, and it would give our enemies the means of transporting the terrorists and the material they need to commit acts of terrorism virtually everywhere.

The border with Mexico is about 2,000 miles. We have more than 25,000 miles of navigable waters, and if you basically turn all of those into entry points, I'm not sure how you guard every possible entry point. The Jones Act effectively becomes a virtual wall for these inland waterways and the holes that would exist there. The Customs and

Border Protection Jones Act Enforcement Division specifically makes that point. This is an important point. Part of the reason this is important is because we do have an Achilles' heel. There's a study done by the Department of Homeland Security that determined that the Poe Lock, which is by the



GEORGE LANDRITH

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Great Lakes, if it were damaged through some sort of attack, could bring a recession to the United States. Just that one act could cause 11 million people to be unemployed, and for those who were lucky enough to keep their jobs, they would see reduced economic opportunities because of the overall impact on the U.S. economy.

So it's very important that these national security and homeland security benefits not be just dismissed as theoretical. I am very happy to risk buying T-shirts from an unreliable foreign supplier, because we'll survive that. But I don't want to get my missile de-

fense from someone I can't rely on. Expecting foreign ships and foreign crews to protect America's heartland is simply not realistic.

In conclusion, I just want to reiterate three important points. One, our nation's Founders and Adam Smith supported cabotage laws that are very much like the Jones Act. Two, to maintain our national security and our military strength, we must have trained mariners and the ability to build and repair ships. Three, no one should be willing to give hostile foreign governments, rogue actors, and terrorists access to our heartland and to our infrastructure in hopes of obtaining some unrelated theoretical and unsubstantiated boon.

**ROB QUARTEL:** The reality is the Jones Act is not the same thing as the 1920 Merchant Marine Act. The Merchant Marine Act of 1920 was, as George said, intended to rebuild the fleet. But the Jones Act, in Section 27 of the Merchant Marine Act, was actually an afterthought. No committee heard it. No one debated it on the floor. It was done solely to protect railroads operating on the West Coast, Sen. Wesley Jones's constituents, from competition from foreign ships. And from a purely economic standpoint, that's something that has been very effective. The Jones Act has essentially raised the cost of shipping above the cost of rail and trucks, so it has actually moved cargo, as was intended, from ships to rail.

The Jones Act is not about national security; it never was intended to be. I'm really amused by the reference to Adam Smith and the Founding Fathers. One of the things that caused the Revolution was the Navigation Acts, because they so restricted trade with the colonies. And one of the things the Founders decided was that they were not going to do Navigation Acts. What they did do is create a form of cabotage that restricted shipping in between ports in the U.S. to American-flagged ships. But the definition of American-flagged ships in those days was not that they had to be built in the

United States and owned by Americans, etc. So it was a very different set of qualifications than the restrictions imposed by the Jones Act today.

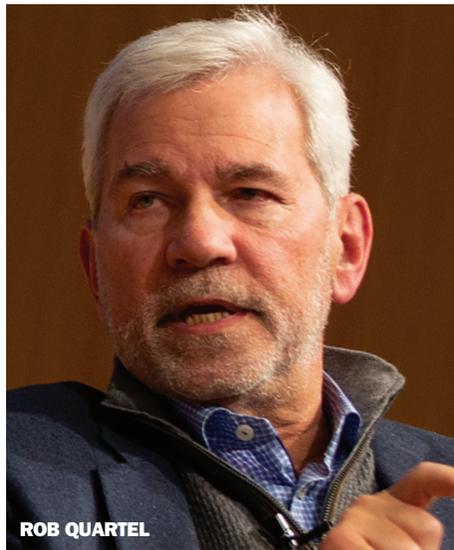
The reference to Napoleon is interesting, too. If you remember, there's a great chart of the size of Napoleon's army. It's a classic of data analytics. It shows the army starting out in Europe as very large. And then as he moves through the continent, it gets smaller and smaller. He entered Russia with almost 700,000 troops and ended up with about 22,000. But they were nowhere near where a ship could deliver cargo, so that was not the problem with their supply lines. They didn't have enough horses. They were in the middle of winter, in the middle of the continent, and it had nothing at all to do with ships. So it's a great example of supply line requirements, but it has nothing to do with ships.

The Jones Act, in fact, does raise the cost of consumer goods in markets where it actually is in play. It does raise the cost of shipbuilding; we know that for a fact. We know it raises numerous other associated costs and makes it impossible for certain businesses to compete, such as timber, for example. We used to have a very robust timber industry in the United States, and they were one of the leaders of the Jones Act Reform Coalition. One of the reasons is that they could no longer ship timber on timber vessels, because there were no deep-draft, self-propelled, over-1,000-ton ships to carry their timber. So they basically moved their timber-growing operations offshore to foreign countries, and they'd bring the timber back to the United States. Or they would ship American timber to Canada, and now we have a trade dispute with Canada partly as a consequence of that.

If you believe that the Jones Act supports the military, that's wrong for three reasons. It supposedly provides a lot of crew. It supposedly provides ships for those crews to sail on during peacetime, and it supposedly provides shipbuilding to build ships in peacetime, as opposed to simply for warships. The Jones

Act fails the test on these things completely.

