

# Tiebout Goes Global: International Migration as a Tool for Voting With Your Feet

Ilya Somin \*

## I. INTRODUCTION

Students of federalism have long recognized that citizens in a federal system can “vote with their feet” by moving from one jurisdiction to another.<sup>1</sup> Those oppressed or harmed by the policies of one regional government can improve their lot by moving to another. Such “exit rights” are an important alternative to traditional “voice”-based political participation through voting.<sup>2</sup> In a classic 1956 article, Charles Tiebout pointed out that foot voting can also help citizens find jurisdictions that more closely approximate their preferred mix of taxes and public services.<sup>3</sup> While foot voting cannot work perfectly so long as there are moving costs,<sup>4</sup> it does enable many people to choose which jurisdiction to live in and thereby decide which policies they wish to live under.

However, scholars have so far failed to systematically consider the implications of foot voting and the Tiebout model for international migration. Although much research addresses the economic and human rights issues raised by movement across international boundaries, there has been very little discussion of its utility as a form of political participation through exit rights. Some scholars have argued for stronger international migration rights on deontological moral grounds.<sup>5</sup> Others advocate such changes because they are likely to greatly increase the well-being of migrants from repressive and

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1. The classic analysis is Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

2. See generally ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY* (1970).

3. Tiebout, *supra* note 1, at 418.

4. *Id.* at 421-22.

5. See, e.g., Joseph H. Carens, *Aliens and Citizens: The Case for Open Borders*, in *THEORIZING CITIZENSHIP* 229 (Ronald Beiner ed., 1995); Jonathon W. Moses, *Two (Short) Moral Arguments for Free Migration*, in *ANVENDT ETIKK VED NTNU [APPLIED ETHICS AT NTNU]* 25 (May Thorseth ed., 2003).

underdeveloped societies, and also provide economic benefits to the societies that take them in.<sup>6</sup>

Two economists have recently considered the implications of the Tiebout model for empirical explanations of international migration induced by fiscal policy differences between nations in the European Union.<sup>7</sup> The existing literature has not, however, addressed the full normative implications of the Tiebout model and foot voting for migration between nation-states more generally.

In this article, I make a tentative effort to plug this hole in the literature. I suggest that the benefits of international foot voting may well be much larger than those of free movement within national borders. Part II briefly summarizes the theory of foot voting and its potential benefits. I focus particularly on the use of exit rights as a form of political participation by which migrants can more effectively choose the public policies under which they live. Crucial benefits of political participation through exit rights include the matching of public policy to diverse preferences, the creation of an outlet for local political minorities and discriminated-against groups, competition between jurisdictions for migrants, and improved incentives for information acquisition relative to traditional ballot box voting.

In Part III, I show how these benefits are potentially much greater for international migration than for domestic migration within advanced democracies. Public policies differ far more across nations than within national boundaries. Free international migration therefore provides a much greater potential range of options for migrants than domestic movement. In addition, international migration may be the only feasible form of political choice for the hundreds of millions of people who live under undemocratic governments. For these unfortunate individuals, emigration may be the only means they have for choosing the public policies they wish to live under, short of violent revolution.

Part IV considers some possible implications for migration law. Current international law requires nations to allow their citizens free exit, but does not require free entrance except in extremely limited circumstances. Unfortunately, the frequent denial of entry rights greatly undercuts the value of exit rights. To reap the full benefits of international foot voting, barriers to entry

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6. See, e.g., LANT PRITCHETT, LET THEIR PEOPLE COME: BREAKING THE GRIDLOCK ON GLOBAL LABOR MOBILITY (2006); Jonathon W. Moses & Bjorn Letnes, *If People Were Money: Estimating the Gains and Scope of Free Migration*, in POVERTY, INTERNATIONAL MIGRATION AND ASYLUM 188 (George J. Borjas & Jeff Crisp eds., 2005).

7. See, e.g., Socrates Karidis & Michael A. Quinn, Fiscal Policy and Migration Flows: Evidence from the European Union, available at [http://dse.univr.it/espe/documents/Papers/E/7/E7\\_3.pdf](http://dse.univr.it/espe/documents/Papers/E/7/E7_3.pdf) (using Tiebout's theories of fiscal competition to explain migration patterns in the European Union). Karidis and Quinn claim that their paper is the first to test the Tiebout hypothesis in an international setting. *Id.* at 1.

should be reduced. I do, however, suggest one set of situations in which the theory of foot voting may in some instances justify restricting rights of entry: cases where free migration might undermine the very policies that make the nation in question attractive to migrants in the first place.

The considerations advanced in this paper do not provide a comprehensive theory of international migration rights. They also do not prove that either international or domestic law should require completely open borders. A full analysis would require a comprehensive balancing of the benefits of free migration against its costs. The advantages of foot voting do, however, provide an important consideration in favor of opening borders more than might otherwise be desirable.

## II. THE BENEFITS OF FOOT VOTING

Standard theories of federalism outline several major advantages of foot voting through free migration between jurisdictions. Here, I focus on three that are particularly relevant to international migration: the ability to satisfy diverse public policy preferences, competition between jurisdictions for migrants, and the protection of politically weak local minorities. In my own work, I have also emphasized the advantages of foot voting as a means of political participation that supplements ballot box voting, and is in some ways superior to it.

