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MEMORANDUM

TO: Participants Berkeley Kadish Center Workshop in Law, Philosophy, and Political Theory
FROM: Ilya Somin
DATE: August 27, 2018
SUBJECT: A brief note on my paper on foot voting and political freedom

The article I will be presenting at the workshop is part of a symposium on democracy forthcoming in *European Political Science*. But much of the material in the article will also be incorporated (in expanded form) in a book I am working on, tentatively entitled *Free to Move: Foot Voting and Political Freedom* (under contract with Oxford University Press). It will more fully make the case for expanding foot voting opportunities both domestically and internationally, consider institutional frameworks for promoting foot voting and mitigating possible costs thereof, and addressing a variety of potential objections.

I very much look forward to your comments, suggestions, and criticisms, which I am sure will make the work better. I would be happy to share a summary of the broader book project with anyone who may be interested.

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**Foot Voting vs. Ballot Box Voting:
Why Voting With Your Feet is Crucial
to Political Freedom**

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Foot Voting vs. Ballot Box Voting: Why Voting With Your Feet is Crucial to Political Freedom

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Introduction

Ballot box voting is the main mechanism of political choice in modern liberal democracies. It is also often thought of as the essence of political freedom. Voting has significant virtues. It is likely one of the reasons why democracies outperform dictatorships on many measures of economic performance and protection for individual rights.¹

But as a mechanism for exercising political freedom, ballot box voting has serious flaws. The average citizen has almost no chance of affecting the outcome of an electoral process. In part as a result, he or she also has strong incentives to make ill-informed and illogical decisions. “Voting with your feet” is a superior option on both fronts. It is therefore also often a superior mechanism of political freedom.

Part I of this article explains how foot voting differs from ballot box voting, and briefly outlines three types of foot voting: voting with your feet between jurisdictions in a federal system, foot voting in the private sector, and international migration. In Part II, I

* Professor of Law, George Mason University. Parts of this article draw on my forthcoming book, “Free to Move: Foot Voting and Political Freedom,” and a forthcoming book chapter, Somin, “Foot Voting and the Future of Liberty, in Todd Henderson, ed., *The Future of Classical Liberalism* (Cambridge University Press, forthcoming).. For helpful suggestions, I would like to thank Jason Brennan, Bryan Caplan, and two anonymous peer reviewers.

¹ See generally Morton H. Halperin, Joseph Siegle, and Michael M. Weinstein, *The Democracy Advantage*, (New York: Routledge, rev. ed. 2010).

explain how foot voting outperforms ballot box voting by allowing more meaningful and better-informed choice.

Part III shows how foot voting outperforms ballot voting from the standpoint of several leading accounts of political freedom: Consent, negative liberty, positive liberty, and nondomination. In Part IV, I outline how the superiority of foot voting is not undercut by taking account of forms of traditional political participation that go beyond voting, such as engaging in activism, lobbying, or campaign contributions. While these sorts of activities may increase the political influence of some parts of the population, they do so only by reducing it for the rest. The efficacy of ballot box voting also cannot be effectively bolstered by various institutional reforms intended to promote “deliberative” democracy. Finally, the Conclusion notes some ways in which we can enhance political freedom by expanding opportunities for foot voting.

In this article, I do not attempt to present a general theory of the extent to which we should rely on foot voting as opposed to ballot box voting. Any such theory would need to consider a variety of issues and tradeoffs other than political freedom. For example, it would need to examine a variety of potential negative and positive effects of migration on natives, and also consider the status of issues that can only be addressed by a very large-scale policy – perhaps, as in the case of global warming, even one encompassing the entire world. Such a comprehensive evaluation is beyond the scope of this project.

But the advantages of foot voting as a mechanism for political freedom are an important consideration in its favor that is often ignored in current debates in democratic theory. While it cannot by itself determine the proper role of foot voting in a liberal

political system, it does suggest a significantly greater role for foot voting than might otherwise be justified.

This article also does not address claims that the current inhabitants of a given territory have a right to exclude newcomers, either on the basis of a collective right that inheres in a particular racial or ethnic group, or because of an “individual” right of freedom of association similar to that enjoyed by private property owners or members of voluntary private clubs.² I intend to address both types of arguments in detail in two forthcoming publications.³ The present publication also does not cover objections to foot voting that are not directly related to the issue of political freedom, such as claims that it might lead to a “race to the bottom” between jurisdictions; I have discussed this issue in some detail in previous publications.⁴

I. Three Modes of Foot Voting

There are at least three important types of foot voting in modern society: jurisdictional choice in federal systems, international migration, and choice among

² For examples of the group right claim, see, e.g., Michael Walzer, *Spheres of Justice*, (New York: Basic Books, 1983), ch. 2; and David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration*, (Cambridge: Harvard University Press, 2016).; for freedom of association arguments utilizing the house and club analogies, see, e.g., Christopher Heath Wellman, “Freedom of Movement and the Right to Enter and Exit,” in Sarah Fine and Leah Ypi, eds., *Migration in Political Theory: The Ethics of Movement and Membership*, (New York: Oxford University Press, 2016), 83, 87.

