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BRIEFLY NOTED

Mencken's Theory of Democracy

BY PIERRE LEMIEUX

After November's elections, many disappointed voters must have been quoting H.L. Mencken's well-known aphorism: "Democracy is the theory that the common people know what they want, and deserve to get it good and hard."

The common person *does* know what he wants: to improve his condition in life according to his own preferences. And he succeeds so well in his private life that, once he was left individually free, he and his fellows generated an Industrial Revolution and what economist Deirdre McCloskey calls the "Great Enrichment."

Except in the special case of children, we must presume that the individual is best positioned to know what he wants, what tradeoffs he's willing to make to get it, and the necessary contracts and other arrangements he should conclude with his fellow humans. He can make errors, of course, but he is the one who has the strongest incentives to avoid them and correct them. He can turn to relatives and friends for advice or ask experts. Brand names and commercial reputations help him choose complex goods and services such as cars, computers, and life insurance. In case of doubt, he can follow the rules that successful people follow. In any event, the common person is likely to make fewer errors in his life than would a benevolent master, not to mention a non-benevolent one.

Confused mix / It is when the common person is given the power to decide what *his fellow humans* should want that things can go very wrong. History and economic theory show the consequences of the domination and exploitation of some individuals by others. Liberal democracy was conceived as a political regime to avoid this danger. Unfortunately, worldly democracies are imperfectly liberal and frequently go astray.

One individual deciding what his fellow citizens should want and coercively imposing it on them is a dictator. A small group of individuals in that role is an oligarchy. When 50 percent plus 1 of the voters believe they know what they or everyone collectively wants and have the general power to impose it on everybody, we have what Alexis de Tocqueville called a "tyranny of the majority" or Bertrand de Jouvenel called a "totalitarian democracy."

A collective such as an electorate literally does not know and cannot know what it wants; only the individuals who comprise it know what they individually want. Collective decisions reached by voting are subject to incoherence (also called "cycling," like from one election to another). For example, the electorate could choose *A* (say, standard Democrats) over *B* (standard Republicans), *B* over *C* (a populist strongman), but then *C* over *A*. This intransitivity in collective choices can happen *even if* each voter's preferences are transitive (coherent) and don't change. Because a collective can want something *and* its contrary, what the electorate wants is not clear at all. (See "Populist Choices Are Meaningless," Spring 2021.)

The electoral choices presented to voters are typically a confused mix of unreliable promises and obscure policies. Contrast that with the clarity and variety of market choices. Market buyers directly get what they want, while most voters have to choose what they think is the least bad alternative.

Pierre Lemieux is an economist affiliated with the Department of Management Sciences of the Université du Québec en Outaouais.

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Rational ignorance / These problems are compounded by what economists call voters' "rational ignorance." When an individual buys, say, a microwave, *he* is the one who determines what is purchased, *he* pays all the cost, and *he* gets all the benefits. So, he will endeavor to choose the model that maximizes his net benefit: he reads *Consumer Reports* or googles similar sources, consults friends, and shops around.

It's different when he votes. The probability that *his* vote will decide the election and thus give him what he wants is infinitesimal; for all practical purposes, he has no voice in the choice made by the majority. Whether or not he incurs the costs of making an enlightened choice (costs include his time reading political platforms, government documents, economic studies, different editorials, etc.) will not change the net benefit he gets from *the others* who determine the election result. He will thus remain "rationally ignorant" of the issues and vote according to his intuitions or by following the political tribe he roots for.

The economist Joseph Schumpeter put it in different terms:

> The typical citizen drops down to a lower level of mental performance as soon as he enters the political field. He argues and analyzes in a way which he would readily recognize as infantile within the sphere of his own interests.

Moreover, well-organized special interests will typically take advantage of this situation and capture the government and put it at their service. Expect trade unions or billionaires or inefficient corporations or some other special interests to get what *they* want from the government.

To all these topics, public choice economics has made major contributions since the mid-20th century. When the common people elect a strong leader or would-be master, Mencken's aphorism seems to take all its force.

A better future? / Yet, there are caveats. Do we really want the majority of voters to get their collective choice "good and hard," let alone those who voted against it? The politicians have probably lied to them, and perhaps some more than others. The value of lying as an electoral asset seems to be on the rise. The public education system appears to have not had much success in encouraging the quest for truth. And the common people have been infantilized by their own governments for decades; the state even pretends to protect an individual from himself.