### A. Satisfying Diverse Public Policy Preferences

There is great divergence among Americans in their public policy preferences. Some may prefer a combination of extensive government services and high taxes, others prefer low taxes and low spending levels. Still others prefer a middle way. Federalism can help satisfy such diverse preferences even in the absence of interstate migration.<sup>8</sup> If, for example, liberals are concentrated in one region and conservatives in another, states in those respective regions can pursue divergent policies, thereby allowing members of both groups to live under a set of policies more closely approximating their preferences.<sup>9</sup>

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8. See Ilya Somin, *Closing the Pandora's Box of Federalism: The Case for Judicial Restriction of Federal Subsidies to State Governments*, 90 GEO. L.J. 461, 464-68 (2002) (making this point and summarizing the diversity rationale for federalism).

9. For brief summaries of the diversity rationale for federalism, see WALLACE E. OATES, *FISCAL FEDERALISM* 11-13 (1972); DIETMAR WELLISCH, *THEORY OF PUBLIC FINANCE IN A FEDERAL STATE* 14-15 (2000); Michael W. McConnell, *Federalism: Evaluating the Founders' Design*, 54 U. CHI. L. REV. 1484, 1493-95 (1987); John O. McGinnis & Ilya Somin, *Federalism vs. States' Rights: A Defense of Judicial Review in a Federal System*, 99 NW. U. L. REV. 89, 106-07 (2004).

Free migration greatly increases the ability of a federal system to satisfy diverse voter preferences. In the absence of mobility, voters who find themselves in a political minority within their jurisdiction may have to wait for years or decades before they get the opportunity to live under their preferred policies; in the extreme case, their time might never come. With the exit option, they can achieve their policy goals far more quickly.

Free migration can also ensure that a higher percentage of the population reside in a jurisdiction relatively close to their preferred policies. Absent migration, only local political majorities are likely to have their preferences satisfied, though some minority groups might be able to win concessions on their preferred issues through logrolling within the locally dominant political coalition. With migration, political “losers” in one area could potentially become “winners” by moving elsewhere. Recognition of this kind of policy “sorting” was one of the key insights of Tiebout’s classic article, which showed that free migration can enable citizens to move to choose the jurisdiction that most closely fits their level of demand for local public goods.<sup>10</sup> The point can also be extended to the demand for government programs that provide private goods as well, such as education and various social programs.

Obviously, as Tiebout pointed out in his original article, the efficacy of migration as a tool for satisfying diverse preferences is limited by the existence of moving costs and by constraints imposed by career needs.<sup>11</sup> Nonetheless, the potential for better satisfying diverse public policy preferences is a major advantage of free migration within a federal system.

### B. Competition Between Jurisdictions

The benefits of free migration are heightened by the possibility of competition between jurisdictions for residents. State and local governments have incentives to attract productive workers and taxpayers to their jurisdictions in order to increase tax revenue and economic growth. This in turn gives them incentives to compete with each other to satisfy potential migrants’ policy preferences.<sup>12</sup> Interjurisdictional competition extends the advantages of

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10. Tiebout, *supra* note 1, at 418.

11. *Id.* at 421-22.

12. There is a vast literature discussing the potential benefits of competitive federalism. For a brief summary, see McGinnis & Somin, *supra* note 9, at 107-10. For some of the more important works in the field, see GEOFFREY BRENNAN & JAMES M. BUCHANAN, *THE POWER TO TAX: ANALYTICAL FOUNDATIONS OF A FISCAL CONSTITUTION* 173-86 (1980); ALBERT BRETON, *COMPETITIVE GOVERNMENTS: AN ECONOMIC THEORY OF POLITICS AND PUBLIC FINANCE* (1996); ALBERT BRETON & ANTHONY SCOTT, *THE DESIGN OF FEDERATIONS* 13-19 (1980); THOMAS R. DYE, *AMERICAN FEDERALISM: COMPETITION AMONG GOVERNMENTS* (1990); OATES, *supra* note 9; WELLISCH, *supra* note 9; James M. Buchanan, *Federalism as an Ideal Political Order and an Objective for Constitutional Reform*, *PUBLIUS*, Spring 1995, at 19; McConnell, *supra* note 9, at 1497-1500; Wallace E. Oates, *An Essay on Fiscal Fede-*

policy diversity by strengthening subnational governments' incentives to tailor their policies to the specific preferences of citizens. Not only does "voting with your feet" have a demand side generated by the desires of potential migrants, it also has a supply side created by the needs of revenue-seeking governments.

The mechanism is imperfect. It may not always trump other considerations that may divert the efforts of state governments – such as the need to satisfy the demands of local constituencies. It also may not give states incentives to attract migrants who consume more public services than they add to the state's revenue. Nonetheless, it does provide a strong incentive for states to cater to the needs of at least a large portion of the population, thereby enhancing migrants' ability to effectively vote with their feet. In some cases even migrants who don't "pay for themselves" may be attractive to states if providing for their needs attracts others who do add to revenue.<sup>13</sup> For example, providing for the needs of children (who usually don't pay taxes) may attract taxpaying parents. Despite some limitations, interstate mobility helps promote beneficial competition for migrants.