³ See Somin, *Free to Move*; and Somin, “Foot Voting and the Future of Liberty,” in Todd Henderson, ed., *The Future of Classical Liberalism*, (Cambridge: Cambridge University Press, forthcoming).

⁴ See Somin, *Democracy and Political Ignorance: Why Smaller Government is Smarter*, (Stanford: Stanford University Press, 2nd ed. 2016), ch. 5; Ilya Somin, “Foot Voting, Federalism, and Political Freedom,” *Nomos: Federalism and Subsidiarity*, eds. James Fleming and Jacob Levy (New York: New York University Press, 2014).

private sector institutions.⁵ Foot voting often involves physical movement from place to place. But the key attribute of all three types of foot voting that differentiate them from conventional ballot box voting is not movement, as such, but rather the ability to make an individually decisive choice. Unlike the ballot box voter, whose ballot 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. The defining characteristic of foot voting is that it is a mechanism for choosing which policies an individual wishes to live under that allows him or her to make a decisive choice.

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. 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.

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.

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.⁶ Ballot box voting is the principle form of voice in democratic societies, while

⁵ For a previous overview of the three types on which this one is modeled, see Somin, "Foot Voting, Federalism, and Political Freedom."

⁶ See Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge: Harvard University Press, 1970).

foot voting is the most significant type of exit.⁷ Unlike the exit-voice distinction, however, that between foot voting and ballot box voting focuses in on the presence or absence of opportunities for individuals to make an individually decisive choice. That distinction is central to the thesis of this article.

Jurisdictional choice within federal systems is probably the most intuitively recognizable form of foot voting. In political systems with multiple levels of government, People can vote with their feet by deciding what jurisdiction to live in, such as a regional or local government. In the United States alone there are 50 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.⁸ Some 43% of native-born Americans have made at least one interstate move in their lifetimes, and almost two-thirds have at least moved from one locality to another.⁹

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 largely populated 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.¹⁰

Foot voting across international boundaries expands choice even more than domestic foot voting, because of the vast differences between national governments. The

⁷ The relevance of some other “voice” mechanisms is discussed later in this article.

⁸ See Somin, *Democracy and Political Ignorance* ch. 5.

⁹ *Ibid.*, 166.

¹⁰ For a wide-ranging overview of the relevant history, see Massimo Livi-Bacci, *A Short History of Migration*, (London: Policy, 2012), chs. 5-6.

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.

Finally, foot voting also occurs in the private sector, when we decide what goods and services 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.¹¹ In the United States alone, some 62 million people live in private communities such as condominium associations, and others.¹² Private planned communities have increasingly taken on a wide range of functions historically performed by government.¹³ Similar institutions have become common in many other countries around the world, both advanced liberal democracies, and in developing nations.¹⁴

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.

In some situations, it is even possible to choose different governmental institutions without physical movement, as for example when people sign contracts with "choice of law" clauses that utilize the laws of a jurisdiction other than the one where

¹¹ For an overview of private planned communities, see Robert Nelson, *Private Neighborhoods and the Transformation of Local Government* (Washington, DC: Urban Institute, 2005).

¹² Edward Peter Stringham, *Private Governance: Creating Order In Economic and Social Life*, (New York: Oxford University Press, 2015), 131

¹³ *Ibid.*, and Nelson, *Private Neighborhoods*.

¹⁴ Somin, *Democracy and Political Ignorance*, 159.

they are located. Some economists and legal scholars argue for expanding the use of such mechanisms, breaking the link between territory and governance.¹⁵

II. How Foot Voting Outperforms Ballot Box Voting

Ballot box voting is usually seen as the essence of political freedom. But it has two serious shortcomings: individual voters have almost no chance of actually affecting the outcome of most elections, and they usually have little or no incentive to make an informed choice. Foot voting is superior on both counts.

*Meaningful, Informed Choice*¹⁶

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 1 in 1 million or 1 in 100 million chance of making a decision that changes the outcome. For example, one does not have meaningful religious freedom if she has only a 1 in 1 million chance being able to determine which religion she wishes to

¹⁵ See, e.g., Erin O'Hara and Larry Ribstein, *The Law Market*, (New York: Oxford University Press, 2009); Bruno S. Frey and Reiner Eichenberger, *The New Democratic Federalism for Europe: Functional, Overlapping, and Competing Jurisdictions*, (London: Edward Elgar, new ed. 2004); Bruno S. Frey, *Happiness: A New Revolution in Economics*, (Cambridge: MIT Press, 2008), 190-98; See Bruno Frey, "A Utopia? Government Without Territorial Monopoly," *Independent Review* 6 (2001), pp. 99-112; Abraham Bell and Gideon Parchomovsky, "Of Property and Federalism," *Yale Law Journal* 115 (2005): 72-115, 101-13.

