

# How Foot Voting Enhances Political Freedom

ILYA SOMIN\*

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## I. INTRODUCTION

We often take it for granted that ballot box voting is the essence of political freedom. In liberal democracies, it is generally considered the main way for the people to choose what sort of government policies they will live under.

The ballot box indeed has great value. But it also has significant flaws. As a mechanism of expressing political choice, it leaves much to be desired. Individual voters almost never have more than a miniscule chance of making a difference to the outcome of an election. And for that very reason, they have strong incentives to make poorly informed decisions.

Voting with your feet—or “foot voting”—is in crucial ways a superior alternative. You can vote with your feet by deciding to move to a different city or state because you prefer its government policies to those in force where you currently reside. International migration is also often a form of foot voting. And, as we shall see, many people vote with their feet in the private sector, as well.

Foot voting offers individuals a chance to make decisions that actually matter. And precisely because their choices do matter, foot voters have every reason to seek out information and use it wisely.

If you are like most people, you probably spent more time seeking out information the last time you bought a television or a smartphone than the last time you voted in an election for the presidency or any other political office. That is likely because the decision on the TV really makes a difference. The one you buy will actually be in your living room. But when you turn it on and see the president or prime minister of your country, the chance that you can actually influence the selection of that person is utterly insignificant.

This Article shows how these two advantages of foot voting make it a powerful tool for expanding political freedom. This applies to all three types of foot voting prevalent in the modern world: foot voting between jurisdictions in a federal system, foot voting through international migration, and foot voting in the private sector. Each of these has been the focus of much controversy. But they are rarely considered together in a single unified framework, and never one that explores their implications for political freedom.

Nobel Prize-winning economist Robert Lucas famously said that once “you start thinking about [economic] growth, . . . it’s hard to think about anything else.”<sup>1</sup> He was referring to the ways in which even modest cumulative increases in economic growth can have an immense impact on

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1. *A Better Way*, *ECONOMIST* (Oct. 9, 2010), <http://www.economist.com/node/17173919> [<https://perma.cc/R6HK-ZK5A>].

human welfare, because of the way the effects of growth compound over time. Even a 1% increase in annual Gross Domestic Product (GDP) growth can make a massive difference over a period of several decades.

The same can be said for foot voting and its impact on human freedom. Even modest increases in opportunities for people to vote with their feet can have an enormous impact in expanding liberty and well-being. For both internal and external migrants—especially those who are poor or fleeing oppression—foot voting is often a life-altering experience that massively improves their situation for the better. Even a 1% increase in the number of people who have access to major foot voting opportunities can make an enormous difference to millions of people.

Few, if any other policy changes can help so many people so much as breaking down barriers to foot voting. A recent World Bank report concludes that, “[i]gnoring the massive economic gains of immigration would be akin to leaving billions of hundred dollar bills on the sidewalk.”<sup>2</sup> Free migration throughout the world could potentially double world GDP, a far larger gain than from any other possible reform.<sup>3</sup>

And that does not include improvements in human rights and “noneconomic” elements of well-being. As Harvard economist and former Secretary of the Treasury Lawrence Summers puts it, “I do not think there is a more important development issue than getting questions of migration right.”<sup>4</sup> What is true of development is also, to a large degree, true of human freedom and well-being more generally. Increasing opportunities for internal foot voting can also potentially generate enormous gains, both economic and otherwise.<sup>5</sup>

The arguments advanced in this Article do not prove that foot voting should be unconstrained in all conceivable circumstances. Political freedom and related issues considered here are not the only ones that need to be weighed in assessing policy on foot voting. But the massive potential

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2. CAGLAR OZDEN, MATHIS WAGNER CHRISTOPH & MICHAEL MINH TAM PACKARD, *MOVING FOR PROSPERITY: GLOBAL MIGRATION AND LABOR MARKETS* 3 (2018). The phrase is adapted from Michael A. Clemens, *Economics and Emigration: Trillion-Dollar Bills Left on the Sidewalk?*, 25 J. ECON. PERSP. 83 (2011).

3. Clemens, *supra* note 2, at 88–89.

4. Lawrence H. Summers, Board Chair, Ctr. for Glob. Dev., Speech at the Center for Global Development: Rethinking Global Policy for the 21st Century 10 (Nov. 8, 2017), <https://www.cgdev.org/publication/rethinking-global-development-policy-for-the-21st-century> [<https://perma.cc/Y66D-ALM5>].

5. *See generally* ILYA SOMIN, *FREE TO MOVE: FOOT VOTING AND POLITICAL FREEDOM* (forthcoming 2020) (manuscript at ch. 2) (on file with Oxford Univ. Press).

gains do counsel in favor of expanding foot voting far more than we might otherwise.

To the extent we value political freedom in any significant sense, we should also assign a high value to foot voting. Freedom of choice through foot voting, and the freedom of movement that make it possible, cannot be absolute principles that always trump other considerations. But there should be at least a substantial presumption in their favor.

My analysis also emphasizes the fundamental similarity between three different types of foot voting that are usually considered to be very different from each other: interjurisdictional foot voting in federal systems, foot voting through international migration, and foot voting in the private sector. Despite some important differences, the three have common virtues, and help advance political freedom in similar ways.

Concluding that foot voting is vital to political freedom and often a better mechanism of achieving it than ballot box voting does not amount to a call for the abolition of democracy. Far from it. Democratic government is still superior to alternatives such as dictatorship and oligarchy,<sup>6</sup> and choosing political leaders by elections has value that does not depend on its effect on political freedom. But there are good reasons to constrain and structure democracy in ways that increase opportunities for foot voting.

Part II of the Article provides an overview of the three main types of foot voting: domestic migration within federal systems, foot voting through international migration, and foot voting in the private sector. In Part III, I expand on the two major advantages of foot voting over ballot box voting: the opportunity to make a decisive choice and the resulting superior incentives to make well-informed decisions. Part IV outlines the advantages of foot voting from the standpoint of four major theories of political freedom: consent, negative liberty, positive liberty, and nondomination. In Part V, I describe why the advantages of foot voting are not significantly undermined by “information shortcuts” and “miracles of aggregation,” which might enable ballot box voting to function well even if individual voters have low levels of knowledge. Part VI explains why forms of traditional political participation beyond voting have many of the same relative weaknesses as ballot box voting does. This Part also summarizes reasons why “deliberative democracy” is unlikely to overcome the flaws of ballot box voting. Finally, Part VII addresses the objection that foot voting should not be considered a legitimate expression of political freedom because it is not truly a form of “political” decision-making at all.

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6. For an overview, see generally MORTON H. HALPERIN, JOSEPH T. SIEGLE & MICHAEL M. WEINSTEIN, *THE DEMOCRACY ADVANTAGE: HOW DEMOCRACIES PROMOTE PROSPERITY AND PEACE* (revised ed. 2010).

In this Article, I do not consider objections to foot voting based on the idea that the existing residents and governments of the nations or regions they move to have a right to exclude. I take up this issue in my forthcoming book *Free to Move: Foot Voting, Migration, and Political Freedom*, from which much of the material in this work is excerpted.<sup>7</sup> In that book, I also consider objections based on the idea that expanded foot voting is likely to have various negative side effects, such as damaging political institutions, increasing crime, or spreading harmful cultural values.<sup>8</sup> The book further takes up a wide range of other issues related to foot voting and migration rights that cannot be covered here.

## II. THREE TYPES OF FOOT VOTING

This Article focuses on three types of foot voting.<sup>9</sup> First, people can vote with their feet by deciding what jurisdiction to live in within a federal system, such as a state or local government. In the United States alone, there are fifty states and thousands of local governments that foot voters can choose between. Both historically and today, millions of people move from one jurisdiction to another at least in part because of preferences over public policy.

A second mechanism for foot voting is international migration, where migrants choose what type of government they wish to live under by moving from one nation to another. Such nations as the United States, Australia, Argentina, Canada, and New Zealand were populated primarily by immigrants who choose to vote with their feet in hopes of finding greater freedom and opportunity due in large part to superior government policies in the destination country.<sup>10</sup>

Foot voting across international boundaries expands choice even more than domestic foot voting, because of the vast differences between national governments. The differences in policy and quality of institutions between, say, Mexico and the United States, are vastly greater than those between any two American states or any two Mexican ones.

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7. See generally SOMIN, *supra* note 5 (manuscript at ch. 5).

8. See generally *id.* (manuscript at chs. 5–6).

9. Ilya Somin, *Foot Voting, Federalism, and Political Freedom*, in NOMOS LV: FEDERALISM AND SUBSIDIARITY 83, 90–91 (James E. Fleming & Jacob T. Levy eds., 2014).

10. For a wide-ranging overview of the relevant history, see MASSIMO LIVI-BACCI, A SHORT HISTORY OF MIGRATION 46–69 (Polity Press, 2012).