### C. Protection for Oppressed Local Minorities

Exit options are particularly valuable for oppressed local minorities. In many parts of the world, regional racial, ethnic, or religious minorities suffer repression and discrimination at the hands of regional governments controlled by other groups. Migration to other parts of the country with less oppressive policies is an important safety valve for minority groups in this predicament.

In American history, the most important example of this phenomenon was the migration of numerous Southern blacks to the North during the era of Jim Crow segregation. Between 1880 and 1920, some 1 million southern blacks migrated to the North, eventually accounting for more than 10 percent of the black population of the United States, which stood at just over 10

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*ralism*, 37 J. ECON. LITERATURE 1120, 1134-37 (1999); Wallace E. Oates & Robert M. Schwab, *Economic Competition Among Jurisdictions: Efficiency Enhancing or Distortion Inducing?* 35 J. PUB. ECON. 333 (1988); Tiebout, *supra* note 1; Barry R. Weingast, *The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development*, 11 J.L. ECON. & ORG. 1 (1995); Ralph Winter, *Private Goals and Competition Among State Legal Systems*, 6 HARV. J.L. & PUB. POL'Y 127 (1983). For an early precursor to this literature, see F. A. von Hayek, *The Economic Conditions of Inter-state Federalism*, 5 NEW COMMONWEALTH Q. 131 (1939). For a summary of various criticisms of competitive federalism, see William W. Bratton & Joseph A. McCahery, *The New Economics of Jurisdictional Competition: Devolutionary Federalism in a Second-Best World*, 86 GEO. L.J. 201 (1997). However, it is important to note that this latter article does not deny the benefits of citizen mobility across jurisdictions. Indeed, the authors decry insufficient mobility as a constraint on the effectiveness of interstate competition. *Id.* at 233-34, 274-75.

13. McGinnis & Somin, *supra* note 9, at 108.

million at the end of this period.<sup>14</sup> Although much of this migration was motivated by the availability of job opportunities in the North, the desire to escape Jim Crow oppression by southern state governments was also an important contributing factor.<sup>15</sup> A 1917 NAACP publication noted that migration north was “the most effective protest against Southern lynching, lawlessness, and general devilry.”<sup>16</sup> There are comparable examples in other parts of the world.<sup>17</sup>

Interregional migration by minority groups seeking to escape repressive government policies is simply an extreme example of Tiebout sorting. Protection of minority groups against discrimination and repression is a local public good for members of the group that regional governments can provide. However, the stakes involved in the provision of these benefits are much greater than those of the more conventional government services that we normally associate with the Tiebout model.

#### *D. Exit Rights and Incentives to Acquire Political Information*

In addition to its more direct benefits, foot voting also has the additional advantage of providing stronger incentives for information acquisition than conventional ballot box voting. As compared to ballot box voting, foot voting provides much stronger incentives for citizens to acquire enough information to make good decisions about the policies they wish to live under.

Scholars have long recognized that most citizens have little or no political knowledge.<sup>18</sup> An individual voter has virtually no chance of influencing the outcome of the election – less than 1 in 100 million in the case of a modern U.S. presidential election. As a result, the incentive to accumulate political knowledge is vanishingly small so long as the only reason for doing so is to cast a “better” vote. Even highly intelligent and perfectly rational citizens

14. DANIEL M. JOHNSON & REX R. CAMPBELL, BLACK MIGRATION IN AMERICA: A SOCIAL DEMOGRAPHIC HISTORY 74-75, 77 (1981).

15. *Id.* at 84-85; FLORETTE HENRI, BLACK MIGRATION: MOVEMENT NORTH, 1900-1920, at 57-60 (1975).

16. MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 164 (2004).

17. *See, e.g.*, MYRON WEINER, SONS OF THE SOIL: MIGRATION AND ETHNIC CONFLICT IN INDIA (1978) (discussing migration between states in India, driven in part by differing levels of tolerance for minority groups).

18. The data on this point is massive. *See, e.g.*, SCOTT L. ALTHAUS, COLLECTIVE PREFERENCES IN DEMOCRATIC POLITICS: OPINION SURVEYS AND THE WILL OF THE PEOPLE (2003) (discussing extensive effects of political ignorance on public opinion); MICHAEL X. DELLI CARPINI & SCOTT KEETER, WHAT AMERICANS KNOW ABOUT POLITICS AND WHY IT MATTERS (1996) (documenting widespread voter ignorance and explaining the importance of political knowledge to the democratic process); Ilya Somin, *When Ignorance Isn't Bliss: How Political Ignorance Threatens Democracy*, CATO INST. POL'Y ANALYSIS, Sept. 22, 2004 (summarizing the evidence).

could choose to devote little or no effort to the acquisition of political knowledge. They are “rationally ignorant.”<sup>19</sup>

The theory of rational ignorance implies that most citizens will acquire little or no political knowledge and that they will often make poor use of the knowledge they do acquire.<sup>20</sup> Since there is very little incentive to acquire political knowledge for purposes of being a “better” voter, most of the political knowledge that citizens do acquire is likely to be obtained for other reasons, such as entertainment or the desire to confirm preexisting prejudices. Some of these extraneous motives for acquiring political information are inimical to rational, unbiased analysis of evidence and lead to flawed and severely biased voter decisions. Economist Bryan Caplan calls this “rational irrationality.”<sup>21</sup> Because there is so little chance that any individual voter’s unbiased analysis of political information will actually impact an election, it is rational for most to subordinate the goal of facilitating rational judgment to other objectives.

