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THE CASE AGAINST THE JONES ACT

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16. Updating the Jones Act for the 21st Century

Kelifi Akina

In a perfect world, there would be no Jones Act.

Ships from any nation would be able to transport goods freely between American ports, and U.S. consumers would be able to enjoy an abundance of products from around the world at significantly lower prices.

Unfortunately, we don't live in a perfect world.

In our frustratingly imperfect existence, free trade is obstructed by protectionist cabotage laws, and the Jones Act is among the worst offenders. The restrictions imposed by the Jones Act cost the American economy billions of dollars.¹ The act itself is propped up by special interests and specious arguments.

As free-market advocates, we justifiably take pride in our pursuit of the perfect: a world without the Jones Act. The philosopher Plato might have commended our vision and reassured us that, somewhere in the great beyond, our conception of the perfect may exist. But he would also have urged us to recognize that we currently live in a dark cave of sorts, and the best we can attain is a reflection or limited version of the perfect. It would take Plato's student Aristotle to drive home the point that even in this imperfect existence we can still do good.

To keep our vision of the perfect from becoming the enemy of the good, we must immerse ourselves in the world at hand and engage with the way the public may react to pro-Jones Act arguments. That necessarily involves reframing the issue in a way that is sympathetic to their perspective. This is how we can position our reform proposals for practical success.

This means understanding the values that Jones Act supporters find reflected in the act, and looking for ways to address the motivations of Jones Act loyalists. Again and again, supporters of the act talk about American security and American jobs. We gain nothing by ignoring these strong, emotion-laden triggers.

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Nor is it possible to argue them away, no matter how compelling our statistics and economic reasoning.

Words matter. To change public perception of the act and create an environment conducive to change, we need to think about how to discuss reform more effectively. This is where Hawaii's example may be instructive.

Because the Jones Act affects the noncontiguous territories in a more immediate and obvious way, Hawaii has been at the forefront of the Jones Act debate for years. Even in simple awareness, the average Hawaiian is likely to know more about what the Jones Act is—and why it matters—than most other Americans.

The good news is that education and awareness have led to a shift in popular opinion toward reform. For example, the state's largest daily newspaper, the *Honolulu Star-Advertiser*—hardly a crusader for free-market reform—has conducted two unscientific public online polls on the Jones Act in the past eight years. In 2012, it asked whether the Jones Act should be kept as is, repealed, or whether an exemption should be created for Hawaii; only 18 percent of newspaper subscribers voting in the poll wanted to keep the Jones Act.² The remainder were split between repeal, at 37 percent, and creating an exemption for Hawaii, at 45 percent. In 2017, opposition to the status quo was stronger.³ When asked “What should be done about the maritime shipping law, the Jones Act?” 11 percent of readers wanted to keep the act as is, 35 percent wanted to modify some outdated provisions, and 50 percent chose the third option, “[d]itch; archaic in today's global marketplace.”⁴

Keep in mind that Hawaii is effectively a one-party state, dominated by Democrats and strongly influenced by unions. On paper, Hawaii residents should be Jones Act defenders and apologists. But years of education and advocacy from the Grassroot Institute of Hawaii and other groups championing economic freedom have helped change the way the public sees the Jones Act. In the recent general election, we even saw both major party candidates for Hawaii's First Congressional District campaign in favor of Jones Act reform. Representative Ed Case, the Democrat who went on to win the election, has shown his willingness to break with the rest of the Hawaii delegation and support modernizing the Jones Act.

What can we learn from this? First, that states matter. Jones Act reform is usually seen as a federal issue, divorced from grassroots efforts in the states.

Jones Act lobbyists do not have to defend the act on a state-by-state basis. They rely on support at the federal level—from pro-military associations, shipbuilding companies, ocean cargo transport companies, and various unions—to persuade Congress that the act should be retained.

Reformers do not have the same luxury. The think tanks, activist groups, businesses, and private citizens who oppose the Jones Act have to change hearts and minds in every state. That is the only way to break the pro-Jones Act consensus in Congress that has frustrated reform for decades. We must drive the demand for change from the ground up, by persuading voters at the state level. This will require help from state groups and think tanks that understand local politics and know how to make the Jones Act a local issue.

From that comes the second important lesson: know what works and what does not.

Over the years, the Grassroot Institute of Hawaii has learned which messages resonate and which ones fall flat when it comes to the Jones Act. Ask Hawaii residents what's wrong with the act and they will tell you, "It raises the cost of living." They might add, "It's bad for business," or "It makes our groceries more expensive." What you will not hear are some of the points that we reformers are most fond of discussing, things like the dwindling number of ships in the Jones Act fleet, or the cost of the act to specific industries. As is the case with so many economic issues, the most persuasive argument comes down to the individual's own wallet.

Which leads us to the national security paradox.