Finally, foot voting also occurs in the private sector, when we decide what goods and services we wish to purchase in the market or what civil society organizations we wish to join. Such private sector foot voting is particularly clear in the case of private planned communities and other organizations that carry out functions traditionally associated with local or regional governments, such as security, environmental amenities, and waste disposal.<sup>11</sup> In the United States alone, some sixty-nine million people lived in private communities as of 2016.<sup>12</sup> Such organizations have spread elsewhere, as well.<sup>13</sup> Private planned communities have increasingly taken on a wide range of functions historically performed by government.<sup>14</sup>

In many cases, foot voting can be undertaken even without physically moving from one place to another. In the private sector, for example, one can change schools, join a new civil society organization, or purchase a new product or service without ever changing one's place of residence.<sup>15</sup>

The key attribute of foot voting that differentiates it from conventional ballot box voting is not movement, as such, but rather the ability to make an individually decisive choice.<sup>16</sup> Unlike the ballot box voter, whose vote is just one of many thousands or millions and usually has only a tiny chance of affecting the outcome, the foot voter can make decisions that have a high probability of making a difference.<sup>17</sup>

As described in Albert Hirschman's famous theory of political choice, people dissatisfied with a political regime can use either "voice" or "exit" to address the situation.<sup>18</sup> Ballot box voting is the principle form of voice in democratic societies, while foot voting is the most significant type of exit. This circumstance makes it easy to confuse the distinction between foot voting and ballot box voting with Hirschman's distinction between exit and voice. But the two are nonetheless distinct. Unlike Hirschman's theory, the distinction between foot voting and ballot box voting focuses

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11. For an overview of private planned communities, see generally ROBERT H. NELSON, *PRIVATE NEIGHBORHOODS AND THE TRANSFORMATION OF LOCAL GOVERNMENT* (2005); EDWARD PETER STRINGHAM, *PRIVATE GOVERNANCE: CREATING ORDER IN ECONOMIC AND SOCIAL LIFE* 131–32 (2015).

12. COMTY. ASS'N INST., *NATIONAL AND STATE STATISTICAL REVIEW FOR 2016: COMMUNITY ASSOCIATION DATA 1* (2017), <https://www.caionline.org/AboutCommunityAssociations/Statistical%20Information/2016StatsReviewFBWeb.pdf> [<https://perma.cc/X7WZ-6ZW2>].

13. *See generally* PRIVATE CITIES: GLOBAL AND LOCAL PERSPECTIVES (George Glasze, Chris Webster & Klaus Frantz eds., 2006).

14. *See generally id.*; NELSON, *supra* note 11.

15. ILYA SOMIN, *DEMOCRACY AND POLITICAL IGNORANCE: WHY SMALLER GOVERNMENT IS SMARTER* 158–59 (2d ed. 2016).

16. *See id.* at 136.

17. *See generally id.* at 136–81.

18. ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES* 3–4 (1970).

on the presence or absence of opportunities for individuals to make a decisive choice, as opposed to one where they have only a tiny chance of affecting the outcome.<sup>19</sup> By contrast, Hirschman's framework does not distinguish between exit and voice mechanisms that offer a decisive choice, and those that do not.<sup>20</sup>

Foot voting need not always be completely individualistic. Families and businesses, for example, make foot voting decisions that require the assent of more than one person.<sup>21</sup> But in most such cases, there are individuals who can either make the choice all on their own or at least exercise a high degree of influence.<sup>22</sup>

The exact point at which an individual's leverage becomes too small for the decision to be considered a case of foot voting rather than ballot box voting may be hard to identify. The distinction between the two is, in close cases, more a matter of degree than kind. But the difficulty of drawing a precise line between the two should not divert attention from the key fact that there is an important difference between them and that most important real-world cases clearly fall on one side of the divide or the other.

### III. MEANINGFUL, INFORMED CHOICE

Effective freedom requires the ability to make a decisive choice, or at least have a high probability of doing so. It is difficult to claim a person has meaningful freedom if they have only a one in one million or one in 100 million chance of making a decision that changes the outcome. For example, people do not have meaningful religious freedom if they have only a one in one million chance of being able to determine which religion they wish to practice. Similarly, people with only a one in one million chance of deciding what views they are allowed to express surely do not have meaningful freedom of speech.

What is true of freedom of speech and freedom of religion is also true of political freedom. Those with only an infinitesimal chance of affecting what kind of government policies they are subjected to have little, if any, genuine political freedom. And that is exactly the position voters find themselves facing in all but the very smallest of elections. In an American presidential election, for example, the average voter has only about a one

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19. See SOMIN, *supra* note 15, at 138.

20. See HIRSCHMAN, *supra* note 18, at 3–5.

21. SOMIN, *supra* note 15, at 146–47.

22. *Id.* at 147.

in sixty million chance of affecting the outcome.<sup>23</sup> In smaller elections, the odds are higher, but still generally very low.<sup>24</sup>

As political scientist Russell Hardin put it, “[M]ost citizens do not typically have the liberty actually to make any difference to their own welfare through politics.”<sup>25</sup> Hardin notes that “if my vote is worthless, . . . [h]aving the liberty to cast it is roughly as valuable as having the liberty to cast a vote on whether the sun will come up tomorrow.”<sup>26</sup> In fairness, casting a vote in an election is not *completely* worthless. There is a small chance that your vote really will change an electoral outcome, and situations where an election was tied or won by a single vote have occurred a few times in history.<sup>27</sup>

The individual voter’s infinitesimally small odds of affecting electoral outcomes also undermine political freedom in a second way: it ensures that most will not make well-informed decisions. On many normative views of freedom, its effective exercise requires at least a reasonably informed choice, especially when it comes to important issues.

Widely accepted standards of medical ethics, for example, require physicians to secure the patient’s informed consent before performing an operation.<sup>28</sup> As the American Medical Association (AMA) Council on Ethical and Judicial Affairs puts it, “[t]he patient’s right of self-decision can be effectively exercised only if the patient possesses enough information to enable an informed choice.”<sup>29</sup> Like many medical decisions, political choices also are often literally matters of life and death. For millions of people, the outcome of an election might make the difference between war and peace, wealth and poverty, or sickness and health.

Unfortunately, few electoral decisions meet the standard posited by the AMA. Ballot box voters have strong incentives to be “rationally ignorant,”

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23. Andrew Gelman, Nate Silver & Aaron Edlin, *What Is the Probability That Your Vote Will Make a Difference?*, 50 *ECON. INQUIRY* 321, 323–24 (2012). For a more detailed discussion of this and alternative methods of estimating the odds that a vote might be decisive, see SOMIN, *supra* note 15, at 75–76. The bottom line is that the odds of decisiveness are low by any reasonable metric.

24. SOMIN, *supra* note 15, at 75–76.

25. RUSSELL HARDIN, *HOW DO YOU KNOW? THE ECONOMICS OF ORDINARY KNOWLEDGE* 93 (2009).

26. *Id.*

27. For a discussion of a few examples, see Eric Levenson, *Coin Flips, Poker Hands and Other Crazy Ways in Which America Settles Tied Elections*, CNN (Jan. 4, 2018, 2:12 PM), <https://www.cnn.com/2018/01/04/us/tie-elections-history-lots-coins-draws-trnd/index.html> [<https://perma.cc/HCU7-H35R>].

28. AMA Council on Ethical & Judicial Affairs, Formal Op. 8.08 (2012), <http://journalofethics.ama-assn.org/2012/07/coet1-1207.html> [<https://perma.cc/5T6S-M45M>] (discussing informed consent).

29. *Id.*

because there is so little chance that their votes will matter.<sup>30</sup> Survey data shows that they often lack even very basic knowledge about the candidates and policy questions at issue in any given election.<sup>31</sup> They also often have little incentive to analyze the information they do learn in a logical, unbiased way. To the contrary, voters have incentives to fall prey to “rational irrationality”: when there are few or no negative consequences to error, it is rational to make almost no effort to control one’s biases.<sup>32</sup> For example, voters routinely overvalue any evidence that supports their preexisting views, while downplaying or ignoring anything that cuts the other way.<sup>33</sup>

Rational ignorance and rational irrationality affect the decisions of altruistic voters, as well as those who are narrowly self-interested. Even a citizen who is strongly motivated to help others still has little incentive to devote more than a small amount of effort to acquiring political knowledge and trying to rein in her biases. Whether her purposes are self-interested or not, the odds that her efforts will pay off are extremely low. This makes it rational for both egoists and altruists to severely limit the time and effort devoted to acquiring and analyzing political information.<sup>34</sup>

Rational ignorance does not necessarily require careful, calculated decision-making.<sup>35</sup> In many cases, it involves merely application of crude rules of thumb or an intuitive sense that there is little benefit to seeking out additional knowledge. Thus, the idea is not dependent on the assumption that voters are hyperlogical or capable of making complex calculations about odds. Indeed, such detailed calculation may itself be irrational, since it may require more time and effort than can be justified given the likely benefit.<sup>36</sup>

Decades of survey data indicate that voter knowledge levels are low, and have experienced little or no increase despite rising educational attainment, and the development of the internet and other modern technology that

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30. See SOMIN, *supra* note 15, at 75–84.

31. This part of the chapter builds on my book, *Democracy and Political Ignorance: Why Smaller Government Is Smarter*, which analyzes rational ignorance and its consequences in great detail. See generally *id.* at chs. 1–4.

32. See *id.* at 92–97; BRYAN CAPLAN, *THE MYTH OF THE RATIONAL VOTER: WHY DEMOCRACIES CHOOSE BAD POLICIES* (2007).

33. For a review of the evidence, see SOMIN, *supra* note 15, at 92–97.

34. For a more detailed discussion, see *id.* at 78.

35. *Id.* at 79.