Foot voting, by contrast, offers very different incentives. Because each migrant’s decision to move or stay is individually decisive, she has strong incentives to acquire the information she needs to make an informed choice. She also has more motivation than foot voters do to consider the information she acquires in an objective manner. Thus, at least from the standpoint of acquiring and analyzing information, foot voting may often be a more effective way of choosing government policies than ballot box voting.<sup>22</sup>

The case of early twentieth century African-American migrants from the South to the North dramatically illustrates the informational benefits of foot voting. Although a high percentage of the migrants were illiterate or poorly educated, they nonetheless acquired sufficient information to determine that conditions for them were likely to be better in the North and to act on it.<sup>23</sup>

Some scholars argue that political ignorance is relatively unimportant because voters can offset their ignorance by resorting to “information shortcuts” and heuristics.<sup>24</sup> For example, voters can rely on cues from better-informed opinion leaders to make their decisions, or rely on the reputation of

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19. The concept of rational political ignorance was first developed by Anthony Downs. See ANTHONY DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* 238-59 (1957).

20. For a more detailed analysis of these two implications of the theory of rational ignorance, see Ilya Somin, *Knowledge About Ignorance: New Directions in the Study of Political Information*, 18 *CRITICAL REV.* 255 (2006).

21. See BRYAN CAPLAN, *THE MYTH OF THE RATIONAL VOTER* 17-18 (2007).

22. I develop this point in greater detail in Ilya Somin, *Political Ignorance and the Countermajoritarian Difficulty: A New Perspective on the Central Obsession of Constitutional Theory*, 89 *IOWA L. REV.* 1287, 1344-47 (2004).

23. See, e.g., HENRI, *supra* note 15; JOHNSON & CAMPBELL, *supra* note 14, at 80-87 (discussing information acquisition by African-American migrants in that period).

24. See, e.g., SAMUEL L. POPKIN, *THE REASONING VOTER: COMMUNICATION AND PERSUASION IN PRESIDENTIAL CAMPAIGNS* (1991).

a candidate's political party as an indicator of the candidate's own likely performance in office. Elsewhere, I have criticized these theories, suggesting that shortcuts, while useful, do not fully offset the impact of widespread political ignorance.<sup>25</sup> It is impossible to do justice to this debate here. For present purposes, it is enough to note that, even though shortcuts can sometimes be effective, foot voting still offers better incentives to acquire and rationally evaluate information than ballot box voting.

Relative to ballot box voters, foot voters have stronger incentives to choose the right information shortcuts and use them effectively. Information shortcuts, at best, reduce the cost of acquiring and processing knowledge; rarely will they eliminate it completely. So long as the cost of acquiring and using political information is positive and significant, foot voting is likely to have informational advantages over ballot box voting.

Foot voting by no means provides perfect incentives for information acquisition. It also has the significant disadvantage of moving costs, which are much higher than the relatively small cost of going to the polls on election day. Nonetheless, its informational benefits are an important advantage that is often overlooked. While that factor does not by itself prove that foot voting should replace ballot box voting entirely, it does suggest that foot voting can be a valuable supplement to it.

### III. INTERNATIONAL MIGRATION AS FOOT VOTING

The major benefits of domestic foot voting are likely to be much greater in the case of international migration. International foot voting creates a far wider choice of government policies for potential migrants, increases the scope of competition for migrants, helps provide protection for more severely oppressed groups, and potentially alleviates much more serious political information problems. Underlying all of these points is the crucial fact that a large portion of the world's population lives under the rule of nondemocratic governments. For most of them, foot voting is the only way they have to choose the government policies they wish to live under, short of violent revolution.

#### *A. Foot Voting and the Prevalence of Nondemocratic Governments*

Despite the spread of democracy in the late twentieth century,<sup>26</sup> the majority of the world's people still live under nondemocratic governments.

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25. Somin, *supra* note 18, at 9-15; Ilya Somin, *Voter Ignorance and the Democratic Ideal*, 12 CRITICAL REV. 413, 419-38 (1998) (surveying and criticizing the major variants of shortcut theory).

26. See, e.g., SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* (1991) (discussing the spread of democracy in this period).

Some 103 of the world's 193 nations are rated either "Not Free" or only "Partly Free" according to Freedom House's annual survey of political freedom around the world.<sup>27</sup> These states contain roughly one half of the world's population.

The ordinary citizens of nondemocratic nations generally exercise little or no influence over government policy. Short of armed rebellion, they usually cannot force a transition to democracy or otherwise compel political elites to heed their desires. Obviously, many states do undergo relatively peaceful transitions to democracy. But this process often takes years or decades. Moreover, many nations lack the necessary social and political preconditions for a successful transition to occur.<sup>28</sup> Even in cases where the needed preconditions are present, a repressive government can use its control of the armed forces and secret police to delay or prevent democratization. Overthrowing such a government may require armed intervention by outside powers or a bloody revolution. These options may prove to be infeasible because of their high costs. In some cases, the "switching" costs of overthrowing a dictatorship may be prohibitive, either because they are genuinely greater than the benefits or because the costs would have to be borne by outside powers who would not reap the benefits and have no way of extracting payment for their "services" from the beneficiaries.<sup>29</sup> Indeed, effective repression can often prevent most citizens from actively opposing a repressive government even if the government's policies are highly unpopular.<sup>30</sup>

In most cases, it is much easier to provide citizens of nondemocratic states with migration rights than to replace their governments with functioning democracies. Even many very repressive governments, such as China, allow relatively free emigration rights for their citizens. Free emigration does not threaten the rulers' authority anywhere near as much as democratization does; they are therefore less likely to resist it. In some cases, they may even favor it, if doing so rids them of members of a disliked ethnic or religious minority group. Even some of those repressive governments that generally

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27. See FREEDOM HOUSE, *FREEDOM IN THE WORLD* (2007), available at <http://www.freedomhouse.org/template.cfm?page=363&year=2007> (last visited Oct. 9, 2008).