Even if we disregard these caveats, we still need to correct Mencken's aphorism as follows: "Non-liberal democracy (as we know it) is the theory that the majority of voters think they know what they want and that everybody deserves to get it good and hard." If the damage caused to institutions protecting individual liberty and prosperity is not irremediable, the result can hopefully serve as a bitter lesson for a better future. *R*

How Data Localization Restrictions Hurt Health Care

BY IKE BRANNON AND CHAD COTTI

Scientists from the Walter and Eliza Hall Institute (WEHI) in Australia recently announced they've identified 13 proteins related to pancreatic ductal adenocarcinoma, the most prevalent form of pancreatic cancer. This breakthrough could pave the way for a blood test capable of identifying people with early-stage pancreatic cancer. That would be a godsend because the disease is seldom discovered until late, at which time the patient's prognosis is almost invariably grim.

For their research, WEHI researchers are using the PURPLE Pancreatic Cancer Translational Registry. The registry tracks the treatment of over 4,000 patients across Australia, New Zealand, and Singapore. That is a sizable sample, but it is a fraction of the 500,000 people diagnosed with the disease globally each year. A larger dataset would undoubtedly provide more insights into the disease and accelerate their findings.

Unfortunately, it is often not possible to include data from the European Union, China, and other countries in such research in a timely manner because of measures restricting cross-border access. Over the past decade, numerous countries have implemented data-re-

Ike Brannon is a senior fellow at the Jack Kemp Foundation. Chad Cotti is chair of the Department of Agricultural, Food, and Resource Economics at Michigan State University.

lated measures with the stated purpose of enhancing cybersecurity, improving data privacy, or pursuing myriad other policy goals.

Some countries have also implemented a variety of "data localization" requirements limiting where data can be processed or stored. While politicians often justify such requirements as being integral to data privacy, other policy objectives are also at play. Most of these laws include strict guidelines regarding where personal data are kept, which often necessitate establishing data storage facilities within the country as well as limits on cross-border data flow.

Governments justify these restrictions by citing national security considerations, economic interests, or "digital sovereignty." While policymakers treat these as costless interventions in the market, they have a direct and significant effect on the ability of pharmaceutical and medical device companies to conduct broad and diverse studies that cross national borders, limiting the size and diversity of trials.

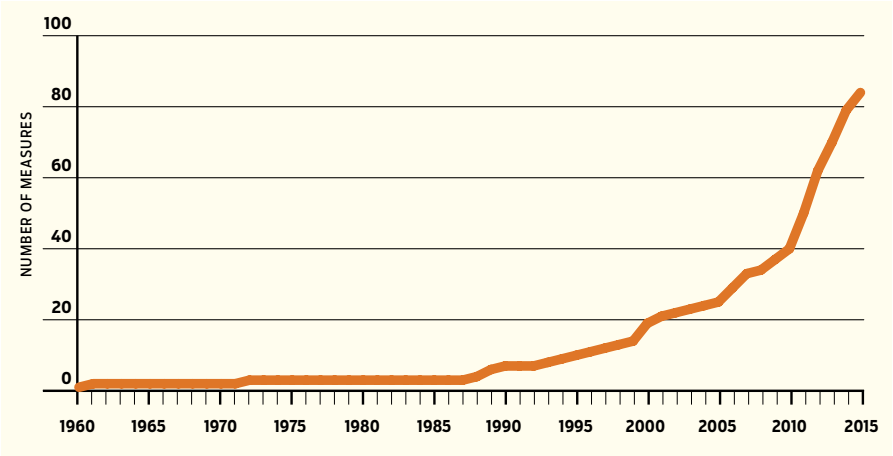
Our analysis finds evidence that the expansion of these laws in the last few years has slowed the development of new drugs and medical devices. This diminution could soon affect patient diagnosis, treatment, and monitoring, as well as the progress of research and development, the pace of preclinical and clinical studies, and the ability to conduct post-market surveillance.

Why restrictions? / There are three broad justifications for data localization policies. First, jurisdictions impose these ostensibly to protect their citizens' data and facilitate law enforcement efforts in pursuing or prosecuting criminal entities that might exploit such data. The claim is that, if these data move across national borders, they are more vulnerable to nefarious uses and less available to benevolent ones.