¹⁶ Some parts of this section are adapted from Ilya Somin, "Foot Voting, Decentralization, and Development," *Minnesota Law Review* (forthcoming).

practice. Similarly, a person with only a 1 in 1 million chance of deciding what views she is allowed to express surely does not have meaningful freedom of speech.

What is true of freedom of speech and freedom of religion is also true of political freedom. A person with only an infinitesimal chance of affecting what kind of government policies he or she is subjected to has little, if any, genuine political freedom.

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, at least 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. As the American Medical Association Code of Medical Ethics 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."¹⁷ 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," because there is so little chance that their votes will matter. Survey data shows that they often lack even very basic knowledge about the candidates and policy questions at issue in any given

¹⁷ AMA Code of Medical Ethics, Opinion 8.08 (2012), available at <http://journalofethics.ama-assn.org/2012/07/coet1-1207.html>

election.¹⁸ 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.¹⁹ For example, voters routinely overvalue any evidence that supports their preexisting views, while downplaying or ignoring anything that cuts the other way.²⁰

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 his or her biases. Whether her purposes are self-interested or not, the odds that her efforts will pay off is extremely low. This makes it rational for both egoists and altruists to severely limit the time and effort devoted to acquiring an analyzing political information.²¹

Rational ignorance does not necessarily require careful, calculated decision-making. 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

¹⁸ This part of the chapter builds on my book *Democracy and Political Ignorance: Why Smaller Government is Smarter*, (Stanford: Stanford University Press, 2nd ed. 2016), which analyzes rational ignorance and its consequences in great detail (see esp. chs. 1-4).

¹⁹ See *ibid.*, ch. 3, and Bryan Caplan, *The Myth of the Rational Voter*, (Princeton: Princeton University Press, 2007).

²⁰ For a review of the evidence, see Somin, *Democracy and Political Ignorance*, 92-97.

²¹ For a more detailed discussion, see Somin, *Democracy and Political Ignorance*, 78.

irrational, since it may require more time and effort than can be justified given the likely benefit.²²

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 makes information easier to access.²³ 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.²⁴ Just before the 2014 election, in which the main stake at issue was control of Congress, only 38 percent of voters knew which party controlled the House of Representatives, and a similar percentage knew which controlled the Senate.²⁵ Another 2014 survey found that only 36 percent of Americans can even name the three branches of the federal government: the executive, the legislative, and the judiciary.²⁶

An informed electorate is a public good, in the economic sense of the term²⁷: 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).

Like many other public goods, it tends to be underproduced, because individuals have

²² For more on these points, see Ilya Somin, "Rational Ignorance." in *Routledge International Handbook of Ignorance Studies*, (Matthias Gross and Linsey J. McGoey, eds., Routledge, 2015).

²³ For recent overviews of the evidence, see, e.g., Somin, *Democracy and Political Ignorance*, ch. 1; Jason Brennan, *Against Democracy* (Princeton: Princeton University Press, 2016); Christopher Achen and Larry Bartels, *Democracy for Realists: Why Elections do Not Produce Responsive Government*, (Princeton: Princeton University Press, 2016); Rick Shenkman, *Just How Stupid Are We? Facing the Truth About the American Voter*, (New York: Basic Books, 2008).

²⁴ For numerous examples, see Somin, *Democracy and Political Ignorance*, ch. 1.

²⁵ *Ibid.*, 1.

²⁶ *Ibid.*, 20.

²⁷ For more detailed discussion, see *ibid.*, ch. 3.

strong incentives to underinvest in it. Informed foot voting, by contrast, is largely a private good that avoids this problem.

Foot voting is superior to ballot box voting on both of these counts. It enables the individual decision-maker to make a meaningful choice. And precisely because the decision actually matters, it gives him or her strong incentives to acquire relevant information and use it wisely. The person deciding where to live or what choices to make in the marketplace and civil society knows that her decisions have real consequences, and generally makes more effort to acquire information. Considerable empirical evidence backs these theoretical predictions, showing that foot voters outperform ballot box voters even when laboring under difficult conditions.²⁸

Adam Przeworski, one of world's leading academic experts on democracy, laments that “[n]o rule of collective decisionmaking other than unanimity can render causal efficacy to equal individual participation.”²⁹ Foot voting is not perfect on this score. 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.³⁰ Deliberative democracy demands a higher level

²⁸Ibid., ch. 5.

²⁹ Adam Przeworski, *Democracy and the Limits of Self-Government* (Cambridge: Cambridge University Press, 2010), 101.

