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Article

## Foot Voting, Decentralization, and Development

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### INTRODUCTION

Most debates over development focus on the question of how new wealth can be created in a given area—bringing growth to where people currently are. But, historically, development has often been driven by the ability of people to vote with their feet for greener pastures—bringing people to where they can produce more growth. In many cases, the best way to create new development is to facilitate foot voting by decentralizing political power and breaking down obstacles to mobility.

When people are able to vote with their feet in favor of areas with greater opportunity, development follows. That is true both when they engage in internal foot voting within a federal system, and when they do so across international boundaries. The effects of both types of foot voting are often spectacular. As Harvard economist and former Secretary of the Treasury Larry Summers puts it, “I do not think there is a more important development issue than getting questions of migration right.”<sup>1</sup>

This Article discusses the implications of foot voting for development and outlines several institutional strategies for expanding foot voting opportunities. It provides a general outline of some themes that will be explored in greater depth in my book *Free to Move: Foot Voting and Political Freedom*.<sup>2</sup>

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1. Lawrence H. Summers, Rethinking Global Development Policy for the 21st Century, Speech at the Ctr. for Glob. Dev. (Nov. 8, 2017).

2. (Oxford Univ. Press forthcoming) [hereinafter SOMIN, *FREE TO MOVE*].

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Part I summarizes the vast development benefits of foot voting. Among other things, migration can enable effective exploitation of place premiums—situations where a given individual is likely to be more productive in one location than another.<sup>3</sup> The magnitude of place premiums is often enormously great. Exploiting them effectively can do more to promote development than most, if not all, other policy reforms. This is true both for international place premiums and domestic ones.

Part II explains how foot voting can provide a powerful mechanism of political freedom: enabling migrants to choose those public policies that best fit their needs. In some crucial respects, foot voting is superior to conventional ballot-box voting. Relative to ballot-box voters, foot voters have stronger incentives to seek out relevant information, and to use it effectively. They also benefit in other ways from the ability to make a decisive choice about the policies they wish to live under, as opposed to a system where they only have the power to cast one vote out of many thousands or millions. In authoritarian societies or poorly established democracies, foot voting may be the only realistically feasible mechanism of political choice for most of the population. The superior decision-making enabled by foot voting increases people's ability to seek out opportunities and promote development.

Part III considers the institutional implications of the case for foot voting. Domestically, we can expand foot-voting opportunities by decentralizing political power and by breaking down barriers to interjurisdictional mobility. Special measures may be needed to facilitate foot voting in federal systems where jurisdictional lines track deep ethnic or religious divisions. Internationally, foot-voting opportunities can be enhanced by lowering barriers to immigration and developing institutional mechanisms to deal with potential negative side effects of freedom of movement.

Foot voting is not a panacea for all development problems, and it certainly is not a perfect free lunch without downsides. But we should nonetheless strive to capture its truly enormous advantages. It is difficult to think of any other development initiative that can bring such vast benefits to so many people.

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3. See generally Michael A. Clemens, et al., *The Place Premium: Wage Differences for Identical Workers Across the US Border* 1 (Ctr. for Glob. Dev., Working Paper No. 148, 2009) (discussing the "place premium" immigrants from different countries secure by moving to the United States).

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## I. PLACE PREMIUMS AND THE DEVELOPMENT BENEFITS OF FOOT VOTING

One of the most important findings of modern development economics is that people are often more productive if they move to a new location—even if their personal characteristics and job skills do not change.<sup>4</sup> This might occur because one location has a greater amount of capital to combine with the labor in question. A factory worker, for instance, might move to a region where his labor is more productive because there are more and better production facilities for him to utilize. Alternatively, the migrant may be more productive in a new region because it has a natural advantage. For example, a farmer is likely to produce more valuable crops in an area where the soil is richer.

But an even more important reason for place premiums is that some areas have better economic and political institutions than others. For example, a Mexican can increase his or her productivity several-fold simply by crossing over into the United States.<sup>5</sup> The main difference between the United States and Mexico is not greater natural resources or even greater physical capital, but superior legal, political, and economic institutions.<sup>6</sup>

Place premiums also enable increased productivity through internal migration. The early twentieth-century movement of African Americans from the South to the North enabled many to increase their incomes by becoming more productive.<sup>7</sup> Some of the difference was due to greater availability of industrial capital in the northern states, but some was also due to greater freedom for blacks in states where their economic opportunities were less limited by discrimination and legally enforced segregation.<sup>8</sup> Today, growing barriers to interjurisdictional mobility are a significant obstacle to economic growth in the United

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4. *See id.* at 33–34 (reviewing the evidence).

5. *See id.* at 41 tbl.8 (reviewing the data).

6. *See generally* DARON ACEMOGLU & JAMES ROBINSON, WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY (2013) (discussing the importance of institutions for development).

7. For a discussion of some of the relevant evidence, see, for example, FLORETTE HENRI, BLACK MIGRATION 133 (1975); Ilya Somin, *Foot Voting, Federalism, and Political Freedom*, in NOMOS: FEDERALISM AND SUBSIDIARITY 83 (Jacob Levy & James Fleming eds., 2014) [hereinafter Somin, *Foot Voting*].