28. See, e.g., ROBERT A. DAHL, *POLYARCHY: PARTICIPATION AND OPPOSITION* (1971) (classic discussion of preconditions for democracy); LARRY DIAMOND, *THE SPIRIT OF DEMOCRACY: THE STRUGGLE TO BUILD FREE SOCIETIES THROUGHOUT THE WORLD* (2008) (recent survey of the relevant evidence).

29. For a discussion of the "switching costs" of eliminating oppressive regimes, see Bryan Caplan, *Mises' Democracy-Dictatorship Equivalence Theorem: A Critique*, 21 REV. AUSTRIAN ECON. 45, 54 (2008). See also GORDON TULLOCK, *AUTOCRACY* 62-65 (1987) (explaining citizens' lack of incentive to revolt against dictatorial regimes).

30. See TIMUR KURAN, *PRIVATE TRUTHS, PUBLIC LIES: THE SOCIAL CONSEQUENCES OF PREFERENCE FALSIFICATION* (1995).

forbid emigration – such as Cuba and the Soviet Union – sometimes allow limited exit rights for parts of their populations.<sup>31</sup>

For many of the three billion people who still live under authoritarian governments, exit rights are their only realistic hope for a chance to be able to influence the policies they live under. Unlike residents of democratic states, they cannot rely on ballot box voting. Since not everyone can emigrate, exit rights are far from a perfect substitute for democratization. But they are often the best available alternative to democratization that is neither impossible nor politically infeasible.

### *B. Benefits of International Foot Voting*

Even aside from the lack of ballot box alternatives in many countries, international foot voting has many of the same benefits as free domestic migration. In many ways, the advantages are actually likely to be greater in the international case.

#### 1. Satisfying Diverse Public Policy Preferences

Just as with domestic migration, international migration can be used to satisfy diverse public policy preferences. The potential benefits from international migration are, however, much greater. There is far more policy diversity across nations than within them. The policies of the most conservative American state arguably differ less from those of the most liberal one than either does from a left-wing European nation such as Sweden. And the U.S.-Sweden divergence in turn pales in comparison to that between either of these countries and most authoritarian governments in the Third World. Free international migration therefore opens up a much wider range of options than free internal migration – even in a large and relatively diverse nation such as the United States.

#### 2. Interjurisdictional Competition

There is far less literature on interjurisdictional competition for international migrants than for domestic ones in a federal system.<sup>32</sup> Nonetheless, it is clear that some nations have in fact tried to adjust their policies in order to reduce “brain drain” of talented workers, especially to the United States. For

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31. Beginning in the 1970s, the Soviet Union permitted limited emigration by Jews, Armenians, Germans, and a few other minority groups. See LARISSA REMENNICK, *RUSSIAN JEWS ON THREE CONTINENTS: IDENTITY, INTEGRATION, AND CONFLICT* 3-4 (2007). Cuba occasionally allowed outmigration, as during the 1980 Mariel boatlift. See ALEX LARZELERE, *THE 1980 CUBAN BOATLIFT: CASTRO'S PLOY, AMERICA'S DILEMMA* (2002).

32. For the literature on domestic interjurisdictional competition, see *supra* Part II.B.

example, the European Union and several Asian countries have altered their policies in order to lure talented emigrants back to their home countries.<sup>33</sup> Some have also adopted policies to attract skilled workers.<sup>34</sup> Many countries have historically sponsored guest-worker programs in order to attract unskilled workers during labor shortages.<sup>35</sup> The resulting wage gains for the workers are often extremely large.<sup>36</sup>

Overall, freer international migration could stimulate interjurisdictional competition that increases the utility of foot voting in much the same way domestic freedom of movement does in a federal system. The potential benefits are potentially far larger because there are so many more options for international migrants than domestic ones and because of the very large policy divergences between countries.

However, the degree of competition is to some extent limited by public hostility to immigration in many countries. In the United States and Western Europe, a combination of economic concerns and hostility towards cultural outsiders has led to increased public opposition to immigration.<sup>37</sup> Economist Bryan Caplan shows that public attitudes towards immigration and international trade are infected by “antiforeign bias” that causes much of the public to systematically overestimate the harm caused by migrants and understate the benefits.<sup>38</sup> Therefore, to fully reap the benefits of interjurisdictional competition for migrants, these anti-immigration attitudes will have to be overcome. Otherwise, governments’ incentives to compete for migrants will be significantly curtailed, or even reversed.