³⁰ For defense of deliberative democracy, see. e.g., Robert Goodin, *Reflective Democracy* (New York: Oxford University Press, 2005); Ethan R. Lieb, *Deliberative Democracy in America: A Proposal for a Deliberative Branch of Government* (University Park: Pennsylvania State University Press, 2004). James Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy* (Boston: MIT Press, 1996); John

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 merely “aggregative” views of democratic participation, which seek only to ensure that election results roughly reflect voters’ preferences.³¹

III. Foot Voting and Theories of Political Freedom

In addition to its general advantages as a mechanism for free, informed choice, foot voting also trumps ballot box voting under four leading standard accounts of political freedom: consent, negative freedom, positive freedom, and nondomination.

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.³² Ballot box voting is often seen as an indicator of such consent.³³ 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.³⁴

S. Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (New York: Oxford University Press, 2002); Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton, NJ: Princeton University Press, 2004); Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Belknap Press, 1996); and James S. Fishkin, “Deliberative Democracy and Constitutions,” *Social Philosophy and Policy* 28 (2011): 242–60.

³¹ For detailed discussions of this point, see Ilya Somin, “Deliberative Democracy and Political Ignorance,” *Critical Review* 22 (2010): 253–79, and Somin, *Democracy and Political Ignorance*, 58–62.

³² See John Locke, *Second Treatise on Government*, Peter Laslett, ed. (New York: Cambridge University Press, 1963); Thomas Hobbes, *Leviathan*, Richard Tuck, ed. (New York: Cambridge University Press, 1991).

³³ See, e.g., John Plamenatz, *Consent, Freedom, and Political Obligation*, (Oxford: Oxford University Press, 2nd. ed. 1968), postscript., Peter Steinberger, 2004. *The Idea of the State*, (Cambridge: Cambridge University Press, 2004), 218.

³⁴ See, e.g., Michael Huemer, *The Problem of Political Authority*, (New York: Palgrave Macmillan, 2013), ch. 4; A. John Simmons, *Moral Principles and Political Obligation*, (Princeton: Princeton University Press, 1979), esp. 136–39.

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.³⁵ This argument has a venerable history, dating back at least to Plato’s *Crito*.³⁶ But it is ultimately unsound. The key flaw is that the argument 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 issue orders 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.³⁷ Assume, further, that the residents benefit from some “services” he provides, such as suppressing rival criminals. 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

³⁵ See, e.g., Steinberger, 219-20.

³⁶ In *Crito*, Socrates argues that he is required to obey Athens’ laws because he chose not to leave the city. See Plato, *Crito*, in *The Collected Dialogues of Plato*, (Edith Hamilton and Huntington Cairns, eds. 1969), 27.

³⁷ This example is adapted from Ilya Somin, “Creation, Consent, and Government Power over Property Rights,” *Cato Unbound*, Jan. 2010, available at <https://www.cato-unbound.org/2010/12/13/ilya-somin/creation-consent-government-power-over-property-rights>.

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,³⁸ but agreed among 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’s 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 Barzinis 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 property 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 untrammelled government control of either property rights or any other rights enjoyed by the people.

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

³⁸ Mario Puzo, *The Godfather*, (New York: Fawcett Crest, 1969).

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.³⁹

Some types of decentralization can even enable people to choose between governments without physically moving at all. This is true of choice of law clauses in many types of contracts, and of proposals for “overlapping” competitive jurisdictions, advanced by economist Bruno Frey and his coauthors.⁴⁰ The more we can expand such options, the more consensual government can be.

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. When choosing between private planned communities, there can often be numerous options within a short distance of each other.

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.

³⁹ This issue is taken up in greater detail in Chapter 2, and possibly also Chapter 5.

⁴⁰ See Erin O’Hara and Larry Ribstein, *The Law Market*, (New York: Oxford University Press, 2009); Bruno Frey, “A Utopia? Government Without Territorial Monopoly,” *Independent Review* 6 (2001), 99-112; Bruno Frey, *Happiness: A Revolution in Economics* (Cambridge: MIT Press, 2008), 189-97; Bruno S. Frey and Reiner Eichenberger, *The New Democratic Federalism for Europe: Functional, Overlapping, and Competing Jurisdictions*, (London: Edward Elgar, new ed. 2004); Bruno Frey, “

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. estimates that some 36% of the world's people live in "not free" undemocratic nations, and another 24% in ones that are only "partly free" (i.e. – only partly democratic).⁴¹ In such regimes, most residents have even less leverage over government policy than individual voters in a Western liberal democracy do.

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.⁴² 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.⁴³ They forcibly confine large numbers of people to a lifetime of poverty and oppression in the Third World. Few government

⁴¹ Freedom House, *Freedom in the World 2016*, available at <https://freedomhouse.org/report/freedom-world/freedom-world-2016>.

⁴² For a leading modern work in this vein, See Robert Nozick, *Anarchy, the State and Utopia*, (New York: Basic Books, 1974).