Second, countries implement these rules to bolster their domestic economy. They correctly believe the data have value and infer that storage within national borders somehow provides their economy with potential gains. For instance, with these mandates, nations seek to stimulate investment both in the creation of data storage facilities as well as in the analysis of the data.

FIGURE 1

Data Globalization Restrictions (Worldwide)



A third motivation is rooted in concerns related to sovereignty. Countries express apprehension about being overly dependent on foreign nations or losing control over a potential economic resource (e.g., data and technology).

However, these arguments don't hold water. For starters, there is little evidence that local data storage requirements protect the data (Brannon and Schwartz 2018). In fact, in authoritarian countries, it undoubtedly makes it more likely that such data will be illegally accessed by the government authorities themselves.

There is also no reason to think that storing data within one's jurisdiction produces any tangible economic benefits. The investment in constructing a data center does not extend much beyond the cost of constructing the building, purchasing servers, and hiring a few people to secure the facility. The tangible economic benefits from the data largely come from researchers' ability to access that data for research, which data localization agreements inhibit.

Data localization laws contribute to higher compliance costs, increased operational inefficiencies, innovation delays, market entry barriers, and reduced global trade. A 2016 report concluded that data flows accounted for $2.8 trillion of global GDP in 2014 and that "cross-border data flows now generate more economic value than traditional flows of traded goods" (Maniyika et al. 2016). A 2022 report discusses the importance of cross-border data flows in collaborating on research and development in areas such as health tech and pharmaceutical development (Zurich Insurance 2022). Yet, as can be seen in Figure 1, the trend of mandating data localization has been on the rise since the inception of the internet, with a noticeable acceleration over the last decade.

Quantifying the effects / The paucity of research on the nature and broad effects of data localization rules makes it challenging to quantify the costs imposed on drug trials and related medical innovation. We began our attempt to do so by surveying 400 experts in health economics or allied healthcare professions, and 32 participants responded to an online questionnaire. All respondents had graduate degrees in economics and did research that focused on health markets or public health.

The survey first asked if respondents knew of hindrances preventing researchers from readily obtaining cross-border

access to pre-clinical, and/or clinical data, as well as whether they thought these constraints serve to delay the discovery of promising chemical compounds, biological substances methods, or technologies for the treatment of many health conditions. Over three-fourths of respondents said they felt these rules did delay discoveries of new treatments for medical conditions. Only 7 percent of respondents indicated these restrictions have no effect on research and development. The survey results are shown in Figure 2.

The survey also asked respondents about their perception of the effects of data localization mandates and restrictions on cross-border data transfers on the costs of pre-clinical and clinical trials. Over 80 percent of experts we surveyed felt these rules effectively reduce the number of pre-clinical and clinical research trials.

We next asked respondents their thoughts on the effect data localization restrictions have on the safety and efficacy of innovation. Fully half reported they felt these restrictions decrease the safety and efficacy of new innovations in the biopharmaceutical sector, while 22 percent felt there would be an uncertain effect.

Fourth, we asked about the effect of data localization mandates and restrictions on the representativeness of data collected in research studies. Nearly two-thirds responded that data localization restrictions would decrease the representativeness of the data collected.

Lastly, we asked for their perspectives on how data localization mandates and restrictions disrupted innovation in health-related sectors. Nearly two-thirds of respondents felt these policies would create a notable disruption, while 23 percent felt the disruptions would be minor.

GDPR and drug development / Quantifying the effects of data localization rules and data transfer restrictions on drug trials poses myriad challenges. However, we can draw insights from the effects of similar policies on past research. To that end, we examined how the EU's 2018 implementation of the General Data Protection Regulation (GDPR) affected clinical research involving the US National Institutes of Health (NIH), specifically on collaborations between the United States and the EU.

To estimate the effect of these restrictions, we began by examining data that compared the initiation of clinical trials funded by the NIH in the largest and wealthiest European Union countries (France, Germany, Italy, and the UK, collectively referred to as the EU4)—with trials initiated in the United States during the period surrounding the implementation of the GDPR. We obtained data from ClinicalTrials.gov, an online repository of clinical research studies and their outcomes. This dataset enabled us to determine the number of new clinical trials initiated both before (2015–2017) and after (2018–2019) the enactment of the GDPR.