Even if anti-foreign bias cannot be overcome, there are still important incentives for international competition. In particular, hostility to immigrants does not impede states’ desire to retain their current valuable residents by reducing the relative benefits of moving abroad. Even if the potential receiving countries are not making any special effort to attract migrants, potential sending countries fear the possible “brain drain” of valuable workers and taxpayers who may vote with their feet for jurisdictions that have adopted

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33. See, e.g., Mario Cervantes & Dominique Guellec, *The Brain Drain: Old Myths, New Realities*, OECD OBSERVER, Jan. 2002, available at [http://www.oecdobserver.org/news/fullstory.php/aid/673/The\\_brain\\_drain:\\_Old\\_myths,\\_new\\_realities.html](http://www.oecdobserver.org/news/fullstory.php/aid/673/The_brain_drain:_Old_myths,_new_realities.html).

34. See, e.g., Chris Edwards & Daniel J. Mitchell, *The Global Tax Revolution: The Rise of Tax Competition and the Battle to Defend it* (2008) (describing such efforts by European and Asian states, including adjustments to tax rates).

35. See, e.g., RITA CHIN, *THE GUEST WORKER QUESTION IN POSTWAR GERMANY* (2007) (describing massive and longstanding German guestworker programs); Kerry Howley, *Guests in the Machine*, REASON, Jan. 2008, at 20 (describing benefits of guest worker programs in various countries, focusing especially on Singapore’s extensive program).

36. PRITCHETT, *supra* note 6; Howley, *supra* note 34.

37. See, e.g., JOEL S. FETZER, *PUBLIC ATTITUDES TOWARD IMMIGRATION IN THE UNITED STATES, FRANCE, AND GERMANY* (2000).

38. CAPLAN, *supra* note 21, at 36-39.

attractive policies for reasons unrelated to a desire to attract immigrants. Moreover, public opposition to immigration is partly counterbalanced by lobbying on the part of employers seeking to obtain new sources of labor, and interest groups with a stake in expanding the tax base. Finally, even if only a few nations are making deliberate efforts to compete for migrants at any one time, that may still offer potential emigrants a much wider range of options than is likely to exist in any domestic federal system.

Because of the existence of strong public hostility to immigration in many advanced nations, their governments often have less incentive to compete for international migrants than for domestic ones. Such competition as does occur, however, is potentially far more beneficial than domestic interjurisdictional competition.

### 3. Protection for Oppressed Minority Groups

Oppressed regional minorities in some developed democracies have bettered their lots through internal migration. But international migration can potentially alleviate far more of this type of harm. Numerous governments engage in extensive repression of ethnic, religious and other types of minority groups. Often, the repression exceeds anything found in liberal democratic states. In the most extreme (but far from unknown) cases, genocide and mass murder have led to the deaths of over 200 million people during the past century.<sup>39</sup> Lesser but still severe forms of group repression also abound under authoritarian and totalitarian governments. Notwithstanding the costs of migration, it is clear that many of the victims of group repression would be vastly better off if they had the opportunity to emigrate. Historically, many immigrants to the United States and other Western nations have come because of group repression in their home countries. The point is sufficiently clear as to not require much elaboration: free international migration can provide enormous benefits through giving oppressed groups the opportunity to flee the rule of their oppressors.

Obviously, migration is not an option for all victims of repression. Some may be unable or unwilling to emigrate even if there were no legal barriers to doing so. Nonetheless, the gains from enabling even a relatively small percentage of these victims to make use of exit rights are potentially large.

### 4. International Migration and Information Acquisition

International foot voting has the same information acquisition advantages over traditional ballot box voting as does domestic migration. However,

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39. See generally R. J. RUMMEL, *DEATH BY GOVERNMENT* (1994) (compiling the data).

there are two relevant differences. First, as already discussed,<sup>40</sup> many international migrants do not even have a ballot box voting option, since they live under nondemocratic governments.

Second, even for residents of relatively democratic societies in the underdeveloped world, political ignorance may be an even more serious problem than it is for voters in wealthy democratic nations. Some 18% of the world's population over the age of 15 is illiterate, a circumstance that makes information acquisition far more difficult.<sup>41</sup> Even some scholars who believe that political ignorance is not a serious problem in the United States argue that it does undermine democratic accountability in less developed societies.<sup>42</sup> For citizens with very low education levels, rational political ignorance may be an even more severe impediment to effective ballot box voting than it is for the relatively more educated residents of wealthier societies.

Obviously, low education may reduce information acquisition for foot voting purposes as well. However, the latter information is often obtained through word of mouth and other mechanisms that rely less on formal education than does political knowledge acquisition. Historically, even poor and illiterate populations have often acquired sufficient information to migrate long distances in order to reach a nation with more favorable government policies.<sup>43</sup>

### C. *The Problem of Migration Costs*

Partly offsetting the relative benefits of international migration are its greater movement and cultural adjustment costs. International migration generally involves a longer and more expensive journey than domestic migration. This difficulty, however, has been partly negated by the reduction of transportation costs in the modern world. The income gains Third World workers accrue from moving to a First World state are vastly greater than the cost of transport.<sup>44</sup> A Mexican worker immigrating to the U.S., for example, can expect a permanent two to six-fold increase in his or her wages.<sup>45</sup>

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40. *See supra* Part III.A.

41. CENT. INTELLIGENCE AGENCY, THE WORLD FACT BOOK 2 (2007), available at <https://www.cia.gov/library/publications/the-world-factbook/fields/2103.html>.