8. For citations to relevant literature, see Somin, *Foot Voting*, *supra* note 7.

States, artificially depressing incomes for the poor and disadvantaged.<sup>9</sup>

In poor countries, increased development is often driven in large part by the migration of rural people to cities, where there are greater job opportunities. In China—the most dramatic recent example of this phenomenon—some 260 million people migrated from rural to urban areas between 1978 and 2012, usually for economic reasons.<sup>10</sup> Much of the migration flow is towards special economic zones with better institutions.<sup>11</sup> This massive migration has been an important factor in the country's rapid economic development, accounting for somewhere between twenty and thirty-three percent of the stupendous economic growth China experienced from the late 1970s to the present.<sup>12</sup>

The importance of place premiums is underscored by the reality that the ultimate purpose of economic development is not to increase production in a particular location but to increase the well-being of people, regardless of where they might be located. As economists Michael Clemens and Lant Pritchett put it, we should seek to maximize “income per natural [person]” rather than per capita income in a particular location.<sup>13</sup> Even if per capita income within the territory of Country X or Region Y remains the same, development has still increased if a substantial proportion of the population of X or Y are able to move to a different location where they can be more productive, earn higher incomes, and otherwise increase their well-being.<sup>14</sup>

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9. For good overviews of the issues, see David Schleicher, *Getting People Where the Jobs Are*, DEMOCRACY (Fall 2016), <http://democracyjournal.org/magazine/42/getting-people-where-the-jobs-are>; and David Schleicher, *Stuck! The Law and the Economics of Residential Stability*, 127 YALE L.J. 78 (2017) [hereinafter Schleicher, *Stuck!*].

10. See BRADLEY M. GARDNER, CHINA'S GREAT MIGRATION: HOW THE POOR BUILT A PROSPEROUS NATION 5 (2017); cf. Xiaochu Hu, *China's Young Rural-to-Urban Migrants: In Search of Fortune, Happiness, and Independence*, MIGRATION POLY INST. (Jan. 4, 2012), <http://www.migrationpolicy.org/article/chinas-young-rural-urban-migrants-search-fortune-happiness-and-independence> (estimating a total of 145 million internal rural-to-urban migrants as of 2009).

11. See Thomas Gries et al., *Explaining Inter-provincial Migration in China*, 95 PAPERS REG'L SCI. 709, 713 (2016).

12. GARDNER, *supra* note 10, at 72.

13. Michael A. Clemens & Lant Pritchett, *Income Per Natural: Measuring Development for People Rather than Places*, 34 POPULATION & DEV. REV. 395, 396 (2008).

14. *Id.*

Greater development can potentially be stimulated by expanding opportunities for people to vote with their feet and take better advantage of place premiums. Economists estimate that the establishment of free migration throughout the world could as much as double world GDP.<sup>15</sup> Even if this estimate overly optimistic by a large margin, it still implies that eliminating migration restrictions would have an enormous impact on development.<sup>16</sup> It is difficult to think of any other policy change that can achieve even remotely comparable gains. Even more modest increases in migration rights could potentially result in greatly increased development.

Obstacles to free internal migration also block valuable development in many countries, both underdeveloped nations and more advanced ones. In China, for example, many millions of people are blocked from seeking out valuable job opportunities by the *Hukou* system of residency permits, which is only gradually being reformed.<sup>17</sup> In the United States, the poor and lower middle class are often impeded from moving towards job opportunities by restrictive zoning laws, and occupational licensing regimes that exclude newcomers from numerous professions.<sup>18</sup>

The impact of zoning is particularly egregious, insofar as it prices out poor and lower-middle-class migrants from areas with strong job markets.<sup>19</sup> A recent study suggests that if the level of zoning in the United States were reduced to that of the

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15. See Michael A. Clemens, *Economics and Emigration: Trillion-Dollar Bills Left on the Sidewalk?*, 25 J. ECON. PERSP. 83, 83 (2011).

16. For claims that migration restrictions do not much affect productivity because few additional people would migrate if they were eliminated, see GEORGE J. BORJAS, IMMIGRATION ECONOMICS 168 (2014). For a critique of the serious analytical and empirical errors in Borjas' argument, see Michael A. Clemens & Lant Pritchett, *The New Economic Case for Migration Restrictions: An Assessment* 12–13 (Ctr. for Glob. Dev., Working Paper. No. 423, 2016), [https://www.cgdev.org/sites/default/files/CGD-Working-Paper-423-Clemens-Pritchett-New-Econ-Case-Migration\\_0.pdf](https://www.cgdev.org/sites/default/files/CGD-Working-Paper-423-Clemens-Pritchett-New-Econ-Case-Migration_0.pdf).

17. See Shannon Tiezzi, *China's Plan for "Orderly" Hukou Reform*, DIPLOMAT (Feb. 3, 2016), <http://thediplomat.com/2016/02/chinas-plan-for-orderly-hukou-reform>; see also GARDNER, *supra* note 10, at 19–21, 26–27 (describing the obstacles the hukou system creates for would-be migrants).

18. See Schleicher, *Stuck!*, *supra* note 9, at 117; Ilya Somin, *Moving Vans More Powerful Than Ballot Boxes*, USA TODAY (Oct. 18, 2016), <http://www.usatoday.com/story/opinion/2016/10/18/mobility-zoning-licensing-voting-minorities-column/91990486>.

19. See Schleicher, *Stuck!*, *supra* note 9, at 129; see also Edward Glaeser, *Reforming Land Use Regulations*, BROOKINGS INST. (April 24, 2017), <https://www.brookings.edu/research/reforming-land-use-regulations/> (providing an overview of the evidence).

median American city, the nation could achieve as much as a 9.5% increase in GDP.<sup>20</sup> Land-use restrictions also severely constrain foot-voting opportunities in China, among other places.<sup>21</sup>

The harm inflicted by migration restrictions goes 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. In many cases, the potential gains here are as great or greater than the purely economic benefits of foot voting.

If development is viewed in the broader sense of expanding human capabilities,<sup>22</sup> then the noneconomic benefits of foot voting are likely just as important as those that relate to increasing productivity, conceived in narrow economic terms. In many cases, escaping from noneconomic oppression enables migrants to enormously enhance their capacities in a variety of ways. The case of women escaping from patriarchal societies where they have little opportunity to seek an education or other opportunities is a particularly dramatic example. The same goes for religious and ethnic minorities escaping persecution and discrimination, political dissenters fleeing oppression, and others whose prospects are artificially constrained by repressive regimes.