⁴³ On the ways in which migration restrictions violate negative freedom, see Michael Huemer, "Is There a Right to Immigrate?" *Social Theory and Practice* 36 (2010): 429-61.

interventions in the market and civil society restrict the freedom of so many people so severely.

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.⁴⁴

Here too foot voting often offers better prospects than ballot box voting. Admittedly, the connection is 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.⁴⁵ Widespread political ignorance – which is even greater among the poor and disadvantaged than among other voters,⁴⁶ often prevents the

⁴⁴ See, e.g., Amartya K. Sen, *Development as Freedom*, (New York: Knopf, 1999); Phillippe Van Parijs, *Real Freedom for All*, (Oxford: Oxford University Press, 1995). cf. Isaiah Berlin, “Two Concepts of Liberty,” in *Four Essays on Liberty*, (Oxford: Oxford University Press, 1959).

⁴⁵ See the discussion of this issue earlier in this chapter, and also in Somin, *Democracy and Political Ignorance*.

⁴⁶ See discussion of this point in Somin, *Democracy and Political Ignorance*, ch. 2.

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. 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.⁴⁷

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.⁴⁸ Much of that benefit would go to migrants from poor nations where there 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.⁴⁹ It is difficult to think of any other 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,

⁴⁷ For examples, see Somin, “Foot Voting, Federalism, and Political Freedom,” and Somin, *Democracy and Political Ignorance*, ch. 5.

⁴⁸ Michael Clemens, “Economics and Emigration: Trillion Dollar Bills Left on the Sidewalk?” *Journal of Economic Perspectives* 25 (2011): 83-106.

⁴⁹ For estimates of the massive effects of migration on the income of emigrants from poor nations, see Michael Clemens and Lant Pritchett, “Income Per Natural: Measuring Development for People Rather than Places,” *Population and Development Review* 34 (2008): 395-434.

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,⁵⁰ the noneconomic benefits of foot voting may be just as important as those 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.

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.⁵¹ Phillip 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.”⁵² By this standard, too, foot voting trumps ballot box voting.⁵³ In most cases, the 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

⁵⁰ See, e.g., Sen, *Development as Freedom*.

⁵¹ See, e.g., Phillip Pettit, *On the People's Terms: A Republican Theory of Democracy and Government*, (Cambridge: Cambridge University Press, 2012); Philip Pettit, *Republicanism: A Theory of Freedom and Government*, (Oxford: Clarendon Press, 1997); James L. Fishkin, *Tyranny and Legitimacy: A Critique of Political Theories*, (Baltimore: Johns Hopkins Press, 1979).

⁵² Pettit, *On the People's Terms*, 2, 4.

⁵³ For a somewhat similar critique of democracy from the standpoint of nondomination theory, see Jason Brennan, *Against Democracy*, (Princeton: Princeton University Press, 2016), 94-99.

changing any of their policies. If a dictator controls important aspects of your life, but gives you a 1 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 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 exercises domination over them. Nondomination theorists explicitly emphasize that benevolence does not vitiate domination – indeed that domination is present even if the ruler merely has the ability to exercise power over his subjects, but never actually uses it.⁵⁴ 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.

Phillip 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.⁵⁵

It is difficult to see how equality of influence can prevent domination. Even if each citizen has exactly the same amount of political influence, each is still dominated by the political majority in so far as he or she has little or no chance to change policy. The fact that everyone else is similarly dominated does change this basic situation.

⁵⁴ See, e.g., Pettit, *On the People's Terms*, 64-74 (arguing that mere “noninterference” is not enough to avoid domination if the ruler in fact has the authority to impose restrictions on her subjects, but merely chooses not to use it).

⁵⁵ *Ibid.*, chs. 4-5, and 262.

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 not necessarily reduce the scope of state power, nor the extent to which those who wield it exercise domination over the citizenry.

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.⁵⁶ Presumably, the slave is still dominated even she is 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

⁵⁶ See, e.g., Pettit, "Freedom as Antipower," *Ethics* 106 (1996): 576-604, 578-81.

restrictions of this type actually did exist in the antebellum South,⁵⁷ 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"⁵⁸ 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 constrained by norms.

Democracy is superior to dictatorship in many ways, and ballot box voting plays an important role in maintaining that superiority.⁵⁹ 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 a foot voter can choose from a variety of options, he or she is no longer subject to domination by the will of any individual ruler, employer, or political majority. At the

⁵⁷ See, e.g., Kenneth Stampp, *The Peculiar Institution: Slavery in the Antebellum South* (New York: Vintage, 1956), ch. IV.

⁵⁸ Pettit, *On the People's Terms*, 263-74.

⁵⁹ See, e.g., Halperin, et al., *The Democracy Advantage*.

very least, he faces far less risk of domination than person whose only recourse is ballot box voting.⁶⁰ 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.