Over and over, reformers have effectively demonstrated that the Jones Act has not helped our military readiness or national defense. Despite the fact that national security is its *raison d'être*, the Jones Act has proven to be ineffective in maintaining a strong merchant marine.

The problem is that, failure or not, the national defense argument so far has been sufficient to convince Congress to preserve the Jones Act. On paper, critics defeat the argument. But the sentiment behind the defense rationale is so strong, and the interests behind it are so influential, that we are unlikely to make any headway against the idea that the act is fundamental to our national security.

So what do we do? We practice the martial art of judo. We move out of the way of our opponent's strength and momentum and use it to achieve real progress toward a modernized Jones Act.

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The two most politically powerful arguments put forth to defend the Jones Act are national security and jobs. We have invested untold time and energy confronting these arguments head-on, with little effect. While we have successfully proved that they are fallacious and unsupported by data, we have not broken their power to stymie repeal efforts.

Instead of pushing for total repeal or an ideal “pure” road toward eliminating the Jones Act and running headlong into our opponents’ strength, we should step out of the way of those areas of strength and use the momentum of smaller reforms to our advantage. This means embracing a strategy that allows small successes to lead us to a meaningful victory.

Let us start with proposals that would sidestep the national defense and jobs rationales: for example, a modification of the build requirement, which would allow U.S. ocean transportation companies to buy ships from American allies, such as Japan and Korea. This would take much of the strength out of the national security argument—especially since the American crew requirement would remain. In fact, one could claim that this reform would strengthen military readiness and response. It also would fracture union opposition, as a change to the build requirement would not pose a threat to crews and dockworkers.

In short, by removing only the Jones Act’s U.S.-build requirement, and not tampering with the U.S.-crewed, U.S.-flagged, and U.S.-owned provisions, we would leave intact the values of national defense and protection of most union jobs. This would allow many Jones Act loyalists to embrace a measure of reform—not abandoning the Jones Act, but updating it for the 21st century.

Supporters of the Jones Act have tried to downplay its impact on consumers by producing absurdities such as the notorious 2018 report sponsored by the American Maritime Partnership that claimed that on two days in March 2018, prices of 13 goods at a Walmart store in San Juan, Puerto Rico, happened to be less than those same goods at one of the retailer’s stores in Jacksonville, Florida.⁵ No explanation was provided for why these specific goods were chosen. That study was a futile attempt to negate the cost-of-living argument before it catches on beyond the shores of Hawaii and Puerto Rico.

Ultimately, the arguments for the Jones Act are based largely on jobs and national defense. We take those arguments away not by forcing their supporters

to defend them, but by refusing to challenge them. This leaves Jones Act supporters with nowhere left to go.

The economic impact of moderate initial reforms will help us demonstrate the benefits of a complete overhaul of the act. In this way, we will continue to gain momentum and grow a grassroots movement that understands how removing the protectionist restrictions of the Jones Act will benefit Americans in a very tangible way.

In contrast, an approach that puts abolition of the Jones Act at the center of its rhetoric backs reformers into a corner. Again, words matter. When the late senator John McCain (R-AZ) attempted Jones Act reform, the focus of his proposed amendment was actually a modification of the build requirement, as suggested here. However, when he spoke about the proposal, he spoke about repealing the Jones Act. Given such all-or-nothing rhetoric, what could Jones Act supporters do but oppose reform of any kind? When no effort is made to respond to the values that Jones Act loyalists present as the rationale for the act, they have no motivation to cooperate with reformers.

This is the problem with a confrontational approach to a political problem. In other spheres, it would make sense to ask for everything and be prepared to compromise only after negotiations begin. However, when it comes to the Jones Act, supporters have no incentive to come to the negotiating table. If the only options are “repeal” or “keep unchanged,” the Jones Act loyalists will become more entrenched in their position.

By making the case for modernization of the act, not repeal, we build a bridge that Jones Act supporters can cross. This approach provides a way for supporters to keep those things they really care about, such as subsidies, jobs, and security. We demonstrate an understanding that it’s highly unlikely you can undo a hundred years of rules, regulations, and practice with the stroke of a pen—that there is more complexity to the Jones Act than many realize.

Jones Act supporters are not immune from seeing the problems in the act. They may be willing to take action that will reduce its negative economic impact—especially on other union-based American industries. The growing divide between union membership and union leadership presents an opportunity for Jones Act reformers, but we must demonstrate that we no longer view this as an all-or-nothing issue.

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We need to offer a solution that brings Jones Act supporters to the negotiating table and creates the potential for a win-win scenario. Rhetoric about ending the Jones Act may excite reformers, but it can turn off Jones Act supporters. For decades, calls to eliminate the Jones Act have been ineffective, only persuading supporters to fight against change more fiercely. If we want a negotiation that results in modernizing the act, we have to demonstrate that there is something to negotiate.