36. For more on these points, see generally Ilya Somin, *Rational Ignorance*, in *ROUTLEDGE INTERNATIONAL HANDBOOK OF IGNORANCE STUDIES* 274 (Matthias Gross & Linsey McGoey, eds., 2015).

makes information easier to access.<sup>37</sup> Often, the majority of the public does not know even basic information, such as which party controls Congress, what major policies have been enacted, or which elected officials are responsible for which issues.<sup>38</sup> Just before the 2014 election, in which the main stake at issue was control of Congress, only 38% of voters knew which party controlled the House of Representatives, and a similar percentage knew which controlled the Senate.<sup>39</sup> Another 2014 survey found that only 36% of Americans can even name the three branches of the federal government: the executive, the legislative, and the judiciary.<sup>40</sup>

An informed electorate is a public good, in the economic sense of the term<sup>41</sup>: people benefit from its production even if they have not contributed to its creation, each individual's contribution is infinitesimally small, and the benefits are "nonrivalrous": my enjoyment of them is not reduced by that of other members of society and vice versa.<sup>42</sup> Like many other public goods, it tends to be underproduced, because individuals have strong incentives to underinvest in it. Informed foot voting, by contrast, is largely a private good that avoids this problem: individuals have strong incentives to produce it for themselves, because they stand to reap the benefits.<sup>43</sup>

Foot voting is superior to ballot box voting on both decisiveness and the incentive to make an informed decision. It enables the individual decision maker to make a meaningful choice. In the case of people who must move in tandem with family members, that choice is not completely decisive. Family members, at least those who are adults, must reach a joint decision of some kind. But individuals still have vastly greater leverage than in almost any ballot box vote. They can make choices that actually matter, or at least have a high probability of doing so.

And precisely because their decisions do matter, foot voters have strong incentives to acquire relevant information and use it wisely. People deciding where to live or what choices to make in the marketplace and civil society know that their decisions have real consequences, and generally make more effort to acquire information. Considerable empirical evidence backs these

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37. For recent overviews of the evidence, see, for example, CHRISTOPHER H. ACHEN & LARRY M. BARTELS, *DEMOCRACY FOR REALISTS: WHY ELECTIONS DO NOT PRODUCE RESPONSIVE GOVERNMENT* 12–15 (2016); JASON BRENNAN, *AGAINST DEMOCRACY* 23–53 (2016); RICK SHENKMAN, *JUST HOW STUPID ARE WE? FACING THE TRUTH ABOUT THE AMERICAN VOTER* 1–13 (2008); SOMIN, *supra* note 15, at 17–46.

38. For numerous examples, see SOMIN, *supra* note 15, at 17–46.

39. *Id.* at 1.

40. *Id.* at 20.

41. For more detailed discussion, see *id.* at 75–82.

42. *Id.* at 77.

43. See generally *id.* at ch. 5.

theoretical predictions, showing that foot voters outperform ballot box voters even when laboring under difficult conditions.<sup>44</sup>

Adam Przeworski, one of world's leading academic experts on democracy, laments that "[n]o rule of collective decision making other than unanimity can render causal efficacy to individual participation."<sup>45</sup> Foot voting is not perfect on this score. Among other things, equality of participation is constrained by moving costs.<sup>46</sup> But it comes far closer than any other mechanism. Foot voting can be made available to a very wide range of people. And, unlike ballot box voting, each individual choice is causally effective.

The informational advantages of foot voting loom even larger if we believe, as some political theorists do, that voters should engage in "deliberative democracy" in which they carefully consider opposing arguments and moral values, and not just merely cast ballots based on their preferences.<sup>47</sup> Deliberative democracy demands a higher level of knowledge and analytical sophistication than more modest versions of democratic theory do. Rationally ignorant voters are even less likely to meet those standards than the less severe ones imposed by "aggregative" theories of democratic participation, which seek only to ensure that election results roughly reflect voters' preferences.<sup>48</sup>

#### IV. FOOT VOTING AND THEORIES OF POLITICAL FREEDOM

In addition to its general advantages as a tool for meaningful informed choice, foot voting also trumps ballot box voting under four leading standard accounts of political freedom: consent, negative freedom, positive freedom, and nondomination. In this Article, I do not attempt to resolve the long-

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44. *Id.* at 136–81.

45. ADAM PRZEWSKI, *DEMOCRACY AND THE LIMITS OF SELF-GOVERNMENT* 111 (2010).

46. For more detailed discussion of this issue, see SOMIN, *supra* note 15, at 165–69; SOMIN, *supra* note 5 (manuscript at ch. 1).

47. For defense of deliberative democracy, see generally, for example, JAMES BOHMAN, *PUBLIC DELIBERATION: PLURALISM, COMPLEXITY, AND DEMOCRACY* (1996); JOHN S. DRYZEK, *DELIBERATIVE DEMOCRACY AND BEYOND: LIBERALS, CRITICS, CONTESTATIONS* (2000); ROBERT GOODIN, *REFLECTIVE DEMOCRACY* (2003); AMY GUTMANN & DENNIS THOMPSON, *DEMOCRACY AND DISAGREEMENT* (1996); AMY GUTMANN & DENNIS THOMPSON, *WHY DELIBERATIVE DEMOCRACY?* (2004); ETHAN R. LEIB, *DELIBERATIVE DEMOCRACY IN AMERICA: A PROPOSAL FOR A POPULAR BRANCH OF GOVERNMENT* (2004); James S. Fishkin, *Deliberative Democracy and Constitutions*, 28 *SOC. PHIL. & POL'Y* 242 (2011).

48. For detailed discussions of this point, see SOMIN, *supra* note 15, at 58–62.

standing disagreements between advocates of these different views. The case for foot voting is strong under all four approaches.

### A. Consent

At least since John Locke and Thomas Hobbes in the seventeenth century, many political theorists have argued that the authority of the state is legitimized by consent.<sup>49</sup> Ballot box voting is often seen as an indicator of such consent.<sup>50</sup> But, as critics have pointed out, it does not truly signify meaningful consent because, among other things, those who choose not to vote are not thereby exempt from the state's authority.<sup>51</sup>

Many claim that living in a territory controlled by a government constitutes "tacit consent" to its authority. Some theorists argue that the consent becomes more binding if residents accept the benefits of various government services, such as police, fire protection, welfare payments, and others.<sup>52</sup> This argument has a venerable history, dating back at least to Plato's *Crito*.<sup>53</sup> But it is ultimately unsound. As the saying goes, tacit consent is not worth the paper it isn't printed on.

The key flaw in the theory is that it assumes the validity of the very point that it is meant to prove: that government has the right to enact laws of a particular type in the first place. If mere physical or political control of a given territory gives the state the power to issue commands as it wishes, then of course residents are required to follow those laws. But the existence of such a right is in no way demonstrated merely because individuals have chosen not to leave the area, or benefit from some of the services the government offers.

Consider the case of an organized crime boss who has established a "territory" and has the physical power to punish area residents who disobey his decrees.<sup>54</sup> Assume, further, that the residents benefit from some "services"

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49. See generally THOMAS HOBBS, *LEVIATHAN* (Richard Tuck ed., Cambridge Univ. Press 1991) (1651); JOHN LOCKE, *SECOND TREATISES OF GOVERNMENT* (Peter Laslett ed., Cambridge Univ. Press 1988) (1690).

50. See generally, e.g., J.P. PLAMENATZ, *CONSENT, FREEDOM, AND POLITICAL OBLIGATION* (2d ed. 1968); PETER J. STEINBERGER, *THE IDEA OF THE STATE* 218 (2004).

51. See MICHAEL HUEMER, *THE PROBLEM OF POLITICAL AUTHORITY: AN EXAMINATION OF THE RIGHT TO COERCE AND THE DUTY TO OBEY* 59–80 (2013); A. JOHN SIMMONS, *MORAL PRINCIPLES AND POLITICAL OBLIGATIONS* 136–39 (1979).

52. See STEINBERGER, *supra* note 50, at 219–20.

53. In *Crito*, Socrates argues that he is required to obey Athens' laws because he chose not to leave the city. See generally PLATO, *Crito*, in *THE COLLECTED DIALOGUES OF PLATO* 27 (Edith Hamilton & Huntington Cairns eds., Hugh Trednwick trans., Princeton Univ. Press 1989) (399 B.C.E.).

54. See Ilya Somin, *Creation, Consent, and Government Power Over Property Rights*, CATO UNBOUND (Dec. 13, 2010), <https://www.cato-unbound.org/2010/12/13/ilya-somin/creation-consent-government-power-over-property-rights> [<https://perma.cc/QA4E-7E79>].

he provides, such as suppressing rival mobsters. Do residents have a moral obligation to obey his dictates or pay taxes to him whenever he demands it, because they have “consented” to it?

Obviously not, since the boss never had a moral right to issue such commands in the first place. The fact that people choose to live in the territory he claims does not establish that they have consented to obey him in any morally significant sense. What is true for organized crime bosses is also true for governments: the mere fact that a government establishes control over a territory and at least some residents do not choose to leave does not prove that they are required to obey the government’s dictates with respect to their property rights.