What is true for international migration is also often true for internal movement. In many countries, some regions offer greater freedom and equality than others, and migration can

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20. See Chang Tai-Hsieh & Enrico Moretti, *Housing Constraints and Spatial Misallocation* 2 (Nat'l Bureau of Econ. Research Working Paper No. 21154, 2015), <http://www.nber.org/papers/w21154>; see also Peter Ganong & Daniel W. Shoag, *Why Has Regional Economic Convergence in the US Declined?* 30 (Nat'l Bureau of Econ. Research, Working Paper No. 23609, 2017), <http://www.nber.org/papers/w23609> (providing evidence that zoning barriers to migration have greatly slowed economic growth and cut off poor workers from job opportunities). For an overview of the evidence, see Glaeser, *supra* note 19.

21. For a description of the China case, see Wendell Pritchett & Shitong Qiao, *Exclusionary Megacities*, 91 S. CAL. L. REV. (forthcoming 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3000724](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3000724).

22. See, e.g., AMARTYA SEN, DEVELOPMENT AS FREEDOM 92 (1999) ("[T]he enhancement of human capabilities also tends to go with an expansion of productivities and earning power. That connection establishes an important indirect linkage through which capability improvement helps both directly and indirectly in enriching human lives and in making human deprivations more rare and less acute.").

help millions of people enjoy the advantages of the former. In addition to the economic place premium, there is also often what we may call the freedom premium or justice premium to expanding mobility.

## II. FOOT VOTING AS A SUPERIOR MECHANISM OF POLITICAL CHOICE

Ballot-box voting is usually seen as the essence of political freedom and the main mechanism by which most ordinary people exercise political choice. The democratic process has important virtues, but it also 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. That makes it a powerful mechanism for enabling would-be migrants to seek out opportunities that expand development.

### A. IMPACT OF INDIVIDUAL VOTERS

In most contexts, we would not say that a person has meaningful freedom if they have only a one-in-one-million or one-in-a-hundred-million chance of making a choice that actually makes a difference. For example, a person has little, if any, religious freedom if they have only an infinitesimal likelihood of being able to determine which religion they wish to practice. The same is true for political choice. As political theorist Russell Hardin put it, “most citizens do not typically have the liberty actually to make any difference to their own welfare through politics.”<sup>23</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 rise tomorrow.”<sup>24</sup>

It is not true that the liberty to cast a vote is *completely* worthless. At least *ex ante*, there is a very small chance that it will swing an electoral outcome. And if that scenario actually occurs, an individual vote could have great value.<sup>25</sup> This is arguably a sufficient reason to make it instrumentally rational to

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

24. *Id.*

25. ILYA SOMIN, DEMOCRACY AND POLITICAL IGNORANCE: WHY SMALLER GOVERNMENT IS SMARTER 80 (2d ed. 2016) [hereinafter SOMIN, DEMOCRACY AND POLITICAL IGNORANCE].

vote, so long as the cost of voting is low.<sup>26</sup> But a form of freedom that is not completely worthless may still be highly attenuated, and greatly inferior, to one where more meaningful choice is possible.

A small percentage of the population has the ability to influence political outcomes by means other than voting. For example, some can do so through lobbying, campaign contributions, or becoming influential political activists or leaders.<sup>27</sup> However, very few have more than a minimal chance of influencing public policy by these mechanisms. Using them effectively usually requires time, skills, and resources that most ordinary citizens do not have.<sup>28</sup> Moreover, to the extent that a few people do wield disproportionate political influence by these means, it only further diminishes the power of the rest of the population.<sup>29</sup>

#### B. LACK OF INCENTIVE TO MAKE AN INFORMED CHOICE

On many normative views of freedom, its effective exercise requires at least a reasonably informed choice, as well as one that has a real chance of making a difference. For example, medical ethicists hold that doctors should generally not perform operations unless they first get the patient's informed consent.<sup>30</sup> As the American Medical Association Code of Medical Ethics puts it, "The patient's right of self-decision can be effectively exercised only if the patient possesses enough information to enable an informed choice."<sup>31</sup> Like 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, the low likelihood of decisiveness also creates powerful incentives for voters to make poorly informed

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26. For a detailed discussion, see *id.* at 79–84; see also DEREK PARFIT, REASONS AND PERSONS 73–75 (1984) (arguing that an extremely small chance of achieving a particular outcome has rational and moral significance when that outcome affects a large number of people).

27. SIDNEY VERBA ET AL., VOICE AND EQUALITY 42 (1995).

28. See, e.g., *id.* at 186 (describing how political influence by means of mechanisms beyond voting is enjoyed by only a small minority of the population).

29. *Id.*

30. *Opinion 8.08—Informed Consent*, 14 AM. MED. ASS'N J. ETHICS 555, 555 (2012), <http://journalofethics.ama-assn.org/2012/07/pdf/coet1-1207.pdf>.

31. *Id.*

choices. Precisely because there is so little chance that their votes will matter, ballot-box voters have strong incentives to be “rationally ignorant.”<sup>32</sup> The phenomenon of rational ignorance afflicts voters in the United States and around the world.<sup>33</sup> It affects virtually all those democracies for which we have relevant survey data.<sup>34</sup> Such ignorance reduces the quality of political decision-making and inhibits development.<sup>35</sup>

Survey data shows that voters often lack even very basic knowledge about the candidates and policy questions at issue in any given election.<sup>36</sup> For example, during the 2014 U.S. midterm election, which focused on control of Congress, polls showed that only thirty-eight percent of the public knew which party controlled the House of Representatives before the election, and the same percentage knew which party controlled the Senate.<sup>37</sup> Voters also often have little understanding of how the government spends its money or which officials are responsible for which issues.<sup>38</sup>

In addition to acquiring very little information, voters have little incentive to analyze what they do learn in a logical, unbiased way.<sup>39</sup> To the contrary, most have strong 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>40</sup>

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32. Ilya Somin, *Rational Ignorance*, in ROUTLEDGE INTERNATIONAL HANDBOOK OF IGNORANCE STUDIES 274, 277 (Matthias Gross & Linsey McGoey eds., 2015). The theory of rational voter ignorance was first developed in ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY 238–59 (1957).