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 on the grounds that 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.⁶¹ Thus, perhaps foot voters do not exercise meaningful choice over public policy, and 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.⁶² Seemingly “economic” choices are usually at least

⁶⁰ For a recent discussion of the ways in which exit rights facilitate nondomination that makes similar arguments, see Robert S. Taylor, *Exit Left: Markets and Mobility in Republican Thought*, (New York: Oxford University Press, 2017).

⁶¹ See, e.g., Robert C. Ellickson, “Legal Sources of Residential Lock-Ins: Why French Households Move Half as Often as U.S. Households,” *University of Illinois Law Review* (2012): 373–404, esp. 395–97; Paul W. Rhode and Koleman S. Strumpf, “Assessing the Importance of Tiebout Sorting: Local Heterogeneity from 1885 to 1990,” *American Economic Review* 93 (2003): 1648–77, 1649.

⁶² On the importance of zoning in determining housing availability and cost, see, e.g., See Chang Tai-Hsieh & Enrico Moretti, “Housing Constraints and Spatial Misallocation”, NBER Working Paper No. 21154 (2015), available at <http://www.nber.org/papers/w21154>. For an overview of the evidence, see, Edward Glaeser, “Reforming Land Use Regulations,” Brookings Institution, April 24, 2017, available at <https://www.brookings.edu/research/reforming-land-use-regulations/amp/>. For more detailed discussion of the relevance of policy to foot voting decisions, see Somin, *Democracy and Political Ignorance*, 167.

in significant part “political,” in the sense that they are made based on considerations heavily influenced by government policy.

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.

If foot voting decisions based on “economic” considerations do not qualify as exercises of political freedom, the same applies to many, perhaps even most, 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.⁶³

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.⁶⁴ Even people who are not severely oppressed sometimes migrate in part for considerations that are not narrowly economic. This is also true for private sector foot voters, who might choose a particular school or private planned community, because it lines up well with their moral or religious principles.

⁶³ For an extensive recent overview of the ubiquity of crude economic retrospective voting, see Achen and Bartels, *Democracy for Realists*, chs. 6-7. See also Somin, *Democracy and Political Ignorance*, 117-22 (summarizing relevant evidence).

⁶⁴ See, e.g., Somin, “Foot Voting, Federalism, and Political Freedom” (discussing the historical case of African-Americans fleeing Jim Crow jurisdictions).

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 may be moving because “anything is better” than the awful status quo where they currently reside. This is often true in the case of refugees, and others.

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, without careful consideration – or even knowledge – of the policies presented by the opposing party. Crude “retrospective voting” of this kind actually determines the outcome of a high percentage of elections.⁶⁵ 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 about the available alternatives.

Moreover, even if the initial impulse to move is a result of terrible conditions, a foot voter can still exercise meaningful choice if he or she has 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 initially she decided to consider moving primarily to escape a terrible situation.

A closely related objection to foot voting is the idea that it is not truly political because foot voters are primarily motivated by narrow self-interest, whereas ballot box

⁶⁵ For recent overviews of the evidence, see Achen and Bartels, *Democracy for Realists*, chs. 6-7; and Somin, *Democracy and Political Ignorance*, ch. 4.

voters are more likely to be motivated by public-spirited considerations. Perhaps self-interested decisions cannot be considered proper exercises of political freedom.

There is nothing inherent in the nature of ballot box voting that ensures it will be public-spirited, or that foot voting will be motivated by narrow self-interest. While most scholars believe that ballot box voters are indeed primarily motivated by public interest considerations,⁶⁶ that conventional wisdom has been challenged by an important recent book by political psychologists Jason Weeden and Robert Kurzban, who argue that seemingly public-spirited voting decisions are, in most cases, really products of self-interest.⁶⁷ On balance, I believe that Weeden and Kurzban overstate their case, and continue to believe the majority view of voting experts is closer to the mark.⁶⁸ But much depends on what qualifies as “self-interest” as opposed to public interest. The distinction between the two is often unclear.

If, as Weeden and Kurzban maintain, voting to advance the interests of a broad societal group to which the voter herself belongs – such as a racial, ethnic, gender, or occupational group – qualifies as self-interested, then a great deal of ballot box voting based in part on group affinities must be considered selfish. And even if such group-centric voting is not selfish, it may not be sufficiently detached from prejudice to qualify as genuinely public-spirited either. For example, many voters, even if not actively hostile to members of other racial or ethnic groups, are nonetheless “ethnocentric,” in the sense

⁶⁶ For citations to the relevant literature, see Somini, *Democracy and Political Ignorance*, 68-69.

⁶⁷ See Jason Weeden and Robert Kurzban, *The Hidden Agenda of the Political Mind: How Self-Interest Shapes Our Opinions and Why We Won't Admit it*, (Princeton: Princeton University Press, 2014).