Perhaps the tacit consent argument becomes stronger if the government in question is democratic, and residents can express their will at the ballot box. Even if mere residency is not enough to prove consent, perhaps participation in democratic elections is. This narrower version of consent theory is more appealing than one that would give *carte blanche* to authoritarian rulers as well as democratic ones. But it still suffers from the same flaws as its more sweeping cousin. It too assumes the validity of the point it is intended to prove. The fact that a majority of residents have voted for a government that enacts a particular set of laws does not prove that either the majority or its representatives were morally entitled to make such decisions in the first place.

This is particularly true if at least some of the residents never agreed to be ruled by the winners of the election, and never had a chance to vote on the logically prior question of whether they accept the underlying structure of the electoral system. Consenting to take part in an already established electoral process does not mean that the voter consented to allow the winners of the election to control any specific set of decisions.

Once a political system is established, one can rationally choose to vote for the “lesser evil” among the available candidates even if one would prefer that the relevant government not exist at all or have much more limited powers. Any “consent” entailed by choosing to vote is further undercut if the winners of the election exercise authority over nonvoting residents as well as those who chose to participate.

Consider the following modification to my crime boss example. Imagine that the Corleone and Barzini Mafia families of *Godfather* fame each claimed to control a territory somewhere in New York City,<sup>55</sup> but agreed among

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55. MARIO PUZO, *THE GODFATHER* (1969).

themselves that the right to reallocate property rights in the area would accrue to whichever of the two crime families won a majority of the residents' votes in a referendum. Let us say they allow a new referendum to take place every four years. Maybe they even permit other Mafia families to compete in their elections so long as they follow the electoral rules initially established by the Barzini and Corleones. Few would contend that the Barzini–Corleone cartel is justified merely because their willingness to hold occasional elections proves that the residents have consented to let them tax and regulate at will.

Democracy is a useful tool for imposing accountability on government. The democratic Mafia cartel I envision is likely to be less oppressive than the more authoritarian system described earlier. But democracy does not by itself justify untrammled government control over anyone who happens to live in a given area.

Foot voting is superior to ballot box voting as an indicator of consent, because those who move out of a jurisdiction really can escape all—or at least most—of its laws. It is still not entirely clear what, if anything, gives the government the right to claim initial authority over the territory it controls. But such authority is more consensual, or at least less coercive, the more those subject to it have opportunities to avoid its reach.

The degree of consensuality here is significantly reduced by moving costs. But greater decentralization can mitigate that, at least to a substantial degree. Foot voting is less costly when moving from state to state than internationally, and less costly still when choosing between localities or between private sector alternatives.<sup>56</sup>

Private sector foot voting potentially offers even greater options, and even lower moving costs than greatly decentralized government. In many cases, we can switch providers of private sector services without physically moving at all.<sup>57</sup> When choosing between private planned communities, there can often be numerous options within a short distance of each other.<sup>58</sup>

While expanded foot voting might not make political power fully consensual, it comes closer than ballot box voting. The more foot voting options we have, and the greater the ease of exercising them, the more consensual government becomes.

Foot voting may be the only possible avenue to make government more consensual for the large percentage of the world's population that lives under nondemocratic regimes. Freedom House estimates that some 37% of the world's people live in “not free” undemocratic nations, and another

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56. See generally SOMIN, *supra* note 5 (manuscript at ch. 2).

57. See generally *id.* (manuscript at chs. 2, 4).

58. See generally *id.* (manuscript at ch. 4).

24% in ones that are only “partly free”—only partly democratic.<sup>59</sup> In such regimes, most residents have even less leverage over government policy than individual voters in a Western liberal democracy do.

### *B. Negative Freedom*

Another possible approach to political freedom links it to “negative” freedom more generally: people have greater political freedom to the extent that they can minimize unwanted government interference with their choices.<sup>60</sup> Here too, foot voting offers greater protection than ballot box voting: the ability to completely, or at least largely, avoid unwanted interference creates greater negative freedom than the ability to cast a vote that has only an infinitesimal chance of having an impact.

It is also important to remember that restrictions on freedom of movement are themselves a major imposition on negative freedom. When governments block would-be migrants from entering or leaving, they prevent millions of people from freely contracting with willing residents who wish to employ them, rent property to them, and otherwise interact with the would-be migrants.<sup>61</sup> They forcibly confine large numbers of people to a lifetime of poverty and oppression in the third world. Few government interventions in the market and civil society restrict the negative freedom of so many people so severely.

### *C. Positive Freedom*

Many modern political thinkers argue for a more “positive” approach to freedom that focuses on “capabilities”: on this view, freedom is not just noninterference but the actual ability to exercise autonomy, pursue your preferred projects, and enhance your capacities.<sup>62</sup>

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59. MICHAEL J. ABRAMOWITZ, FREEDOM HOUSE, FREEDOM IN THE WORLD 2018: DEMOCRACY IN CRISIS 2 (2018), <https://freedomhouse.org/report/freedom-world/freedom-world-2018> [<https://perma.cc/UQX2-ZXDC>].

60. See generally ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA (2013), for a leading modern work in this vein.

61. On the ways in which migration restrictions violate negative freedom, see generally Michael Huemer, *Is There a Right to Immigrate?*, 36 SOC. THEORY & PRAC. 429 (2010).

62. See generally, e.g., AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); PHILIPPE VAN PARIJS, *REAL FREEDOM FOR ALL: WHAT (IF ANYTHING) CAN JUSTIFY CAPITALISM?* (1995); Charles Taylor, *What’s Wrong with Negative Liberty*, in *THE IDEA OF FREEDOM: ESSAYS IN HONOUR OF ISAIAH BERLIN* 175 (Alan Ryan ed., 1979). *But cf.* ISAIAH BERLIN, *Two Concepts*

Here too, foot voting often offers better prospects than ballot box voting. Admittedly, the connection here is much more equivocal than with consent, negative freedom, and nondomination (discussed below). At least in theory, a policy enacted through ballot box voting could potentially enhance positive freedom for many people to a much greater extent than is possible through any realistically feasible foot voting options. Nonetheless, foot voting often offers better opportunities than ballot box voting.

A foot voter can potentially choose between a wide variety of governmental and private alternatives that might help him or her develop capabilities and pursue a range of possible projects. By contrast, most ballot box voters have almost no control over options available to them. Moreover, foot voters are more likely to make well-informed and unbiased choices than ballot box voters.<sup>63</sup> Widespread political ignorance, which is even greater among the poor and disadvantaged than among other voters,<sup>64</sup> often prevents the enactment of policies that might genuinely enhance positive freedom, while incentivizing many that perversely undermine it.

Some poor and disadvantaged people may need redistributive programs to develop their capabilities and to exercise positive freedom more fully. This Article does not try to address the extent to which redistribution is desirable or morally essential for such purposes.<sup>65</sup> But it is important to stress that foot voting is itself a powerful mechanism for increasing the income and economic well-being of the poor, often a more powerful one than any form of redistribution. Foot voting opportunities have been of special value to the poor and oppressed and tend to benefit them even more than the relatively well off.<sup>66</sup>

International migration is a particularly potent tool for enhancing positive freedom. Economists estimate that allowing free migration throughout the world would likely double world GDP.<sup>67</sup> Much of that benefit would go to migrants from poor nations where their opportunities to enhance their capacities would otherwise be severely limited at best. As in the case of negative freedom, the effects are enormous, often doubling or tripling the income of the migrants in question.<sup>68</sup> It is difficult to think of any other

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*of Liberty*, in *LIBERTY: INCORPORATING FOUR ESSAYS ON LIBERTY* 166 (Henry Hardy ed., 1969).

63. See generally SOMIN, *supra* note 15, at 119–54.

64. See *id.* at 38–61.

65. For an explanation of how greatly expanded foot voting is compatible with extensive redistribution, see SOMIN, *supra* note 5 (manuscript at ch. 2).

66. See *id.* (manuscript at chs. 2, 3).

67. See Clemens, *supra* note 2, at 84.

68. For estimates of the massive effects of migration on the income of emigrants from poor nations, see generally Michael Clemens & Lant Pritchett, *Income Per Natural:*

policy change that would enhance positive freedom for so many people so quickly.

For both positive and negative freedom, the benefits of foot voting go far beyond the narrowly “economic.” Expanded foot voting opportunities can also massively enhance migrants’ freedom and well-being more generally. Consider, for example, women fleeing patriarchal societies, religious minorities fleeing oppression, and people fleeing repressive tyrannical regimes of various kinds.

From the standpoint of enhancing positive freedom by expanding human capabilities,<sup>69</sup> the noneconomic benefits of foot voting may be just as important as the enhancement of productivity, conceived in narrow economic terms. In many cases, escaping noneconomic oppression enables migrants to enormously enhance their capacities in a variety of ways. The full scope of these effects is probably impossible to quantify. But there is little doubt that they are massive.

#### *D. Nondomination*

Some scholars argue that the true essence of political freedom is “nondomination”: the state of being free from the arbitrarily imposed will of others.<sup>70</sup> Philip Pettit, a leading advocate of nondomination theory, describes its objective as the absence of “involuntary exposure to the will of others” and the securing of “the freedom that goes with not having to live under the potentially harmful power of another.”<sup>71</sup> By this standard, too, foot voting trumps ballot box voting.<sup>72</sup> In most cases, individual ballot box voter finds herself under the complete domination of whichever political forces prevail in electoral competition—at least with respect to whatever issues come within the control of democratic government. And she generally has only an infinitesimal chance of changing any of their policies. If a

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*Measuring Development for People Rather than Places*, 34 *POPULATION & DEV. REV.* 395 (2008).