In the two years following GDPR passage, US clinical trials increased 20.7 percent but NIH collaboration with EU4 countries declined 47.5 percent.

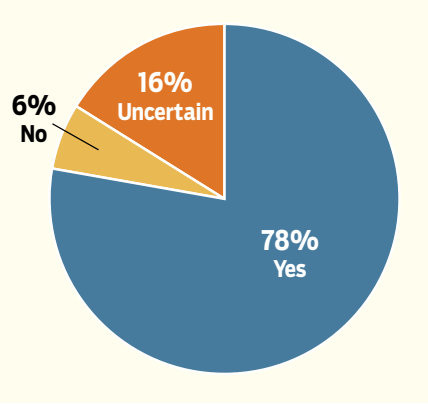
The analysis shows that in the two years following the GDPR passage, the number of NIH-funded clinical trials in the United States increased significantly (20.7 percent) compared to the three years preceding it. However, NIH collaboration with the EU4 countries sharply declined (47.5 percent) during the same period.

This decline could simply be an artifact of declining clinical trials within the EU4 relative to the United States. To see if that was the case, we examined data on total clinical trials—irrespective of NIH affiliation—for the EU4 countries and the United States. Total clinical trials in the United States increased by 14.7 percent between the 2015–2017 and 2018–2019 time periods (similar to the NIH-funded US trials at +20.7 percent). Total clinical trials started in the EU4 countries increased by 17.5 percent. Hence, the decrease in NIH-funded EU4 trials is not related to a broader reduction in clinical trials during this period.

These findings suggest that GDPR data usage constraints may have substantially diminished cross-border data collaborations. Future restrictions are likely to have similar consequences.

FIGURE 2

Survey Results: Do Cross-Border Data Restrictions Delay Discovery of Medical Treatments?



Drag on innovation / Countries pursue data localization measures in part because many jurisdictions have exaggerated the benefits of impeding cross-border data flow. There is no tangible evidence that such rules enhance data privacy, and no credible analysis has found that these steps have any tangible effect on a country's economic activity. Nevertheless, such policies can be politically acceptable to the populace because the perceived benefits they generate for a country—a public perception of improved data security and some marginal economic activity or job creation—may outweigh the economic costs to that particular country.

The lost benefits from faster drug or

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medical device innovation ultimately get spread across the globe to other jurisdictions. Nonetheless, those losses are large—for the country imposing the regulations as well as the rest of the world. Our analysis suggests the global costs clearly outweigh the aggregate benefits.

As nations struggle with the dual objectives of safeguarding data and promoting international collaboration in drug and medical device development, researchers must do more to help policymakers understand the opportunity costs of data localization laws. R

READINGS

- Brannon, Ike, and Hart Schwartz, 2018, "The New Perils of Data Localization Rules," *Regulation* 41(2): 12–13.
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The States Are Taking the Lead on AI

BY THOMAS A. HEMPHILL

Since the launch of Open AI's ChatGPT in late 2022, federal policymakers have been debating how to regulate artificial intelligence (AI) transparency and safety. But so far, Congress has not enacted any significant legislation. That could soon change, as the Senate Committee on Commerce, Science, and Transportation could report out as many as eight AI-related bills before the end of the 118th Congress.

State efforts / Though public and media attention focus on policymaking in Washington DC, the real action on AI has, so far, largely happened at the state level. According to the National Conference of State Legislatures, in the 2024 legislative session (as of June 3), at least 40 states, Puerto Rico, the Virgin Islands, and the District of Columbia's local government introduced AI bills, and six states, Puerto Rico, and the Virgin Islands adopted resolutions or enacted legislation. Among those developments:

- Illinois enacted legislation to regulate the use of AI in certain employment settings.
- Indiana created a task force to consider AI regulation.
- Maryland adopted policies and procedures concerning state government development, procurement, deployment, use, and assessment of AI systems.
- Utah enacted the Artificial Intelligence Policy Act, providing several consumer protections.
- West Virginia created a select committee to consider AI regulation.