⁶⁸ I largely agree with the critique of Weeden and Kurzban outlined by Bryan Caplan. See Bryan Caplan, “Conspiracy Theory: *The Hidden Agenda of the Political Mind*,” *Econlog*, Jan. 5, 2015, available at http://econlog.econlib.org/archives/2015/01/conspiracy_theo.html. Caplan’s critique resulted in a prolonged exchange with Weeden. For links to various posts by both sides, see Caplan, “Rejoinder to Weeden,” *EconLog*, Jan. 14, 2015, available at http://econlog.econlib.org/archives/2015/01/a_few_replies_t.html.

of placing a higher value on the interests of members of their own ethnic group than those of others.⁶⁹

Just as ballot box voting is far from uniformly public-spirited, so foot-voting is not always actuated by narrowly self-interested motives. For example, members of some religious groups have historically migrated for the purpose of being able to practice their faiths more freely, thereby living up to their moral codes.

Most important of all, it is far from clear that self-interested exercises of political choice are necessarily worse than more altruistic ones. Political choices based on altruistic, but badly misguided, views, may be more reprehensible and cause more harm than those based on narrow self-interest. Consider the enormous harm caused by voters and other political actors who made decisions based on public-interested, but horrendously flawed, worldviews such as racism, fascism, or communism. The narrowly selfish decision-maker who, for example, merely seeks to increase her own income is often less dangerous and less morally reprehensible than a public-spirited ideologue with the same degree of influence.

Whether foot-voting is more self-interested than ballot-box voting is likely to vary from case to case, and is also highly sensitive to how broad a definition of “self-interest” we choose to adopt. Fortunately, the relative merits of the two systems as mechanisms of political freedom do not depend on the answer to this difficult question.

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 to A to Jurisdiction B, it might be difficult for

⁶⁹ See, e.g., Donald R. Kinder and Cindy Kam, *Us Against Them: Ethnocentric Foundations of American Opinion* (Chicago: University of Chicago Press, 2009).

government officials and others to figure out which policy differences (if any) 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 move because my new jurisdiction has lower taxes, a cleaner environment, or better schools, I can enjoy the benefits of those policies even if third parties don't realize 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.⁷⁰ 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.⁷¹

For similar reasons, the benefits of foot voting are not necessarily dependent on whether the mover is immediately allowed to vote in his or her new jurisdiction – as is often not the case with international migrants. If foot voters are not allowed to become ballot box voters in their new homes, they at least have had the opportunity to exercise an

⁷⁰ See sources referenced in Somin, *Democracy and Political Ignorance*, 267 n.127.

⁷¹ On the difficulties of determining whether and to what extent a “mandate” exists even in high-profile elections, such as that for the presidency of the United States, see David Grossman, David Peterson, and James Stimson, *Mandate Politics*, (Cambridge: Cambridge University Press, 2006).

important form of political choice through foot voting. For the many international migrants who exit undemocratic regimes,⁷² lack of ballot box voting rights in their new destination would not even be a loss compared to their previous condition.

In this article, I do not attempt to address the issue of when and under what conditions immigrants should be given the franchise. I suggest only foot voting can be a powerful mechanism of political choice even in cases where the franchise is not extended immediately, and even if it is long delayed.

IV. 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. 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 “deliberative democracy.”

Political Participation “Beyond Voting”

In some cases, participation “beyond voting” surely does enable individual citizens to increase their influence over policy. Prominent activists, intellectuals,

⁷² See Part I.

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.⁷³ 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.⁷⁴

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. A simple example illustrates the point: Imagine an electorate that consists of 1 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.

⁷³ Jennifer Oser, Jan Leightley, and Kenneth Winneg, “Participation, Online and Otherwise: What’s the Difference for Policy Preferences?,” *Social Science Quarterly* 95 (2014): 259-77.

⁷⁴ See e.g. *ibid*; Sidney Verba, Kay Schlozman., and Henry Brady, *Voice and Equality* (Cambridge: Harvard University Press, 1995); Larry Bartels, *Unequal Democracy* (Princeton: Princeton University Press, 2010).

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, and interest in politics.

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, than 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 1 in 60 million chance of influencing electoral outcomes,⁷⁵ 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) by simultaneously ensuring that the leverage of each individual is infinitesimally small. The only exception might be a society with an

⁷⁵ See part I.

extremely small population, 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.⁷⁶

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.⁷⁷ 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.⁷⁸ 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.

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.⁷⁹ Such

⁷⁶ For a discussion of this possibility, see Ilya Somin, “Deliberative Democracy and Political Ignorance,” *Critical Review* 22 (2010); 253-79.

⁷⁷ See, e.g., Verba, et al., *Voice and Equality*.

⁷⁸ For surveys of the evidence, see, e.g., Diana Mutz, *Hearing the Other Side*, (Cambridge: Cambridge University Press, 2006), 29-41; Somin, *Democracy and Political Ignorance*, ch. 3; Brennan, *Against Democracy*.