69. See generally, e.g., SEN, *supra* note 62.

70. See generally, e.g., JAMES L. FISHKIN, *TYRANNY AND LEGITIMACY: A CRITIQUE OF POLITICAL THEORIES* (1979); PHILIP PETTIT, *ON THE PEOPLE’S TERMS: A REPUBLICAN THEORY AND MODEL OF DEMOCRACY* (2012) [hereinafter PETTIT, *ON THE PEOPLE’S TERMS*]; PHILIP PETTIT, *REPUBLICANISM: A THEORY OF FREEDOM AND GOVERNMENT* (1999) [hereinafter PETTIT, *REPUBLICANISM*].

71. PETTIT, *ON THE PEOPLE’S TERMS*, *supra* note 70, at 2, 5.

72. For a somewhat similar critique of democracy from the standpoint of nondomination theory, see BRENNAN, *supra* note 37, at 95–99.

dictator controls important aspects of your life, but gives you a one in 100 million chance of changing his decisions, it is pretty obvious that you are dominated by him. The same is true if a democratic majority controls your life in the same way.

In most cases, domination by a democratic majority is likely to be more benevolent and less onerous than domination by a dictator. But relatively benevolent domination is domination nonetheless. A benevolent dictator who honestly seeks to improve the lot of his subjects still exercise domination over them. Nondomination theorists explicitly emphasize that benevolence does not vitiate domination—indeed that domination is present even if rulers merely have the ability to exercise power over their subjects, but never actually use it.<sup>73</sup> The same is true of a democratic majority that similarly strives for benevolence, or even one that simply chooses not to exercise its authority, despite having the power to do so.

Pettit contends that a democratic regime can avoid domination if its citizens enjoy “equality of influence” and the exercise of power is limited by institutional constraints, such as separation of powers, judicial review, and various political norms.<sup>74</sup> It is difficult to see how equality of influence can prevent domination. Even if citizens have exactly the same amount of political influence, each is still dominated by the political majority in so far as they have little or no chance to change policy. The fact that everyone else is similarly dominated does not change this basic situation.

Institutional constraints on the exercise of power can potentially reduce domination by making it more difficult to enact laws and regulations and—in the case of judicial review—by potentially eliminating some issues from the scope of governmental authority entirely. For example, judicial review might forbid restrictions on freedom of speech or religion.

Nonetheless, individual citizens are still dominated within whatever sphere the government remains able to pass laws. In the case of separation of powers or supermajority rules, the institutional constraints in question merely increase the number of people who must agree to a given exercise of authority. For example, in a bicameral system, a law might have to be passed by both houses of the legislature. In a presidential system, it might also require the concurrence of the executive. Such limitations may have great value. But they do not necessarily reduce the scope of state power, nor the extent to which those who wield it exercise domination over the citizenry.

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73. See, e.g., PETTIT, ON THE PEOPLE’S TERMS, *supra* note 70, at 64–74 (arguing that mere “noninterference” is not enough to avoid domination if rulers in fact have the authority to impose restrictions on their subjects, but merely choose not to use it).

74. See generally *id.* at 239–92.

For Pettit, the institution of slavery epitomizes domination, because the master enjoys vast power to interfere with the slave's choices "with impunity and at will," and the slave has no ability to avoid the master's authority.<sup>75</sup> Presumably, a slave is still dominated even if he is not owned not by an individual master, but by a group who make decisions by majority vote, or, say, by a two-thirds supermajority. Within slavery, domination is likewise still present even if the master is limited by laws and norms that restrict the range of punishments he can inflict on those who refuse his orders. Some restrictions of this type actually did exist in the antebellum South,<sup>76</sup> yet surely no one could seriously claim that the slaves were thereby freed from domination.

Similarly, the fact that the powers of a democratic state may be constrained by institutional limits or norms does not eliminate domination within whatever sphere the government still controls. Separation of powers, bicameralism, and other similar institutions might make it more difficult to exercise power, but do not eliminate its existence.

Pettit's appeal to the importance of "norms"<sup>77</sup> actually has much in common with defenses of dictatorship and oligarchy that rely on the benevolence of the rulers to protect the people. Kings, aristocrats, oligarchs, and other nondemocratic rulers are also usually constrained by norms of various types, including some that are strongly internalized. Yet that is not enough, on Pettit's theory, to free their subjects from domination. The same is true of democratic governments that are also constrained by norms.

Democracy is superior to dictatorship in many ways, and ballot box voting plays an important role in maintaining that superiority.<sup>78</sup> But it cannot ensure political freedom defined as nondomination.

By contrast, foot voting does much better. If extensive opportunities for foot voting are institutionalized, the foot voter can often use exit rights to escape unwanted impositions, and thereby greatly reduce conditions of domination, even if not completely eliminate them.

If foot voters can choose from a variety of options, they are no longer subject to domination by the will of any individual ruler, employer, or political majority. At the very least, they face far less risk of domination than a

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75. See, e.g., Philip Pettit, *Freedom as Antipower*, 106 *ETHICS* 576, 578–81 (1996).

76. See, e.g., KENNETH M. STAMPP, *THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH* 141–50 (1956).

77. PETTIT, *ON THE PEOPLE'S TERMS*, *supra* note 70, at 263–74.

78. See generally e.g., HALPERIN, SIEGLE & WEINSTEIN, *supra* note 6.

person whose only recourse is ballot box voting.<sup>79</sup> The slave who can refuse the master's orders and escape his control is no longer a slave at all, and thereby freed from domination—at least to a large extent. The same goes for a citizen who can use foot voting to avoid the dictates of democratic government.

## V. INFORMATION SHORTCUTS AND “MIRACLES OF AGGREGATION”

Some scholars argue that we need not worry much about widespread political ignorance, because voters can use “information shortcuts” to make good decisions—small bits of knowledge that substitute for larger bodies of information they do not know.<sup>80</sup> Alternatively, even if individual voters tend to be ignorant, the electorate as a whole might still make good decisions, because of its high level of aggregate knowledge: the so-called “miracle of aggregation.”<sup>81</sup> If true, these theories might diminish voter ignorance concerns about ballot box voting. Unfortunately, however, they are not nearly as compelling as advocates claim.

I have criticized both shortcut theories and miracle of aggregation arguments in detail in my book, *Democracy and Political Ignorance*.<sup>82</sup> Here, I will only emphasize a few key points.

### A. Information Shortcuts

There are many types of information shortcuts that advocates claim can substitute for more extensive political knowledge. Perhaps the best known example is so-called “retrospective voting,” under which voters can choose to reelect or remove incumbents based on whether things have improved under their rule or not. In theory, retrospective voters need not know

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79. For a recent discussion of the ways in which exit rights facilitate nondomination that makes similar arguments, see generally ROBERT S. TAYLOR, *EXIT LEFT: MARKETS AND MOBILITY IN REPUBLICAN THOUGHT* (2017).

80. See, e.g., Arthur Lupia, *Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88 AM. POL. SCI. REV. 63, 63 (1994).

81. See e.g., ROBERT S. ERIKSON, MICHAEL B. MACKUEN & JAMES A. STIMSON, *THE MACRO POLITY* 428–29 (2002); HÉLÈNE LANDEMORE, *DEMOCRATIC REASON: POLITICS, COLLECTIVE INTELLIGENCE, AND THE RULE OF THE MANY* 156–59 (2013); JAMES SUROWIECKI, *THE WISDOM OF CROWDS: WHY THE MANY ARE SMARTER THAN THE FEW AND HOW COLLECTIVE WISDOM SHAPES BUSINESS, ECONOMIES, SOCIETIES, AND NATIONS* 259–71 (2004); DONALD A. WITTMAN, *THE MYTH OF DEMOCRATIC FAILURE: WHY POLITICAL INSTITUTIONS ARE EFFICIENT* (1995); Bernard Grofman & Julie Withers, *Information-Pooling Models of Electoral Politics*, in *INFORMATION, PARTICIPATION, AND CHOICE: AN ECONOMIC THEORY OF DEMOCRACY IN PERSPECTIVE* 55 (Bernard Grofman ed., 1993); James A. Stimson, *A Macro Theory of Information Flow*, in *INFORMATION AND DEMOCRATIC PROCESSES* 345–68 (John A. Ferejohn & James H. Kuklinski eds., 1990).

82. SOMIN, *supra* note 15, at 90–112.

anything about the details of government policy or party platforms. As one advocate puts it, “[i]n order to ascertain whether the incumbents have performed poorly or well, citizens need only calculate the changes in their own welfare.”<sup>83</sup> Ronald Reagan effectively captured this idea during the 1980 presidential election, when he famously said that in order to figure out who to support, voters need only ask themselves “are you better off than you were four years ago?”<sup>84</sup> Other shortcut theories emphasize the potential value of knowledge gained from everyday life,<sup>85</sup> identification of candidates with political parties,<sup>86</sup> and cues from trusted “opinion leaders”—people who have similar values to the voters, but superior knowledge of policy issues, and therefore can potentially function as intermediaries for guiding voter decisions.<sup>87</sup>

Despite their variety, shortcut theories share two common flaws: they often require considerable preexisting knowledge to use effectively, and they do not address the problem of “rational irrationality”—voters’ bias in the evaluation of information.<sup>88</sup>

For example, effective retrospective voting requires understanding what issues particular incumbents are responsible for, and what impact they have had on them. If voters are ignorant on these points, they could easily end up rewarding and punishing incumbents for events they did not cause, while overlooking those they do have an impact on.