33. See *Perceptions Are Not Reality: Things the World Gets Wrong*, IPSOS MORI (Oct. 28, 2014), <https://www.ipsos-mori.com/researchpublications/researcharchive/3466/Perceptions-are-not-reality-Things-the-world-gets-wrong.aspx> (discussing survey data showing widespread public ignorance in numerous democracies).

34. For a recent comparative analysis of inaccuracies in public perceptions of political and economic issues in numerous democracies, see *id.*

35. See generally BRYAN CAPLAN, THE MYTH OF THE RATIONAL VOTER: WHY DEMOCRACIES CHOOSE BAD POLICIES (2007) (discussing how voter ignorance and irrationality lead to bad policy); SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25 (discussing the extent and dangers of political ignorance).

36. See SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 17–46 (detailing numerous studies showing voter ignorance).

37. *Id.* at 17.

38. *Id.* at 17–18, 117–19.

39. See CAPLAN, *supra* note 35, at 131–35 (explaining rational irrationality in the context of elections).

40. *Id.* at 74.

## C. THE SUPERIORITY OF FOOT VOTING

Foot voting is systematically superior to ballot-box voting on both decisiveness and incentives to acquire information.<sup>41</sup> It enables the individual decision-maker to make a meaningful choice. When a potential migrant decides where to live, his or her decision is highly likely to make a real difference to the outcome. Even those who must secure the agreement of a spouse or other family member still generally have much greater clout than an average ballot-box voter in an election.

And precisely because their decisions do actually matter, foot voters have strong incentives to acquire relevant information and use it wisely. A 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 relevant information.

Considerable empirical evidence backs these theoretical deductions.<sup>42</sup> For example, experiments show that people tend to process political information in a far more biased and less accurate way than otherwise similar information about nonpolitical issues.<sup>43</sup>

Voters can sometimes offset the effects of political ignorance by relying on information shortcuts; small bits of knowledge that function as proxies for larger bodies of information that they do not know.<sup>44</sup> In my book *Democracy and Political Ignorance*, I discuss a variety of different shortcut mechanisms in detail, and explain why they are not nearly as

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41. *Id.* at 138–45. For a discussion of moving costs and other factors that might inhibit effective choices for foot voters, see SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 165–76; *infra* Part III.

42. See SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 136–81 (discussing relevant data and experiments).

43. See, e.g., *id.*; Dan M. Kahan et al., *Motivated Numeracy and Enlightened Self-Government*, 1 BEHAV. PUB. POL'Y 54, 54 (2017) (recounting experiments in which subjects used their quantitative-reasoning capacity to selectively conform their interpretation of data to the result more consistent with their political outlooks).

44. For arguments that shortcuts function well, see, for example, MORRIS P. FIORINA, RETROSPECTIVE VOTING IN AMERICAN NATIONAL ELECTIONS 1–44 (1981) (providing a detailed analysis of retrospective voting, an important type of information shortcut); ARTHUR LUPA & MATTHEW D. MCCUBBINS, THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW? (1998) (defending a variety of shortcuts); SAMUEL POPKIN, THE REASONING VOTER (1991) (arguing that shortcuts are effective).

effective as advocates claim.<sup>45</sup> In some cases, they even make the situation worse, such as when voters routinely reward and punish incumbents for outcomes they did not cause.<sup>46</sup> Similar weaknesses beset claims that the ignorance of individual voters does not matter because some sort of “miracle of aggregation” enables the electorate to attain collective wisdom despite it.<sup>47</sup> Here, I will only emphasize that, even if ballot-box voters can sometimes make reasonably good decisions, foot voters generally do much better.<sup>48</sup>

In some cases, the challenge facing both foot voters and ballot-box voters is not to effectively utilize existing information, but to seek out new information that may not—as yet—be known to anyone.<sup>49</sup> Here too, foot voters generally have better incentives than ballot-box voters.<sup>50</sup> For the same reason that they have strong incentives to seek out and use existing knowledge, they are also incentivized to find new relevant knowledge.<sup>51</sup>

If foot voters find new information that helps them make a better decision, the better-informed choice is likely to make an important difference in their lives. By contrast, a ballot-box voter who finds new information that might improve her ballot box decision-making has far less likelihood of gaining anything for her trouble. Her better-informed vote is still highly unlikely to make any difference.

As Charles Tiebout showed in his classic article on the subject, foot-voting opportunities can enhance political choice even if jurisdictions make no special effort to attract migrants.<sup>52</sup> In a world where all jurisdictions choose policies solely to please current residents, foot voting can still enhance choice by giving

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45. SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 106–35.

46. *Id.* at 117–19.

47. *Id.* at 127–34. For an important recent defense of a version of the “miracle of aggregation” theory, see HÉLÈNE LANDEMORE, DEMOCRATIC REASON: POLITICS, COLLECTIVE INTELLIGENCE, AND THE RULE OF THE MANY 156–60 (2013). For my critique, see Ilya Somin, *Why Political Ignorance Undermines the Wisdom of the Many*, 26 CRITICAL REV. 151 (2014).

48. For an overview of the evidence, see SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 148–58 (comparing multiple examples where foot voting was more effective than ballot box voting).

49. *Id.* at 164–65.