42. *See* Jasjeet Sekhon, The Varying Role of Voter Information Across Democratic Societies (July 26, 2004) (unpublished manuscript, on file with author) (arguing that political ignorance makes little difference in the United States but is a serious problem in underdeveloped nations such as Mexico).

43. *See, e.g.*, ROGER DANIELS, COMING TO AMERICA: A HISTORY OF IMMIGRATION AND ETHNICITY IN AMERICAN LIFE 214 (2d ed. 2002) (discussing information acquisition by often illiterate nineteenth century immigrants to the United States).

44. For estimates of the income gains, see PRITCHETT, *supra* note 6.

45. COUNCIL OF ECON. ADVISERS, ECONOMIC REPORT OF THE PRESIDENT 191 (2007).

Linguistic and cultural adjustment costs may sometimes be much higher than transportation expenses. Not all potential migrants are willing to accept such costs, and some will therefore be deterred from moving. Historically, a significant number of immigrants to the United States have eventually returned to their countries of origin because of assimilation problems.<sup>46</sup> For the many migrants who are willing to bear the cost of cultural and linguistic adjustment, however, international migration potentially offers far more (and often better) options than purely domestic migration.

#### IV. IMPLICATIONS FOR MIGRATION LAW

The benefits of international foot voting provide a rationale for expanding international migration rights. Current international law protects emigration rights, but provides very little protection for the right to enter a country. Foot voting would be much more effective with expanded entry rights.

##### *A. Migration Rights Under Current International Law*

The importance of migration rights is partly recognized by current international law. Human rights treaties such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights recognize a right to emigration.<sup>47</sup> However, this “right to leave” has not been coupled with an equally strong right to enter. Indeed, recent political trends have seen renewed efforts to curtail “illegal” entry into the United States, Australia, and Western Europe. Unfortunately, the right to leave may have little value for potential migrants who have nowhere to go.

Current international law, such as the 1951 Convention Relating to the Status of Refugees, requires states to refrain from expelling migrants only if the refugees in question have a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”<sup>48</sup> This approach is also followed in U.S. refugee law, and in that of European Union states.<sup>49</sup> Thus, migration rights can be denied

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46. See Guillermina Jasso & Mark E. Rosenzweig, *Estimating the Emigration Rates Of Legal Immigrants Using Administrative and Survey Data: The 1971 Cohort Of Immigrants to the United States*, 19 DEMOGRAPHY 279 (1982).

47. See International Covenant on Civil and Political Rights, art. 12, Dec. 16, 1966, 999 U.N.T.S. 171; Universal Declaration of Human Rights, G.A. Res. 217A, art. 13, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948). For a complete survey of international law on the right to leave, see Colin Harvey & Robert P. Barnidge, Jr., *Human Rights, Free Movement, and the Right to Leave in International Law*, 19 INT'L J. REFUGEE L. 1, 2-5 (2007).

48. Convention Relating to the Status of Refugees, art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 150.

49. See, e.g., *Sael v. Ashcroft*, 386 F.3d 922, 924 (9th Cir. 2004) (summarizing U.S. law). For a summary of European Union law, see Rosemary Byrne et al.,

to potential immigrants who have suffered the adverse effects of harmful government policies without being specifically targeted for “persecution” on the basis of any of the above categories. For example, a citizen of an oppressive society cannot claim the right to enter the United States or the EU “merely” because the absence of free political debate in his country leads to the enactment of harmful government policies that reduce his or her well-being. He must prove that he has been specifically targeted for persecution because of his opposition to the government. Similarly, the law allows states to deny entry to “economic” migrants – even if their poverty is in large part due to flawed policies enacted by their home governments.

Moreover, even in democratic states, domestic political processes are unlikely to give full weight to the interests of potential immigrants. By definition, such people are not yet citizens, do not have the right to vote, and are unlikely to be able to exercise political influence in other ways. Thus, political leaders can neglect their interests – or even falsely blame them for alleged “harms” that they have not caused<sup>50</sup> – with relatively little fear of political retribution. It is thus not surprising that anti-immigrant political movements have flourished in both the United States and several European nations in recent years, while parties seeking to increase immigration are rare.

*B. Democracy, Foot Voting, and the Case for an Expanded Right to Entry*

From the standpoint of promoting foot voting, the distinction between victims of “persecution” and other potential migrants makes little sense. Even potential migrants who have not been personally targeted for persecution on the basis of race, religion or political beliefs may still suffer the ill effects of oppressive or misguided government policies. For example, repression of the right to freedom of speech and political organization affects not only would-be speakers, but also all other citizens of the society in question, who are forced to live under a political process that they have no power to influence.

Similarly, “economic” migrants are in many cases fleeing poverty that is in large part caused by the flawed policies of the governments they live under. Development economists recognize that most poor countries could generate rapid economic growth by adopting appropriate policies.<sup>51</sup> In many

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*Understanding Refugee Law in an Enlarged European Union*, 15 EUR. J. INT’L L. 355, 358-67 (2004).

50. See the discussion of anti-foreign bias in CAPLAN, *supra* note 21 (explaining how voters are often led to blame immigrants and foreigners for problems they did not really cause).