To be clear, we must remain committed to the Platonic vision of a world without the Jones Act. It is still before us, just like the ideal of abolishing other barriers to free international trade. But we cannot achieve that goal in one leap. Instead, we must work within political reality and craft a strategy based on reforms that can achieve consensus. That means defusing the national security and jobs arguments by offering reforms that takes them off the table as a concern. And it means working with state organizations to educate voters on what the Jones Act is and why they should care about it.

In a perfect world, there would be no Jones Act. But we are not in a perfect world. So, let us embrace the Aristotelian approach and find the virtue within the merely good rather than frustrating ourselves with the elusiveness of the perfect. Instead of calling for repeal, let's rally together different interests that can all embrace updating the Jones Act for the 21st century.

68. House of Commons Debates,” October 31, 2017.
69. While foreigners are not barred from working on Canadian vessels, they do have to be permanent residents and have Canadian certifications. See “Questions Frequently Asked Regarding: Certification and Training,” Government of Canada, <https://www.tc.gc.ca/eng/marinesafety/mpsp-training-examination-certification-faq-1052.htm>. The Emerson Report also went as far as to recommend that Canada improve its processes for recruiting and certifying foreign seafarers. See Transport Canada, *Pathways: Connecting Canada’s Transportation System to the World*, p. 230.
70. Blank and Prentice, “NAFTA at 20.”
71. Frittelli, “Shipping under the Jones Act,” p. 10.
72. Mary R. Brooks, *The Jones Act Under NAFTA and Its Effects on the Canadian Shipbuilding Industry* (Halifax: Atlantic Institute for Market Studies, September 2006), p. 12.
73. *Vision and Balance: Report of the Canada Transportation Act Review Panel*, p. 146.
74. *Vision and Balance: Report of the Canada Transportation Act Review Panel*.
75. Grabow, Manak, and Ikenson, “The Jones Act: A Burden America Can No Longer Bear.”
76. Grabow, Manak, and Ikenson, “The Jones Act: A Burden America Can No Longer Bear.”
77. Frittelli, “Shipping under the Jones Act,” p. 13.
78. The U.S. defense industrial base refers to the products and services that the Department of Defense uses to support its mission. Under U.S. law, Canadian persons or organizations that provide production, research, and services are part of this base. See, for example, Heidi M. Peters, “Defense Primer: U.S. Defense Industrial Base,” in *In Focus* no. 10548, Congressional Research Service, February 6, 2020.

Chapter 16

1. In 2002, the U.S. International Trade Commission estimated that the annual economic gain from repealing the act for residents of Alaska, Hawaii, and Puerto Rico would be between \$5 billion and \$15 billion in current-value dollars. See U.S. International Trade Commission, *The Economic Effects of Significant U.S. Import Restraints: Third Update*, Publication no. 3519 (Washington: USITC,

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2. “The Big Q: What Do You Think about the Jones Act, the 1920 Law Designed to Protect U.S. Domestic Shipping Interests?,” *Honolulu Star Advertiser*, December 1, 2012.
 3. “Big Q: What Should Be Done about the Maritime Shipping Law, the Jones Act?,” *Honolulu Star-Advertiser*, October 2, 2017.
 4. “Big Q: What Should be Done about the Maritime Shipping Law, the Jones Act?,” *Honolulu Star-Advertiser*, October 3, 2017.
 5. Reeve and Associates and Estudios Técnicos Inc., *Impact of the U.S. Jones Act on Puerto Rico* (Ogden, UT: Reeve, 2018), p. 6.

Chapter 17

1. Douglas Irwin, *Clashing Over Commerce: A History of US Trade Policy* (Chicago: University of Chicago Press, 2017), p. 35; and John Frittelli, “The Jones Act: An Overview,” Congressional Research Service, RS21566, July 8, 2003.
2. John Randolph Spears, *The Story of the American Merchant Marine (Illustrated Edition)* (Norwood, MA: Norwood Press, 1910), p. 29.
3. Winthrop L. Marvin, *The American Merchant Marine: Its History and Romance from 1620 to 1902* (New York: Charles Scribner’s Sons, 1916), pp. 26–27.
4. Marvin, *The American Merchant Marine*, p. 31
5. Henry Hall, *American Navigation: With Some Account of the Causes of Its Recent Decay, and of the Means by Which Its Prosperity May Be Restored* (New York: D. Appleton and Company, 1880), p. 41.
6. Hall, *American Navigation*, p. 39.
7. Bryan Clark, Timothy A. Walton, and Adam Lemon, *Strengthening the U.S. Defense Maritime Industrial Base: a Plan to Improve Maritime Industry’s Contribution to National Security* (Washington: Center For Strategic and Budgetary Assessments, 2020).