50. *Id.*

51. I discuss this issue in greater detail in *id.*

52. Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 418 (1956).

potential migrants a wider range of options than they would have otherwise.<sup>53</sup> Even if each jurisdiction's policies are determined without reference to the needs of migrants, the opportunity to vote with your feet can enable many people to find local or regional governments with policies better suited to their preferences.<sup>54</sup>

But foot voting becomes an even more powerful mechanism for enhancing choice if regional governments have incentives to compete for residents.<sup>55</sup> Competition for tax revenue leads jurisdictions to adopt policies that appeal to potential migrants, both individuals and businesses.<sup>56</sup> That, in turn, can enhance their opportunities for choice, and promote greater economic development.<sup>57</sup> Historically, job opportunities and a favorable economic climate are among the principal determinants of regional migration.<sup>58</sup>

Finally, it is important to recognize that foot voting may be the only possible mechanism of exercising political choice for the large part of the world's population that live under authoritarian regimes or weakly established democracies. Freedom House estimates that some twenty-five percent of the world's people live in "not free" undemocratic nations, and another thirty percent in ones that are only "partly free" (i.e., only partly democratic).<sup>59</sup>

### III. INSTITUTIONAL DESIGN FOR A FOOT VOTING WORLD

The development benefits of expanded foot voting are potentially enormous. What can countries do to design institutions that capture them, while minimizing potential downsides?

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53. *Cf. id.* at 418 ("The greater the number of communities and the greater the variance among them, the closer the consumer will come to fully realizing his preference position.").

54. *Id.*

55. For a fuller discussion, see Somin, *Foot Voting*, *supra* note 7, at 84. See also SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 145–46.

56. SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 145–46.

57. *Id.*

58. See, e.g., *supra* Part I; cf. SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 166–67 (outlining the reasons for migrations between U.S. states).

59. *Freedom in the World 2018: Democracy in Crisis*, FREEDOM HOUSE, <https://www.freedomhouse.org/report/freedom-world/freedom-world-2018> (last visited Apr. 26, 2018).

Ideally, institutions should be able to accommodate greatly expanded foot voting across both domestic and international jurisdictional boundaries. In order to maximize development, countries must especially seek to expand foot-voting opportunities for the poor and oppressed of the world. It is here that the greatest gains can occur, both narrowly economic and otherwise.

#### A. FACILITATING DOMESTIC FOOT VOTING

Promoting foot voting has a number of implications for domestic constitutional structures. The most obvious and widely accepted is the idea that citizens should be able to move freely between subnational jurisdictions and that the latter should not be able to stop them from doing so.<sup>60</sup> In the United States and other advanced democracies, such freedom of movement is largely taken for granted. As early as 1867, the Supreme Court struck down a state law imposing an exit tax on people seeking to migrate to other states.<sup>61</sup>

Before the Civil War, however, state-imposed restrictions on internal migration were far from unusual, with many states excluding free African Americans, some categories of aliens, and those considered likely to become public charges.<sup>62</sup> Today, internal restrictions on migration are far more common in poor nations. China's *hukou* system is a particularly well-known and important example, because it affects so many people in the world's most populous country.<sup>63</sup> But regional governments in other developing nations also seek to restrict migration in various ways. For example, some Indian states seek to keep out migrants from minority ethnic groups.<sup>64</sup> Some ethnonationalist

60. See, e.g., Ilya Somin, *Foot Voting, Political Ignorance, and Constitutional Design*, 28 SOC. PHIL. & POL'Y 202 (2011) (discussing this necessity) [hereinafter Somin, *Foot Voting, Political Ignorance, and Constitutional Design*].

61. *Crandall v. Nevada*, 73 U.S. 35, 49 (1867).

62. See MARILYN C. BASELER, *ASYLUM FOR MANKIND: AMERICA 1607–1800*, at 190–309 (1998) (discussing state-level migration restrictions in eighteenth and nineteenth century America); Gerald L. Neuman, *The Lost Century of American Immigration Law, (1776–1875)*, 93 COLUM. L. REV. 1833, 1841–80 (1993) (tracing U.S. immigration law in the eighteenth and nineteenth centuries).

63. See discussion *supra* Part I.

64. For a recent overview, see Rameez Abbas & Divya Varma, *Internal Labor Migration in India Raises Integration Challenges for Migrants*, MIGRATION POL'Y INST. (Mar. 3, 2014), <http://www.migrationpolicy.org/article/internal-labor-migration-india-raises-integration-challenges-migrants>.

political leaders, such as those of the Shiv Sena Party in Maharashtra, India, have even promoted violence against migrants in order to expel them and deter others from coming.<sup>65</sup>

Well-designed constitutional systems can do much to enhance opportunities for foot voting, while minimizing potential downsides.<sup>66</sup> At a bare minimum, effective foot voting requires preventing regional governments from either forcibly excluding migrants or preventing their own people from leaving. It also requires suppression of antimigrant violence. The latter may be difficult to achieve in areas where legal institutions are weak or corrupt and ethnic or religious hostilities between migrants and natives are severe.

Internal foot voting can be further facilitated by enforcement of relatively tight limits on the scope of central government power, thereby devolving more issues to the regional or local level.<sup>67</sup> That will ensure that more issues are subject to foot voting, with lower moving costs.<sup>68</sup> In many situations, moving costs can be further reduced by devolving authority to the local level, rather than to regional authorities. It is much easier and cheaper to move from one nearby city or town to another than to move to a different region.

Not all policy decisions can be devolved to lower-level governments. Some problems are so large-scale that they can only be addressed by a national government, or perhaps even only through international cooperation. Global warming is an obvious example of the latter.

But a wide range of issues currently controlled by the U.S. federal government and other large national governments can be handled by smaller regional or local governments, as dramatically demonstrated by the success of small nations such as Switzerland, Luxembourg, Denmark, New Zealand, and oth-

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65. *Id.*; see also SIKATA BANERJEE, WARRIORS IN POLITICS: HINDU NATIONALISM, VIOLENCE, AND THE SHIV SENA IN INDIA 35–52 (2000) (detailing similar riots involving the Shiv Sena Party in Jogeshwari, Behrampada, Dharavi, and Govandi/Deonar).

66. This Section builds on ideas first developed in Somin, *Foot Voting, Political Ignorance, and Constitutional Design*, *supra* note 60.

67. SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 167.

68. See Somin, *Foot Voting, Political Ignorance, and Constitutional Design*, *supra* note 60, at 221–23; see also SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 167.

ers.<sup>69</sup> These countries—which are smaller than many U.S. states, and even some U.S. cities—have independent policies on health care, education, social security, and many other issues, yet perform relatively well and seem not to suffer from an insufficient size and scale.<sup>70</sup> More systematic research also finds that larger democracies generally perform no better than smaller ones, which suggests that size is not an advantage, at least not for handling most issues.<sup>71</sup>

The optimal distribution of power between different levels of government cannot be determined by reference to foot voting alone; a variety of other considerations must also be weighed. But enhancing opportunities for foot voting is a major consideration in favor of greater decentralization.

Foot voting can also be enhanced by political institutions that promote competitive rather than cooperative federalism.<sup>72</sup> If regional and local governments are required to raise all or most of their own funds by taxing their own residents, as in the competitive federalism model, they will have stronger incentives to adopt policies that offer attractive options to potential migrants in order to increase revenue.<sup>73</sup> By contrast, cooperative federalism, under which lower-level governments get all or most of their funding from the central government, undermines incentives to adopt effective policies that promote development.<sup>74</sup>

In some situations, there is a danger that competition will result in a race to the bottom, in which jurisdictions try to attract businesses in ways that harm ordinary citizens: for example, by allowing firms to take actions that damage the envi-

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69. See SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 227–28 (discussing the ability of small countries to successfully handle policies on these issues).

70. *Id.*

71. See generally ROBERT A. DAHL & EDWARD R. TUFTE, SIZE AND DEMOCRACY (1973) (providing a seminal discussion of the subject).

72. For a discussion of competitive and cooperative federalism, see, for example, THOMAS R. DYE, AMERICAN FEDERALISM: COMPETITION AMONG GOVERNMENTS 1–33 (1990).

73. See, e.g., Somin, *Foot Voting*, *supra* note 7; Barry Weingast, *The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development*, 11 J.L. ECON. & ORG. 1 (1995) (discussing the benefits of competitive federalism for development).

74. See Weingast, *supra* note 73.

ronment.<sup>75</sup> However, race-to-the-bottom concerns are greatly overstated on both theoretical and empirical grounds.<sup>76</sup>

The theoretical flaw in the race to the bottom argument is that rational revenue-oriented jurisdictions must focus not only on attracting businesses, but also on attracting workers and other taxpayers, many of whom care about environmental quality and other similar quality-of-life issues.<sup>77</sup> Those preferences are also often shared by business interests that seek to employ such workers, especially high-skilled ones, if only because they would have to pay higher wages to attract such workers to places with poor environmental amenities.<sup>78</sup> Wealthier workers and taxpayers (the sort governments are often especially eager to attract) are particularly likely to be willing to sacrifice additional income for environmental quality.<sup>79</sup> Empirically, subnational governments have often pioneered forms of environmental protection faster than central governments, and do not seem to systematically favor would-be polluters at the expense of other potential migrants.<sup>80</sup>

This is not to suggest that subnational governments are immune from capture by business interests that might lobby

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75. For a summary and defense of the race to the bottom theory, see Kirsten H. Engel, *State Environmental Standard-Setting: Is There A "Race" and Is It "To The Bottom?"*, 48 HASTINGS L.J. 274, 274–369 (1997). For other modern defenses, see, for example, Kirsten H. Engel & Scott R. Saleska, *Facts are Stubborn Things: An Empirical Reality Check in the Theoretical Debate Over the Race-to-the-Bottom in State Environmental Standard-Setting*, 8 CORNELL J.L. & PUB. POL'Y 55 (1998); Joshua D. Sarnoff, *The Continuing Imperative (But Only from a National Perspective) for Federal Environmental Protection*, 7 DUKE ENVTL. L. & POL'Y F. 225 (1997).

76. For leading theoretical critiques, see Richard Revesz, *The Race to the Bottom and Federal Environmental Regulation: A Response to Critics*, 82 MINN. L. REV. 535 (1997) (responding to critics and defending his prior challenge of race-to-the-bottom arguments) [hereinafter Revesz, *The Race to the Bottom*]; Richard Revesz, *Rehabilitating Interstate Competition: Rethinking the "Race-to-the-Bottom" Rationale for Federal Environmental Regulation*, 67 N.Y.U. L. REV. 1210 (1992) (challenging the strength of race-to-the-bottom arguments).

77. See Revesz, *The Race to the Bottom*, *supra* note 76, at 538–40. I discuss these issues in more detail in SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 168–69.

78. See SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 168–69.

79. For a summary of the relevant evidence on this point, see Ilya Somin & Jonathan H. Adler, *The Green Costs of Kelo: Economic Development Takings and Environmental Protection*, 84 WASH. U. L. REV. 623, 663–65 (2006).

80. See SOMIN, DEMOCRACY AND POLITICAL IGNORANCE, *supra* note 25, at 168–69 (citing relevant studies).

for excessive pollution or other policies that enable them to benefit at the expense of the interests of the general public. Far from it.<sup>81</sup> But there is no inherent reason why such capture is more of a danger at the local and regional level than with central governments. The possibility of foot voting also puts constraints on such rent-seeking, as jurisdictions especially prone to it are likely to lose investors and taxpayers over time.<sup>82</sup>

Foot voting may have less to offer minority groups in the many federal systems where they are actually the majority in a few regions, but widely despised elsewhere. Many federal systems were established for the specific purpose of giving regionally concentrated minorities a jurisdiction of their own, thereby helping to mitigate ethnic conflict.<sup>83</sup> In such situations, it might be difficult or even impossible for individuals to move to a region dominated by another ethnic group.

For example, an Iraqi Kurd moving into a majority-Arab province might reasonably fear violence or, at least, discrimination. Even in the absence of overt hostility, such minority groups might face painful cultural and linguistic adjustments if they move out of their home regions. A French Canadian who moves from Quebec to Alberta is unlikely to face ethnic violence or even much in the way of discrimination. Even so, moving to a majority Anglophone province might still be a difficult decision, with substantial transition costs.