51. For one of the most influential summaries of the evidence, see Jeffrey D. Sachs & Andrew Warner, *Economic Reform and the Process of Global Integration*, 1995 BROOKINGS PAPERS ON ECON. ACTIVITY 1. See also NATHAN ROSENBERG & L. E. BIRDZELL, JR., *HOW THE WEST GREW RICH* (1986) (explaining how Western

cases, enormous advances in the economic status of the poor could be achieved simply by allowing them to acquire enforceable property rights<sup>52</sup> and by integrating the nation in question more closely with the world economy.<sup>53</sup> All too often, migrants who are fleeing generally adverse economic and political conditions are no less victims of their governments than those who have been targeted for individualized “persecution” of the sort currently recognized as grounds for asylum rights by international law.

Previous scholars have argued for stronger international migration rights on a variety of grounds.<sup>54</sup> This Article highlights an additional and generally ignored advantage of migration rights: the opportunity to strengthen democratic accountability by enabling more people to “vote with their feet” against repressive or dysfunctional governments in their home societies. As in the case of domestic federal systems, international foot voting allows citizens greater choice over the government policies they live under, and may force states to adopt better policies in order to prevent skilled migrants and valuable taxpayers from departing.

Unlike many other types of international law, a right to free migration does not significantly undermine the ability of democratic states to adopt diverse approaches to various policy issues.<sup>55</sup> States with free entry and exit rights can still enact a wide range of different policies, so long as they do not inhibit freedom of movement. Indeed, as scholars of domestic federalism have emphasized, freedom of movement might stimulate policy innovation by governments, as they compete for economically valuable migrants.<sup>56</sup>

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nations’ greater prosperity relative to most other states is primarily the result of superior policy choices); Robert Cooter, *Innovation, Information, and the Poverty of Nations*, 33 FLA. ST. U. L. REV. 373 (2005) (arguing that the poverty of many nations is largely due to poor industrial policy choices by their governments); Mancur Olson, Jr., *Big Bills Left on the Sidewalk: Why Some Nations Are Rich, and Others Poor*, J. ECON. PERSP., Spring 1996, at 3 (showing that government policy choices have an enormous impact on the relative wealth or poverty of nations).

52. See, e.g., HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* (2000) (showing how the poor in many Third World countries suffer from their lack of enforceable property rights).

53. See, e.g., JAGDISH BHAGWATI, *IN DEFENSE OF GLOBALIZATION* 51-67 (2004) (showing how free trade and openness to foreign investment provide enormous benefits to the world’s poorest citizens).

54. See sources cited *supra* notes 5-6.

55. For a discussion of tensions between democracy and international law, see John O. McGinnis & Ilya Somin, *Should International Law Be Part of Our Law?*, 59 STAN. L. REV. 1175 (2007).

56. See, e.g., BRENNAN & BUCHANAN, *supra* note 12, at 173-86; BRETON, *supra* note 12; BRETON & SCOTT, *supra* note 12, at 13-19; DYE, *supra* note 12.

### C. *Limitations of the Analysis*

The foot voting argument does not necessarily justify an absolute “open borders” international law norm. Even in combination with the moral and economic case for free migration rights, it may not outweigh all possible justifications for restricting immigration in particular instances. Indeed, the theory of international foot voting actually provides a novel rationale for limits on migration: in some extreme cases, free migration could actually undermine liberal democratic government, thereby eliminating the very political system that made immigration appealing to begin with. For example, it is theoretically possible that the rapid in-migration of a large group hostile to liberal democracy could result in the election of a governing party that would undermine the very liberties that make the country in question attractive to immigrants in the first place. In such a scenario, restrictions on immigration may be necessary to maintain democratic government despite the very real harms that they cause.<sup>57</sup>

The importance of foot voting does not provide a comprehensive blueprint for international migration law. Other potential objections to free migration that are not considered here include concerns about the preservation of national cultures<sup>58</sup> and “brain drain” claims.<sup>59</sup> It does, however, provide an important and generally overlooked consideration in favor of broadening international rights to entry and exit. At the very least, we should consider the possibility of enacting much stronger entry rights for migrants fleeing states with nondemocratic governments where foot voting is the only practicable way for most citizens to choose the government policies they wish to live under.

## V. CONCLUSION

The Tiebout model and the theory of foot voting point to several underemphasized advantages of free international migration. At the same time, they cannot and do not provide a comprehensive account of optimal migration rights. The latter would require a much broader consideration of the relevant costs and benefits. Foot voting is far from the only relevant issue

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57. I do not believe that either the United States or most European nations are currently faced with such a threat. I mention it merely as a theoretical possibility that could justify restrictions on immigration. There may, however, be real world examples of the phenomenon. For example, the tiny Baltic states probably could not allow unlimited immigration from neighboring Russia without running into this kind of problem.

58. See, e.g., PRITCHETT, *supra* note 6, at 99 (noting that this concern is the politically “most important” objection to free migration rights).

59. See, e.g., Lucie Cheng & Philip Q. Yang, *Global Interaction, Global Inequality, and Migration of the Highly Trained to the United States*, 32 INT’L MIGRATION REV. 626 (1998) (discussing this issue).

involved. But it does hold great potential for empowering some of the world's poorest and most oppressed people – protecting them from persecution and enabling them to choose the policies they wish to live under. At the very least, foot voting should be a more important part of the debate over international migration rights than it has been so far.