Sadly, that is exactly what happens in most elections. Voters routinely reelect or defeat incumbents based on short-term economic trends they have little if any control over.<sup>89</sup> Voters also punish incumbents for a wide range of other events they cannot control, including shark attacks, droughts,

83. MORRIS P. FIORINA, *RETROSPECTIVE VOTING IN AMERICAN NATIONAL ELECTIONS* 5 (1981). For an early classic defense of retrospective voting, see V.O. KEY, JR., *THE RESPONSIBLE ELECTORATE: RATIONALITY IN PRESIDENTIAL VOTING 1936–1960*, at 60–61 (1966).

84. LOU CANNON, *GOVERNOR REAGAN: HIS RISE TO POWER* 547 n.26 (2003).

85. See, e.g., SAMUEL L. POPKIN, *THE REASONING VOTER: COMMUNICATION AND PERSUASION IN PRESIDENTIAL CAMPAIGNS* 7–11, 17–18 (1991).

86. See, e.g., JOHN H. ALDRICH, *WHY PARTIES? THE ORIGIN AND TRANSFORMATION OF POLITICAL PARTIES IN AMERICA* 48–49 (1995); ANTHONY DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* 96–141 (1957).

87. See generally, e.g., ARTHUR LUPA & MATTHEW D. MCCUBBINS, *THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW?* (1998). I criticized their analysis in my review of their book. See generally Ilya Somin, *Resolving the Democratic Dilemma*, 16 *YALE J. ON REG.* 401 (1999) (reviewing LUPA & MCCUBBINS, *supra*).

88. See generally CAPLAN, *supra* note 32.

89. See ACHEN & BARTELS, *supra* note 37, at 90–212; Andrew Leigh, *Does the World Economy Swing National Elections?*, 71 *OXFORD BULL. ECON. & STAT.* 163, 163–65 (2009).

and even local sports team victories.<sup>90</sup> Similarly, voters also often fail to understand which office holders are responsible for which issues, and thereby attribute responsibility to the wrong officials.<sup>91</sup>

The effectiveness of retrospective voting is also often undermined by bias in the evaluation of information.<sup>92</sup> The theory implicitly assumes that voters objectively consider the state of the world and then judge incumbent politicians by what they see. But, in reality, the reverse is often true. Partisan and other biases often skew perceptions of underlying reality, causing voters to believe that conditions are better than they really are when their preferred party is in power, and worse than they are when the opposing party is.<sup>93</sup> For example, Republicans tend to believe that inflation and unemployment are higher than is actually the case when a Democrat is in the White House, while Democratic voters have the opposite bias.<sup>94</sup>

When voters reward and punish incumbents for things they did not do or act on highly biased perceptions of reality, retrospective voting not only fails to offset voter ignorance. It may even make the situation worse than before.

Similar problems beset other information shortcuts.<sup>95</sup> They too often require information that most voters do not know, and they too routinely fall prey to biases exacerbated by rational irrationality.

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90. See CHRISTOPHER H. ACHEN & LARRY M. BARTELS, UCLA INT'L. INST., BLIND RETROSPECTION: ELECTORAL RESPONSES TO DROUGHT, FLU, AND SHARK ATTACKS 1 (2004), <http://www.international.ucla.edu/media/files/PERG.Achen.pdf> [<https://perma.cc/6KG8-VZ9G>]; SOMIN, *supra* note 15, at 3–4; Andrew J. Healy, Neil Malhotra & Cecilia Hyunjung Mo, *Irrelevant Events Affect Voters' Evaluations of Government Performance*, 107 PROC. NAT'L ACAD. SCI. 12,804, 12,804–07 (2010); Andrew Healy & Neil Malhotra, *Random Events, Economic Losses, and Retrospective Voting: Implications for Democratic Competence*, 5 Q.J. POL. SCI. 1, 3 (2010).

91. SOMIN, *supra* note 15, at 119. See generally Bryan Caplan et al., *Systematically Biased Beliefs About Political Influence: Evidence from the Perceptions of Political Influence on Policy Outcomes Survey*, 46 AM. POL. SCI. ASS'N 760, 765 (2013).

92. Larry M. Bartels, *Beyond the Running Tally: Partisan Bias in Political Perceptions*, 24 POL. BEHAV. 117, 125 (2002).

93. See, e.g., *id.*; see also, e.g., DONALD GREEN, BRADLEY PALMQUIST & ERIC SHICKLER, PARTISAN HEARTS AND MINDS: POLITICAL PARTIES AND THE SOCIAL IDENTITIES OF VOTERS 110–11 (2002); Michael Marsh & James Tilley, *The Attribution of Credit and Blame to Governments and Its Impact on Vote Choice*, 40 BRIT. J. POL. SCI. 115, 116 (2009); Thomas J. Rudolph, *Triangulating Political Responsibility: The Motivated Formation of Responsibility Judgments*, 27 POL. PSYCHOL. 99, 104–05 (2006); Christopher H. Achen & Larry M. Bartels, Address at the Annual Meeting of the American Political Science Association: It Feels Like We're Thinking: The Rationalizing Voter and Electoral Democracy 3–4 (Aug. 28, 2006). For recent overviews of this evidence, see ACHEN & BARTELS, *supra* note 37, at 280–81; SOMIN, *supra* note 15, at 120–21.

94. Bartels, *supra* note 92, at 124–25.

95. For detailed discussion, see SOMIN, *supra* note 15, at 107–27.

Shortcuts are by no means completely useless. In some situations, they can help voters make good decisions. For example, retrospective voting can be effective in situations where incumbents have failed in large and obvious ways, such as by losing a war or deliberately causing a famine.<sup>96</sup> But most government policies are more complicated than this, and require greater knowledge to understand and assess.<sup>97</sup>

### *B. Miracles of Aggregation?*

Even if most individual voters are generally ignorant, the electorate as a whole could potentially make well-informed decisions. One possible mechanism by which this could happen is that poorly informed voters could cancel each other out, thereby enabling the well-informed minority to control electoral outcomes.<sup>98</sup>

Assume, for example, that an electorate of ten million voters is choosing between a Democratic candidate and a Republican one, and that 90% of them are poorly informed, and make decisions based on ignorance. If their ignorance-driven errors are randomly distributed, then almost exactly half of the ignorant group—45% of the total electorate—will choose the Democratic candidate based on their flawed reasoning, and a similar number—also 45% of the total—will choose the Republican. Poorly informed votes for the Democrats will be offset by poorly informed votes for Republicans, leaving the true outcome to be determined by the knowledgeable minority of 10%, who—by assumption—have a far better understanding of the issues at stake.

Another way in which the collective electorate might make good decisions despite the ignorance of individual voters is by taking advantage of its superior aggregate knowledge.<sup>99</sup> A large group with a low average level of knowledge might nonetheless have a high level of total knowledge, perhaps higher than that of a smaller group in which each individual knows far more than the average member of the larger group. For example, a group of 100 voters, each of whom knows one unit of information, has a higher total

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96. *See id.* at 118.

97. For far more extensive analysis, see *id.* at 90–118.

98. For miracle of aggregation theories of this kind, see, for example, WITTMAN, *supra* note 81, at 16–17; Philip E. Converse, *Popular Representation and the Distribution of Information*, in INFORMATION AND DEMOCRATIC PROCESSES 381, 382–83 (John Ferejohn & James Kuklinski eds., 1990).

99. For a prominent recent defense of this sort of theory, see LANDEMORE, *supra* note 81, at 156–57.

level of knowledge than a group of ten people, each of whom knows five units. Although the average member of the smaller group knows five times more than the average member of the larger one, the latter still has twice as much total knowledge—100 units—as the former—50 units. In this way, “diversity trumps ability”; a large, diverse group, can know more than a smaller, more expert one.<sup>100</sup>

Unfortunately, neither of these versions of miracle of aggregation theory even comes close to accurately describing real world electorates. The first version fails because real world errors caused by ignorance rarely cancel each other out, because they are rarely randomly distributed. Errors in one direction tend to be more common than those in the other. And in a large group, if one type of error is even slightly more common than the other, it will almost certainly be decisive in determining the outcome.<sup>101</sup> In addition, the knowledgeable minority that supposedly determines the outcome when effects of ignorance are indeed random is often highly unrepresentative of the larger electorate; for example, its members tend to be wealthier, and more likely to be white and male than the American electorate as a whole.<sup>102</sup>

The “diversity trumps ability” version of aggregation theory also turns out to be overly optimistic. Among other flaws, it assumes that voters have enough basic general knowledge of the political system to be able to properly assess the ways in which their more specific individual knowledge applies to the issues at stake in an election. As H el ene Landemore, a leading academic advocate of the theory, puts it, diversity is only likely to “trump” individual knowledge if the participants in the diverse group are “relatively smart (or not too dumb).”<sup>103</sup>

In addition, the theory also assumes that individual voters make their decisions objectively and independently based on their own private knowledge, as opposed to being influenced by the views of others, and by cognitive biases of the sort incentivized by rational irrationality.<sup>104</sup> Neither assumption holds true in most real world situations. Voters are routinely influenced by misconceptions widespread in society, and their evaluation of political information is often highly biased.<sup>105</sup> Even relatively small biases of this kind can easily unsettle the “diversity trumps ability theory” and cause a

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100. See *id.* at 89–90, 102, 117.