Nonetheless, foot voting is still potentially useful under such conditions. The federal system in question can—and often should—include multiple majority-minority districts.<sup>84</sup> For example, the French-speaking minority in Switzerland can choose between multiple majority-French cantons. Similarly, Iraq has

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81. For some examples of such capture caused, in part, by misinformation, see generally DAVID SCHULTZ, *AMERICAN POLITICS IN THE AGE OF IGNORANCE: WHY LAWMAKERS CHOOSE BELIEF OVER RESEARCH* 108–13 (2013) (discussing examples of states in the United States that have fallen victim to interest group capture, often resulting from misinformation).

82. For a discussion of how foot voting constrains corruption, see Sunita Parikh & Barry Weingast, *A Comparative Theory of Federalism: India*, 83 VA. L. REV. 1593, 1604–06 (1997) (analyzing India through a comparative federal performance model to examine the performance of the system and the impact of corruption in India).

83. See generally DAWN BRANCATI, *PEACE BY DESIGN: MANAGING INTRASTATE CONFLICT BY DECENTRALIZATION* (2009) (discussing many such examples from around the world).

84. For other potential advantages of such a system, see Donald L. Horowitz, *The Many Uses of Federalism*, 55 DRAKE L. REV. 953, 958–62 (2007).

three majority-Kurdish provinces, albeit partially unified under the Kurdistan Regional Government.<sup>85</sup>

Where there is only one majority-minority region, it is worth considering the possibility of breaking it up to form multiple jurisdictions. French Canadians would likely enjoy a broader array of foot-voting options if Quebec were divided into several smaller provinces rather than remain one big one.

I do not suggest that any particular majority-minority jurisdiction must necessarily be divided in order to facilitate foot voting; other considerations would also have to be weighed before reaching that conclusion in any given case. But the foot-voting benefits of partitions should not be neglected.

Such arrangements can allow even regionally concentrated minorities a degree of choice. That range of choice can be further expanded if more power is devolved to local governments, rather than just regional ones. Even if it is impossible to form more than one majority-minority regional government, that region may have many local governments that could potentially compete with each other.

#### B. FACILITATING INTERNATIONAL MIGRATION

Some of the greatest potential gains from expanding foot voting are those to be had from freeing up international migration.<sup>86</sup> From the standpoint of both economic development and a variety of noneconomic interests, the difference between living in a poor nation and a more developed one vastly outweighs the difference between living in the worst region of an advanced nation and the best. But it is also fair to say that international foot voting faces stronger and more widespread and vociferous opposition than internal foot voting. In both the United States and many European nations, strong nationalist movements have arisen that not only oppose expanding immigration but advocate greatly reducing it from existing levels.<sup>87</sup>

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85. For a discussion of Kurdish government, see generally STEPHEN MANSFIELD, *THE MIRACLE OF THE KURDS: A REMARKABLE STORY OF HOPE REBORN IN NORTHERN IRAQ* (2014).

86. See discussion *supra* Part I.

87. See Ronald F. Inglehart & Pippa Norris, *Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash* (Harvard Uni. Kennedy Sch., Working Paper No. RWP16-026, Nov. 2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2818659](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2818659); Conor Friedersdorf, *What Right-Wing Populist Movements Share: Blaming Immigrants*, ATLANTIC (June 29, 2017), <https://www.theatlantic.com/politics/archive/2017/06/what-right-wing-populist-movements-share-blaming-immigrants/532023>.

This opposition will not be easily overcome. But the vast gains to be had from expanded migration rights make it imperative to try. Even incremental increases in international foot-voting opportunities can save millions of people from what would otherwise be a lifetime of poverty and oppression. In the nineteenth century, many millions of poor and oppressed people were able to migrate to relatively freer societies with greater opportunities, such as the United States, Canada, and Australia, thanks in large part to the paucity of migration controls during that period.<sup>88</sup> If border controls are reduced, the lower transportation costs created by modern technology make such movement easier today.

Many objections have been offered to the idea of greatly expanding international migration rights.<sup>89</sup> These include fears that it will increase crime and terrorism, reduce the wages of natives,<sup>90</sup> overburden the welfare state, cause the enactment of harmful policies supported by immigrant voters, and lead to the spread of dangerous cultural values.<sup>91</sup> I cannot review and assess these objections in detail here. But it is possible to sketch out a general framework for addressing them.

First, many of the standard objections to free international migration are significantly overblown. For example, the available evidence indicates that increased immigration does not lead to increases in per capita welfare spending.<sup>92</sup> At least in the United States, immigrants actually have a much lower crime

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88. For an overview, see MASSIMO LIVI-BACCI, *A SHORT HISTORY OF MIGRATION* 46–57 (Carl Ipsen trans., Polity Press 2012).

89. I plan to discuss these concerns in far greater detail in SOMIN, *FREE TO MOVE*, *supra* note 2.

90. *See, e.g.*, BORJAS, *supra* note 16, at 79–148; PHILIP CAFARO, *HOW MANY IS TOO MANY? THE PROGRESSIVE ARGUMENT FOR REDUCING IMMIGRATION INTO THE UNITED STATES* 33–54 (2015) (claiming that cheap immigrant labor lowers wages and benefits for natives, disproportionately impacting the poor).

91. *See, e.g.*, SAMUEL P. HUNTINGTON, *WHO ARE WE? THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY* 141–294 (2004) (claiming that immigration threatens American identity and values).