⁷⁹ See, e.g., Bruce Ackerman and James Fishkin, *Deliberation Day*, (New Haven: Yale University Press, 2004); Claudio Lopez-Guerra, *Democracy and Disenfranchisement: The Morality of Electoral Exclusions*, (Cambridge: Cambridge University Press, 2014); Claudio Lopez-Guerra, “The Enfranchisement Lottery,”

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 together about them.⁸⁰ 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. 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.⁸¹ 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.⁸²

In previous work, I have criticized different variants of these proposals in some detail.⁸³ Here, I emphasize a few key points that are especially relevant to the issue of political freedom.

Philosophy, Politics, and Economics (Oct. 2010); Helene Landemore, “Deliberation, Cognitive Diversity, and Inclusiveness: An argument for the Random Selection of Representatives,” *Synthese* 190 (2013): 1209-31; Ethan Leib, *Deliberative Democracy in America: A Proposal for a Popular Branch of Government*, (University Park: Penn State Press, 2004).

⁸⁰ See, e.g., Ackerman and Fishkin, *Deliberation Day*.

⁸¹ See, e.g., Lopez-Guerra, “Enfranchisement Lottery”; Landemore, “Deliberation.”

⁸² See discussion of this possibility in Somin, *Democracy and Political Ignorance*, 209-10.

⁸³ See *ibid.*, 204-11; Somin, “Deliberative Democracy and Political Ignorance,”; and see Ilya Somin, “Jury Ignorance and Political Ignorance,” *William and Mary Law Review* 55 (2014): 1167-93, 1179-87.

First, even if these proposals for increasing deliberation work exactly as advertised, they still would not change the fact that all most 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 some part of the population results in reducing the influence of others.⁸⁴

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.⁸⁵ The deliberators can only do so if they serve as members of the "sorted" group 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.

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.⁸⁶ This suggests they are likely to have similar or greater

⁸⁴ See discussion earlier in Part IV.

⁸⁵ On this point, see Somin, *Democracy and Political Ignorance*, 208-09.

⁸⁶ Somin, "Jury Ignorance and Political Ignorance," 1179-87.

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.⁸⁷

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. 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.⁸⁸

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

⁸⁷ See Somin, *Democracy and Political Ignorance*, 210-11.

⁸⁸ For a more detailed discussion, see *ibid.*, 206-09.

thinking. But it is at least likely to result in better-informed and more thoughtful decision-making than ballot box voting.⁸⁹

Conclusion

As a mechanism for enhancing political freedom, foot voting outperforms ballot box voting. It does so because it enables far more people to make meaningfully decisive choices about the policies they wish to live under, while simultaneously creating stronger incentives to acquire relevant information and evaluate it objectively.

This does not by itself tell us how far we should go to expand foot voting opportunities, or what the optimal amount of foot voting should be. Still less does it prove that we should dispense with ballot box voting altogether. Political freedom is not the only relevant consideration to take into account in determining the relative balance between foot voting and ballot box voting in society. For example, political freedom might sometimes be constrained in order to promote other objectives, such as increasing utility or promoting distributive justice. Some issues may simply be impossible to address through foot voting, most notably worldwide environmental problems, such as global warming.

Nonetheless, political freedom provides a strong reason to rely on foot voting more often and ballot box voting less often than we might otherwise. Moreover, there are many ways we can expand opportunities for foot voting while simultaneously increasing human welfare and providing greater opportunity for the poor and oppressed.

⁸⁹ For more extensive discussion, see *ibid.*, ch. 5.

Domestically, we can expand foot voting opportunities by decentralizing authority to lower levels of government,⁹⁰ and by cutting back zoning restrictions and other policies that block migration by the poor.⁹¹ Internationally, foot voting can be expanded by reducing barriers to international migration, which currently condemn millions to lives of poverty and oppression, that they might otherwise escape.⁹²

In both the internal and international cases, expanding foot voting can often enhance welfare and promote the interests of the poor, as well as expand political freedom. Even if we cannot or, for some reason, should not radically expand foot voting opportunities in the near future, even incremental change can potentially make a big difference. Increasing by even one percent the number of people who are allowed to migrate to the United States or other advanced nations from developing countries (particularly ones with oppressive regimes) would be a massive increase in political freedom for hundreds of thousands of people. The same is true, albeit to a lesser extent, if we marginally increase internal foot voting opportunities, especially for the poor.

At the very least, foot voting should play a much larger role in debates over political freedom than is currently the case. Often, a person who is free to move is far more liberated than one who is merely free to cast a vote that has almost no chance of actually changing anything.

⁹⁰ See Somin, “Foot Voting Federalism, and Political Freedom.”

⁹¹ See, e.g., Schleicher, “Stuck!,” (discussing a range of such policies).

⁹² I plan to discuss this issue and its relevance to political freedom in far greater detail in Somin, *Free to Move*.