101. For a more detailed discussion of these points, see SOMIN, *supra* note 15, at 128–29.

102. See *id.* at 130–31.

103. LANDEMORE, *supra* note 81, at 102.

104. For a discussion of rational irrationality, see *supra* Part III.

105. For more extensive analyses of these points, see SOMIN, *supra* note 15, at 123–33; Ilya Somin, *Why Political Ignorance Undermines the Wisdom of the Many*, 26 CRITICAL REV. 151, 154–55, 162 (2014).

large group with low average levels of information to make serious systematic errors.<sup>106</sup>

## VI. DELIBERATION AND POLITICAL PARTICIPATION “BEYOND VOTING”

Ballot box voting is not the only way citizens can influence government policy in a democratic political system. They can also do so by engaging in political speech, activism, demonstrations, lobbying, campaign contributions, and other such activities.<sup>107</sup> Does the availability of such options mitigate the shortcomings of ballot box voting as a mechanism of political freedom? If so, it could reduce or even completely eliminate the advantages of foot voting. Unfortunately, such a happy scenario is both empirically dubious and, in some ways, impossible even in theory. The same goes for efforts to mitigate political ignorance and enhance political freedom by increasing opportunities for deliberation.

### *A. Political Participation “Beyond Voting”*

In some cases, participation “beyond voting” surely does enable individual citizens to increase their influence over policy. Prominent activists, intellectuals, campaign donors, and others surely have influence far greater than that of the average voter. Nonetheless, participation beyond voting does not and cannot overcome the difficulties inherent in the insignificance of any one vote to electoral outcomes.

One problem is that participation beyond voting is very unequally distributed. A recent study found that only about 25% of American voters engage in such activities at all.<sup>108</sup> Those who participate in this way differ from the rest of the population in terms of both policy preferences and background characteristics, such as income, race, and gender.<sup>109</sup>

If political participation beyond voting is unequally distributed, and largely confined to a relatively small minority of the population, its effect is to increase the political leverage of some people only by reducing that of others.

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106. LANDEMORE, *supra* note 81, at 102; SOMIN, *supra* note 15, at 116.

107. Jennifer Oser, Jan E. Leighley & Kenneth M. Winneg, *Participation, Online and Otherwise: What’s the Difference for Policy Preferences?*, 95 *SOC. SCI. Q.* 1259, 1260 (2014).

108. *See id.* at 1268.

109. *See, e.g.*, LARRY M. BARTELS, *UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GILDED AGE* 19 (2008); SIDNEY VERBA, KAY LEHMAN SCHLOZMAN & HENRY E. BRADY, *VOICE AND EQUALITY: CIVIC VOLUNTARISM IN AMERICAN POLITICS* 463–65 (1995); Oser, Leighley & Winneg, *supra* note 107, at 1260–61.

A simple example illustrates the point: Imagine an electorate that consists of one million citizens. Initially, the only way any of them can influence electoral outcomes is by casting votes at the ballot box. But due to a technological change or an increase in her capabilities, one member of the electorate, Smith, manages to increase her influence by a factor of 1000. She now has as much electoral clout as 1000 conventional voters previously did. This greatly increases her odds of affecting electoral outcomes. But it also proportionately reduces the leverage of everyone else, which is diminished to the exact same degree as Smith's influence is increased.

The same point applies if Smith's increased influence takes the form of affecting policymaking by pathways other than influencing electoral results. The more influence she has over policy, the less is available to everyone else.

Given enormous differences in capabilities, opportunities, and interest in politics, it is difficult to see how inequality in participation beyond voting can be eliminated, or even reduced to a low level. To the contrary, it seems likely to persist in any society where there are substantial inequalities in wealth, ability, acquired skills, and political interest.

But even in a world where participation beyond voting was completely equalized, the problem of the insignificance of individual voters' influence would still persist. If each person had exactly the same ability to exercise influence by using methods other than voting, then each individual's influence beyond voting would be insignificant for much the same reasons as each individual vote currently is. In a society where each individual vote has only a one in sixty million chance of influencing electoral outcomes,<sup>110</sup> each person's participation beyond voting would have exactly the same odds of determining the result if such participation were equalized to the same degree as voting is. The same goes for opportunities to influence policy by means other than affecting election results, so long as those opportunities are also equally distributed.

The fundamental problem is that political influence is a zero-sum game. If some people gain more of it, it can only be by reducing the influence of others. In a dictatorship or oligarchy, the rulers have enormous political influence, but only by denying access to power to all or most of the rest of the population. The same is true, albeit to a less extreme degree, in a democracy where some citizens wield far greater influence than others.

In a hypothetical society where political influence is equally distributed, such equality can only be guaranteed, if at all, only by simultaneously ensuring that the leverage of each individual is infinitesimally small. The only exception might be a society with an extremely small population,

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110. See *supra* text accompanying note 23.

where each individual vote is likely to have greater significance. But such small micropolities probably cannot handle many of the larger-scale issues that arise in modern societies.<sup>111</sup>

If participation beyond voting does not eliminate the insignificance of any single vote, it also cannot mitigate the problem of rational ignorance. Currently, people who participate beyond voting have somewhat higher levels of political knowledge than the rest of the population.<sup>112</sup> But this is unlikely to hold true in a society where such participation is equally distributed. In that world, each person's influence beyond voting would be just as infinitesimal as their influence at the ballot box. Neither would provide much incentive to achieve more than minimal levels of political knowledge.

Moreover, those most interested in politics—the people most likely to engage in political participation beyond voting—also tend to be the most biased in their evaluation of the information they do know.<sup>113</sup> By engaging emotions such as partisan bias and hatred of political opponents, participation beyond voting may actually lead to more poorly informed decision-making, even if those involved in the process know more facts.

### *B. Increasing Knowledge Through Deliberation*

In recent years, a number of scholars have argued that we can greatly mitigate the problem of political ignorance by increasing opportunities for deliberation.<sup>114</sup> Such proposals come in two general types. Some try to get the entire population to engage in greater deliberation, and thereby increase their understanding of the issues they vote on. For example, Bruce Ackerman and James Fishkin's "Deliberation Day" proposal would establish a national day during which voters across the nation would be incentivized to hear presentations about the issues at stake in an upcoming election, and deliberate

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111. For a discussion of this possibility, see Ilya Somin, *Deliberative Democracy and Political Ignorance*, 22 *CRITICAL REV.* 253, 271–72 (2010).

112. See VERBA, SCHLOZMAN & BRADY, *supra* note 109, at 512, 532.

113. For surveys of the evidence, see, for example, BRENNAN, *supra* note 37, at 55–56; DIANA C. MUTZ, *HEARING THE OTHER SIDE: DELIBERATIVE VERSUS PARTICIPATORY DEMOCRACY* 32–33 (2006); SOMIN, *supra* note 15, at 92–104.

114. See generally, e.g., BRUCE ACKERMAN & JAMES S. FISHKIN, *DELIBERATION DAY* (2004); LEIB, *supra* note 47; CLAUDIO LÓPEZ-GUERRA, *DEMOCRACY AND DISENFRANCHISEMENT: THE MORALITY OF ELECTORAL EXCLUSIONS* (2014); HÉLÈNE LANDEMORE, *Deliberation, Cognitive Diversity, and Democratic Inclusiveness: An Epistemic Argument for the Random Selection of Representatives*, 190 *SYNTHESE* 1209 (2013); CLAUDIO LÓPEZ-GUERRA, *The Enfranchisement Lottery*, 10 *POL. PHIL. & ECON.* 211 (2011).

together about them.<sup>115</sup> More commonly, proposals to increase deliberation rely on “sortition”: randomly selecting a small, representative fraction of the population to make decisions on behalf of the rest.<sup>116</sup> Because each of the voters in the small group chosen by sortition would carry far greater weight than a vote in a conventional election, the participants would have incentives to seek out more information, and consider it more carefully.

Some sortition proposals would rely on the small groups to make policy decisions across the board, or to select political leaders in place of the broader, conventional electorate.<sup>117</sup> Others would give each small group of sortition selected voters a different, more narrowly defined task, such as deliberating over one particular area of policy.<sup>118</sup>

In previous work, I have criticized different variants of these proposals in some detail.<sup>119</sup> Here, I emphasize a few key points that are especially relevant to the issue of political freedom.

First, even if these proposals for increasing deliberation work exactly as advertised, they still would not change the fact that almost all voters have only an infinitesimal chance of influencing policy outcomes. Where the deliberation in question is conducted by the entire voting population, each individual’s likelihood of influencing the outcome would be about the same as before, even if they ended up casting their votes in a better-informed manner.