92. *See, e.g.*, ALBERTO ALESINA & EDWARD L. GLAESER, *FIGHTING POVERTY IN THE US AND EUROPE: A WORLD OF DIFFERENCE* (2004) (indicating that European nations with greater immigration actually have lower welfare spending than those with more); Zachary Gochenour & Alexander Nowrasteh, *The Political Externalities of Immigration: Evidence from the United States* (Cato Inst., Working Paper No. 14, Jan. 2014), <http://object.cato.org/sites/cato.org/files/pubs/pdf/working-paper-14-3.pdf> (providing evidence from American states).

rate than native-born citizens do.<sup>93</sup> Similarly, the risk that an American will be killed by an immigrant terrorist is so infinitesimal that it is actually several times lower than the risk that he or she will be killed by a lightning strike.<sup>94</sup>

Where immigration creates genuine problems and negative side effects, it is often possible to deal with the issue by means of “keyhole solutions” that minimize the risk without barring large numbers of immigrants.<sup>95</sup> If, for example, immigration does impose excessive burdens on the welfare state, receiving nations could abolish or reduce welfare payments to migrants.<sup>96</sup> Excluding immigrants from welfare benefits might be unjust. But it is surely less so than forcing them to endure the far greater material deprivation of being condemned to poverty for the rest of their lives in an underdeveloped nation. Similarly, if there is a credible danger that immigrant voters will cause the enactment of harmful or unjust government policies, the obvious solution is to tighten eligibility for the franchise.

In the United States, for example, immigrants cannot become citizens unless they have lived in the country for five years, demonstrate a knowledge of the English language, and pass a civics test that many native-born citizens would fail.<sup>97</sup> If necessary, such standards could be made even more stringent. Tests could become tougher, naturalization periods can be extended, and so on. Governments can make freedom of move-

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93. For a review of the relevant studies and evidence, see MARY C. WATERS & MARISA GERSTEIN PINEAU, NAT'L ACAD. SCI., *THE INTEGRATION OF IMMIGRANTS INTO AMERICAN SOCIETY* 326–44 (2015).

94. According to the National Weather Service, an average of twenty-seven Americans were killed by lightning over the past decade. *Lightning Deaths at All-Time Record Low in 2017*, USA TODAY (Jan. 2, 2018), <https://www.usatoday.com/story/weather/2018/01/02/lightning-deaths-all-time-record-low-2017/996949001/>. By contrast, the annual incidence of death by immigrant terrorists is far lower. See Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, CATO INST. (Sept. 13, 2016), <https://www.cato.org/publications/policy-analysis/terrorism-immigration-risk-analysis>.

95. For examples of such proposals see Bryan Caplan, *Why Should We Restrict Immigration?*, 32 CATO J. 5 (2012). I will further outline such ideas in SOMIN, *FREE TO MOVE*, *supra* note 2.

96. Cf. MARTIN RUHS, *THE PRICE OF RIGHTS: REGULATING INTERNATIONAL LABOR MIGRATION* (2013) (arguing that limiting the welfare rights of labor migrants can enable increased migration).

97. SOMIN, *DEMOCRACY AND POLITICAL IGNORANCE*, *supra* note 25, at 212.

ment easier while making it tougher for new immigrants to become citizens or acquire certain other types of rights.<sup>98</sup>

Long-term exclusion from the franchise may be unfair or unjust to immigrants. But it is a lesser injustice than excluding them from the country entirely, which would condemn most to a lifetime of poverty and oppression. In most of their home nations, the would-be migrants also have little or no influence over public policy. This is particularly true in the many nations that have authoritarian governments or are only partly democratic.

Where other keyhole solutions might be inadequate, policymakers should also consider tapping the vast wealth created by immigration to mitigate negative side effects that cannot be addressed in other ways. If, for example, immigration drives down the wages of native low-skilled workers and this is considered a morally unacceptable outcome, national governments can impose a surtax on the incomes of recent immigrants and redistribute the wealth to those native workers whose wages have been depressed.<sup>99</sup>

Like exclusion from welfare benefits and the franchise, such discriminatory taxation may be unjust. But it, like other keyhole solutions, still leaves the immigrants far better off than they would be if left out of the country entirely. Paying, say, a ten-percent-higher tax rate in a country where the immigrant earns three times as much as she would in her homeland still leaves her vastly better off than she would be otherwise.

Along the same lines, if immigration does lead to an increase in crime, tax revenue generated by the wealth it creates can be used to fund additional police forces and other law enforcement tools that can bring crime down again.<sup>100</sup> Lowering migration barriers can potentially double world GDP.<sup>101</sup> Some of that new wealth could be used to alleviate possible negative side-effects of migration, while still leaving enabling vast gains for both immigrants and natives.

In sum, understandable objections to expanded migration should be addressed by a combination of assessing whether the objection is overblown, implementing keyhole solutions, and—

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98. See generally RUHS, *supra* note 96 (discussing a variety of such policy options).

99. See Caplan, *supra* note 95, at 9.

100. I will develop this proposal in greater detail in SOMIN, FREE TO MOVE, *supra* note 2.

101. See Clemens, *supra* note 15, at 84–89.

where necessary—tapping the wealth created by immigration to mitigate negative side effects and compensate adversely affected natives. These strategies may not always be feasible. There may perhaps still be extreme situations where migration restrictions are the only possible way to prevent some great harm.<sup>102</sup> But they can at least enable vastly freer migration than is currently feasible.

Perhaps this assessment is too optimistic and keyhole policies can only enable a modest increase in migration. But even such a modest increase can still greatly enhance development and liberate millions of people from tyranny and privation.

### CONCLUSION

For many of the poorest and most oppressed people in the world, the most likely path to economic development and political freedom runs through foot voting. Expanded foot voting can also do much for the relatively disadvantaged residents of more advanced nations. It is, furthermore, often a better mechanism for decision-making than conventional ballot-box voting.

It will not be easy to overcome the many barriers to expanding foot-voting opportunities, especially with respect to international migration. Progress towards that objective is likely to be incremental. But even limited gains can make an enormous difference.

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102. I will consider a number of such possible scenarios in SOMIN, FREE TO MOVE, *supra* note 2.