George mentioned there were 40,000 ships—that term, I wrote it down, ships—in the U.S. fleet. There are not 40,000 ships. There are probably 39,650 barges. There may be 300, close to 300, actual ships and there may be 80, if there are that many, Jones Act



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ships. Ships are very different from barges. One of the things that is problematic for customers under the Jones Act, and in fact the entire American maritime industry, is that this is an industry that doesn't care about its customers. It doesn't care what they want. When a grain producer wants to put his grain on a grain ship, they offer him an oil tanker instead, because they don't have any grain carriers. When the cattlemen want a specialized cattle ship to carry their cattle to the mainland to the feed lots, they put them in “cow-tainers,” half containers, because there are no longer any ships that are built to carry cattle.

Industry after industry after industry is like that, as the fleet has shrunk. So, why has the Jones Act actually destroyed the fleet?

Because the restrictions have essentially eliminated a competitive market for shipbuilding, which we haven't had since about 1865 when they began the switch from tall masts to steel and engines. Because the costs are so high for an American ship, it's a vicious cycle. An American ship costs anywhere between three and eight times what a ship costs overseas. We know that American shipyards can't build large ships. They can build tugboats. They can build service ships for oil rigs and they can build barges competitively, but they can't build the big ships that we really need for trade, nor can they very well build the big ships we really need for the military at reasonable cost.

So when you start looking at it and breaking down the costs of shipping, like in Hawaii, the biggest factor raising the cost of shipping is in this cost of the capital equipment, meaning the ship itself, which is many times the cost on the world market. And then after that is labor.

There had been a lot of talk earlier about repealing the Jones Act, and there was a reference to the Jones Act Reform Coalition. The Jones Act Reform Coalition did not call for repealing the Jones Act. What it called for was treating this industry like every other national critical transportation industry in the United States, meaning you can buy your equipment from anywhere you want to buy it. The ship can be owned by anybody who wants to own it, as long as they're an American corporation. To be an American corporation you don't have to be an American; you just have to incorporate in the United States. So those are the key factors we would retain. But the Jones Act Reform Coalition basically said, you can buy your ships anywhere you want. You can finance them anywhere you want. You have to register in the U.S. if you're going to do business here, like any other U.S. corporation.

Even without the shipbuilding provisions of the Jones Act, when you're doing business in the United States, you would still have to use U.S. labor. And of course you have to

obey OSHA [Occupational Safety and Health Administration] and all the other regulatory requirements.

But, by the way, American requirements are not quite as tough as requirements in the shipping industry anywhere else on the planet. We are all signatories to international treaties, and the United States actually had to upgrade its standards when we signed those treaties. We do have occasionally different shipbuilding standards, but they're really things like putting a fire hydrant on this side of the ship versus on that side of the ship. If you have any engagement in shipbuilding, you really can't find anything substantial between our ships and anybody else's ships on that basis. George's reference to that in his remarks is a complete shibboleth.

Regarding homeland security: I actually know a little bit about homeland security. I was the guy who figured out that ocean shipping containers could be weaponized and came up with a paradigm that we now use, which is not to physically inspect containers but to use the data associated with containers. Our company created systems of predictive analytics and artificial intelligence. And the government uses this paradigm of taking the data, running analysis against it to figure out who the likely "bad actors" are, and then targeting those people who were suspect.

Foreign-flagged ships travel up the Mississippi every day. They travel into the Great Lakes. They travel all the rivers of our country. They are in our ports. As George said, 98 percent of the capacity of the trade of the United States is on foreign ships. They don't sit offshore, nor do their crews. They come into the ports. They come into the cities. The crews get off the ship. They walk all around. They are licensed, just like ours are licensed. So, the notion that the Secretary of Homeland Security said that this is a wall or a barrier is, intellectually, completely ludicrous.

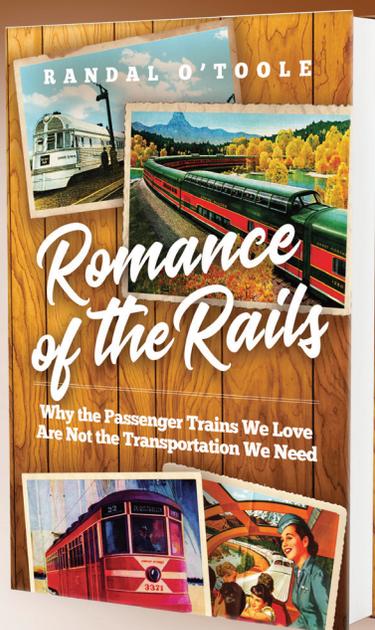
So to me, this is really an example of what's

wrong with this conversation: a lot of assertions that are misleading and have nothing to do with fact, a lot of so-called facts but they aren't the full facts. One of the things you hear frequently is that a quarter-million jobs in the maritime industry are dependent on the Jones Act. Well, no they're not. There may be a quarter-million people operating in U.S. ports—the guys putting the cargo on, running the trains back and forth, and all of these kinds of things. But remember, 98 percent of what comes in and out of American ports is on foreign ships. So just the remaining 2 percent gets you to about 4,800 people. In the passenger service industry, it's about

650 people. Or actually, in the Jones Act segment of the industry, it used to be those numbers maybe 30 years ago. It's probably almost no one today.

If you continue down the path of the Jones Act, what you're going to see is the complete elimination of the U.S. Merchant Marine, because it will continue to get more and more expensive. Shipbuilding on the commercial side will continue to decline as it has now for 65 years. We really do have to reform it, and the way to do that is just to make the industry comply with all the other rules that the rest of us do in daily life, without any special restrictions. ■

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