Colorado / When it comes to the passage of significant legislation addressing transparency and safety issues related to AI, those states all take a backseat to Colorado. There, the legislature passed the Colorado Artificial Intelligence Act (S.B. 205) in August, though it will not take effect until February 1, 2026, at the earliest.

The new law defines "high risk AI systems" as those that make *consequential decisions* affecting consumers' lives, including educational opportunity, government services, insurance, financial and legal services, employment opportunity, healthcare services, and housing. The law describes duties for both developers and deployers (that is, users) of high-risk AI systems, emphasizing the importance of using reasonable care to mitigate risks of algorithmic discrimination.

Required duties of AI developers include providing documentation and disclosures regarding the intended uses and potential limitations of high-risk systems. Developers are required to promptly report any instances of algorithmic discrimination to the Colorado attorney general, who has exclusive enforcement authority (precluding all private rights of action). AI deployers are charged with implementing risk management programs, conducting impact assessments, notifying consumers of the use of high-risk AI systems, and offering consumers the opportunity to appeal adverse decisions made by AI systems. Developers and deployers must also provide a public statement to consumers summarizing the types of high-risk AI systems they develop or use, and how to mitigate algorithmic discrimination risks.

Colorado may not be done legislating AI, but future efforts seem intended to ensure regulation does not suppress this promising technology. Gov. Jared Polis (D) has called on the legislature to amend the law before it takes effect "to ensure the final regulatory framework will protect consumers and support Colorado's leadership in the AI sector." Proposed revisions would limit the law's scope to only the most high-risk systems, follow a more traditional enforcement framework without mandatory proactive disclosures, and emphasize a regulatory focus on developers of high-risk AI systems rather than smaller companies that deploy them.

What is next? / S.B. 205 had its genesis in a bipartisan, multistate (involving nearly 30 states) AI working group under the auspices of the National Council of State Legislatures (NCSL). The group intends to coordinate approaches to regulating AI systems and facilitate informed legislative action, emphasizing the need to balance AI regulation and innovation. The Colorado leg-

THOMAS A. HEMPHILL is the David M. French Distinguished Professor of Strategy, Innovation, and Public Policy at the University of Michigan, Flint.

islation reflects this dual objective by including provisions focused on promoting responsible AI development while mitigating risks of algorithmic discrimination. Furthermore, Colorado's commitment to improvement and adaptation in its approach to AI regulation can be observed in its delayed effective date of implementation as well as Polis's suggested revisions.

Colorado's efforts are having influence in other states. In late August, the California Legislature passed S.B. 1047, the Safe and Secure Innovation for Frontier Artificial Intelligence Models Act. It would have required developers of advanced—and large—AI models to adopt safety measures to prevent the technologies from being misused. In late September, Gov. Gavin Newsom (D) vetoed the legislation, arguing it should not be limited to only the largest and most expensive AI models—ones that cost at least $100 million to train—and it did not consider whether the models would be deployed in high-risk situations. In his veto message, Newsom announced that he would be working with prominent AI researchers, including Fei-Fei Lei of Stanford, to develop new AI safety legislation that he would be willing to support.

In addition, the NCSL working group hopes to see comprehensive AI system legislation introduced in a dozen or more states in 2025. It would be useful for the working group to offer model state legislation that those and other lawmakers could consider.

AI is a new frontier in both technology and public policy, and concerns about it often seem rooted more in science fiction than sound understanding. The laboratories of the states will hopefully help distinguish good policy from unjustifiably costly, obstructive, or simply unnecessary government intervention. *R*

ERRATUM

In the Fall 2024 article "Assessing Trump's New Tariff Ideas," a data error on federal revenue from tariffs resulted in some subsequent calculation errors. The 2023 federal receipts from tariffs were $82 billion, not $72 billion, which represents 1.8% of federal revenues (not 1.6%). It follows that replacing the individual income tax by customs tariffs would require a 2,600 percent (not 2,900 percent) increase in tariff revenues. These errors all appear in the first paragraph of the article.

Later in the article, the same data error resulted in the incorrect calculation that the average US tariff levied on imported goods is 2.3 percent; the correct average is 2.6 percent. Also, Trump's (then) proposed new tariffs would nearly triple (instead of "roughly quadrupling") federal tariff revenues.

None of these corrected figures change the author's argument, but he wants to correct the errors and apologize for the mistakes.