Where the deliberation is conducted by a small group selected through sortition, those selected might potentially have very great influence. But those not selected by the sortition process would have even less ability to influence policy than before. Here, as elsewhere, increasing the political influence of one part of the population results in reducing the influence of others.<sup>120</sup>

The second problem is that deliberation proposals are unlikely to result in the sorts of improvements in political knowledge that advocates claim. There are several massive obstacles to such success: one is that the enormous size and scope of modern government make it difficult for participants to become informed on more than a fraction of the relevant issues.<sup>121</sup> The deliberators can only do so if they serve as members of the “sorted” group

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115. See, e.g., ACKERMAN & FISHKIN, *supra* note 114, at 3.

116. See SOMIN, *supra* note 15, at 208–10 (discussing examples).

117. See, e.g., Landemore, *supra* note 114, at 1210; López-Guerra, *supra* note 114, at 211–12.

118. For a discussion of this possibility, see SOMIN, *supra* note 15, at 210.

119. See *id.* at 204–11; Somin, *supra* note 111, at 253–55; Ilya Somin, *Jury Ignorance and Political Ignorance*, 55 WM. & MARY L. REV. 1167, 1179–87 (2014).

120. See SOMIN, *supra* note 15, at 210–11.

121. On this point, see *id.* at 208–09.

for a very long time, thereby becoming a kind quasi-professional political class of the type that sortition is intended to avoid in the first place.<sup>122</sup>

The experience of juries in the legal system suggests that lay jurors have great difficulty dealing with complex scientific evidence and large-scale policy issues that come up in some cases.<sup>123</sup> This suggests they are likely to have similar or greater difficulty in dealing with public policy issues in settings where they are likely to have broader responsibilities than on a jury.

These problems can, to some degree, be mitigated by giving each group selected through sortition only a narrow area of responsibility. But that in turn creates serious difficulties in ensuring that the different groups do not work at cross-purposes and in handling resource tradeoffs between the issues handled by different groups.<sup>124</sup>

Whether they rely on sortition or on deliberation by the entire community of voters, deliberative democracy proposals are also highly vulnerable to manipulation by politicians and interest groups.<sup>125</sup> Someone has to decide what issues will be on the agenda, which groups will handle which questions, and who will get to submit information or make presentations to the deliberators. For obvious reasons, each of these choices is ripe for abuse, and real-world interest groups and political leaders are likely to exploit them.<sup>126</sup>

To the extent that deliberative democrats seek to promote decision-making that is well-informed, they would be well advised to reconsider at least some of their traditional skepticism of foot voting mechanisms. The latter incentivizes well-informed decision-making without requiring reliance on some small segment of the population, or opening the door to agenda manipulation by powerful interest groups. It also enables a wide range of people to make choices that are individually decisive.

Foot voting cannot meet all the requirements of deliberative democracy, especially in its more demanding forms, which require a high degree of sophisticated thinking.<sup>127</sup> But it is at least likely to result in better-informed and more thoughtful decision-making than ballot box voting.<sup>128</sup>

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122. *See id.* at 208.

123. *See Somin, supra* note 119, at 1179–87.

124. *See SOMIN, supra* note 15, at 210–11.

125. *See id.* at 206–09.

126. For a more detailed discussion, *see id.*

127. *See generally id.* at 58–61.

128. For more extensive discussion, *see id.* at ch. 5.

## VII. IS FOOT VOTING TRULY “POLITICAL”?

Despite its advantages over ballot box voting, many might be tempted to dismiss the efficacy of foot voting as a mechanism for political freedom because the motivations of most foot voters are not sufficiently “political.” Critics point out that the motivations of many foot voters are actually primarily economic: seeking out jobs and housing, for example.<sup>129</sup> Thus, perhaps foot voting cannot be considered a form of political choice.

Such criticism ignores the fact that economic opportunities are often closely tied to public policy decisions: for example, job opportunities are often determined in large part by government policy decisions on labor markets, while housing costs are in large part the product of zoning decisions.<sup>130</sup> Seemingly economic choices are usually at least in significant part political.

The same is true of foot voting decisions made in the private sector, at least with respect to issues that might otherwise be controlled by the government. Choices between private planned communities, for example, are often based on considerations of quality and cost similar to those that influence foot voting decisions between local governments.<sup>131</sup>

If foot voting decisions based on economic considerations do not qualify as exercises of political freedom, the same applies to many ballot box voting decisions. The biggest determinant of most electoral outcomes is the recent performance of the economy, often based on exercises of crude retrospective voting that gives little or no consideration to the extent to which incumbents are truly responsible for current economic conditions or not.<sup>132</sup>

In many cases, moreover, foot voters are not motivated solely or even primarily by narrowly economic considerations. The most obvious examples are migrants and refugees fleeing war or oppressive regimes of various kinds. Many internal migrants also fit that description, such as unpopular minorities moving to more tolerant jurisdictions.

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129. See, e.g., Robert C. Ellickson, *Legal Sources of Residential Lock-Ins: Why French Households Move Half as Often as U.S. Households*, 2012 U. ILL. L. REV. 373, 395–97; Paul W. Rhode & Koleman S. Strumpf, *Assessing the Importance of Tiebout Sorting: Local Heterogeneity from 1885 to 1990*, 93 AM. ECON. REV. 1648, 1649 (2003).

130. On the importance of zoning in determining housing availability and cost, see generally Chang Tai-Hsieh & Enrico Moretti, *Housing Constraints and Spatial Misallocation* (Nat'l Bureau of Econ. Research, Working Paper No. 21154, 2017). For an overview of the evidence, see Edward Glaeser, *Reforming Land Use Regulations*, BROOKINGS INSTITUTION (Apr. 24, 2017), <https://www.brookings.edu/research/reforming-land-use-regulations/> [https://perma.cc/2Q94-BPKB]. For more detailed discussion of the relevance of policy to foot voting decisions, see SOMIN, *supra* note 15, at 167.

131. See generally SOMIN, *supra* note 5 (manuscript at ch. 4).

132. For a recent overview of the ubiquity of crude economic retrospective voting, see ACHEN & BARTELS, *supra* note 37, at 146–213.

It is also possible to argue that foot voting does not qualify as a meaningful endorsement of the political system chosen by migrants, because the latter are often fleeing terrible conditions out of desperation. Some move because “anything is better” than the awful status quo where they currently reside.

But if terrible initial circumstances undermine the validity of foot voting decisions, the same is often true of ballot box voting decisions. Elections often turn on voters’ rejection of what they see as a badly flawed status quo. The point is not that foot voting is ideal in this respect, but that it outperforms ballot box voting by enabling individuals to make more decisive choices, and giving them better incentives to become informed.

Moreover, even if the initial impulse to move is a result of terrible conditions, foot voters can still exercise meaningful choice if they have a wide range of options. That can occur in a federal system with a variety of jurisdictions, through international migration (if there are a wide range of nations open to migrants), or in the private sector. In such a situation, a foot voter’s choice among multiple possible destinations does carry an element of endorsement, even if she initially decided to consider moving primarily to escape terrible circumstances.

Availability of a wide range of options can also mitigate the potential danger that migration will increase heterogeneity of preferences in a jurisdiction, thereby making it more difficult to satisfy a large proportion of them simultaneously. If there is a wide range of options available to potential movers, the latter can choose ones where the existing package of policies set by current residents fits their needs well. In that scenario, many individual jurisdictions will be relatively homogenous in the preferences of their residents, but the existence of extensive “second order diversity” *between* jurisdictions creates a broad range of choice for foot voters.<sup>133</sup>

Finally, foot voting might not be properly political because it may not communicate any clear message as to why the movers chose one jurisdiction over another. If I move from Jurisdiction A to Jurisdiction B, it might be difficult for government officials and others to figure out which policy differences were factors in my choice. Fortunately, the effectiveness of foot voting as a mechanism of political choice does not depend on effective communication of this type. Even if no one else knows why any given set of foot voters acted as they did, they themselves presumably know, and still were able to choose which policies they wish to live under. If I

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133. See Heather K. Gerken, *Second-Order Diversity*, 118 HARV. L. REV. 1099, 1102–04 (2005).

move because my new jurisdiction has lower taxes, a cleaner environment, or better schools, I can enjoy the benefits of those policies even if no one else knows that was my motivation.

To the extent clear communication is desirable, it can be partially achieved through studying patterns of foot voting choices. For example, data indicate that American movers tend to seek out areas with relatively lower taxes, greater job opportunities, and relatively inexpensive housing.<sup>134</sup> Local and regional governments seeking to attract migrants can take account of these preferences, and plan accordingly.

Such communication is necessarily imperfect. But the same is true to an even greater extent of ballot box voting, where it is often difficult or impossible to tell whether the winner of an election truly has a mandate for his or her policies and, if so, which ones.<sup>135</sup>

## VIII. CONCLUSION

Foot voting has major advantages over traditional ballot box voting that often make it a more effective tool for expanding political freedom. Those advantages stem from the fact that it allows individuals to make decisive choices, and thereby also incentivizes them to be well-informed. Foot voting cannot completely displace the ballot box as a mechanism of political choice. But expanding its domain can nonetheless have great value.

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134. See generally Nathan J. Ashby, *Economic Freedom and Migration Flows between U.S. States*, 73 S. ECON. J. 677 (2007).

135. On the difficulties of determining whether and to what extent a mandate exists, see generally LAWRENCE J. GROSSBACK, DAVID A.M. PETERSON & JAMES A. STIMSON, *MANDATE POLITICS* (2007).