

The right to move and the right to exclude: Ilya Somin and ‘foot voting’

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1 | INTRODUCTION

There is much that is attractive in Ilya Somin's book *Free to Move* (2020), summarised in his article ‘Freedom through foot voting’ in the February 2021 issue of *Economic Affairs*.¹ The treatment of international migration as part of a more fundamental discussion of association and the case for greater institutional pluralism are important contributions. There are, however, difficulties with his argument, chief among which is the implicit denial of the right to exclude – whether it be from the nation state or from sub-national associations. By not permitting exclusion, an important aspect of freedom is lost: the ability of individuals in combination to bring about public good-type outcomes, examples of which include, among other things, language protection, environmental preservation, and the protection of common resources.

2 | DOES THE RIGHT TO MOVE INCREASE OR REDUCE FREEDOM?

Somin's central claim is that freedom is increased if people have more opportunities to move. In his book he elaborates on his conceptualisation of freedom, arguing that it encompasses both negative freedom and the capabilities approach (p. 25). As a first observation, interpersonal comparisons of freedom must be possible if we are to say foot voting increases freedom. Probably the least controversial way to define freedom is as the unimpeded satisfaction of preferences. Of course, some preferences cannot be permitted because they harm other people (without their consent), or they violate equal treatment. And at points Somin does rely on principles other than freedom to buttress his argument. He maintains that a person's place of birth is a morally irrelevant characteristic, and restrictions on international migration are incompatible with domestic principles of anti-discrimination (pp. 106, 119). Ever since John

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Rawls appealed to the moral arbitrariness of a person's native endowments to reject desert-based arguments for distribution, there has been a keen, although largely fruitless, debate over what is and what is not morally arbitrary. Anti-discrimination is, however, a more concrete consideration and has been central to American debates over association, with the battle lines drawn between the right to exclude on the one side, and on the other the compelling case for preventing discrimination. Somin needs to be clearer whether it is freedom or equality that is driving the case for the right to move. Of course, both could carry weight, but then he needs a balancing principle. I will, however, focus on freedom and consider whether Somin's proposals would maximise it.

It seems plausible that having an exit option from oppressive and dysfunctional regimes would enhance freedom. But those left behind may as a result have even less freedom. The loss may not be immediate, but over the long term the constant depletion of material and human capital through migration may make the possibility of regime change less likely. This is an accounting argument – how much freedom is gained and lost by migration. I am not arguing that people have a moral obligation to fix their countries; in the book Somin rejects this argument (pp. 111–12) and I agree with him.

3 | FREE MOVEMENT AND THE RIGHT OF ASSOCIATION

To stick with the accounting point, migration will likely affect global population levels. Population may go down if migrants have lower fertility in their new countries than they would have had in their country of origin, or it may go up if migration acts as a safety valve for high fertility countries. If the aim is to maximise freedom, should we calculate freedom as a global total, somewhat like classical utilitarianism, or per capita in the spirit of average utilitarianism?

These are, however, small points compared with what I think is a major objection to Somin's proposal, and that is the implicit rejection of a right to exclude. Most liberals start from the premise that people have preferences, and while you can be mistaken about the correct means to satisfy them, those preferences are beyond criticism. Of course, some preferences may be obnoxious and, as argued above, there can be grounds for restricting freedom. But all restrictions are a loss of freedom and should be counted as such. Associations both facilitate and restrict freedom: in so far as the preferences of members of an association can be satisfied only by excluding non-members, they enhance the members' freedom at a cost to non-members. Restricting foot voting *is* a loss of freedom, but then so is forced association.

Restrictive associations are often the only way to realise certain goods. A minority language group may within a defined geographical space restrict house sales to those who speak the language. People within a locality may seek to preserve its rural character by imposing zoning (in British parlance: a green belt) – a policy Somin rejects. A group could try to achieve and maintain herd immunity in the face of a virus by demanding proof of vaccination status. Perhaps more obscurely but still of significance, an association may wish to maintain a certain level of altruism, most especially if altruism is selected against within a group but more altruistic groups outcompete less altruistic ones (see the discussion of multilevel selection in Wilson, 2015, pp. 31–45). All of these have public good characteristics and are vulnerable to free riders: vendors who want a good price for their property, landowners on the green belt who want to sell to housebuilders, anti-vaxxers who get protection from the vaccinated, and non-altruists benefitting from high-altruism groups.

The tragedy of the commons illustrates the problem of free movement. In his book Somin suggests private property rights may be a solution to exploitation of the commons, while also acknowledging that this might not always work (p. 141). In fact, as Elinor Ostrom argues, community governance is often necessary. Such a governance structure – which is distinct from state coercion or a regime of property rights – depends upon a common understanding of how the resource should be used, a low discount rate, trust and reciprocity, and experienced leadership (Ostrom, 2002, p. 5). Although she does not say it, these things depend upon a stable population and the capacity to exclude those who have not been socialised into these practices. And it is also reasonable to assume that the local community consents to these arrangements – it is not an authoritarian structure imposed upon them.

The planned communities Somin endorses as an example of private foot voting might justifiably impose restrictions so as to create a particular kind of community.

Dealing with free riders is compatible with freedom if by their behaviour members of the association tacitly consent to the benefits enjoyed by the association. Here Somin rightly identifies the problem with the state: there is no meaningful consent (pp. 20–3). And where there is no reasonable option to leave the association, we cannot distinguish those who want to bring about the end – language maintenance, a rural environment, and so on – from those who do not have such a preference. The problem is that the state is often the most effective way to realise public goods, for the reason set out by Thomas Hobbes (as reinterpreted by twentieth-century game theorists): the state seems to solve the prisoner's dilemma. But its strength is also its weakness: by monopolising violence within a territory and restricting immigration it undermines consent. And as Somin argues in his book and article, democracy neither guarantees freedom nor is an effective signalling device for the production of goods (pp. 18–19). Foot voting is more effective: movement across international borders could make consent to the state meaningful.

4 | FREE MOVEMENT VERSUS INSTITUTIONAL PLURALISM

Somin identifies the inconsistency in allowing – under normal circumstances – free movement within the state's territory, while strictly controlling (permanent) entry on to that territory from outside. The conclusion he draws is that we should increase foot voting at all levels – from the public to the private sector, domestically (through federalism), and between states. I draw a different conclusion. If globally the power of states to exclude is weakened, we make consent real and can thus exclude people from sub-national associations because they now have meaningful alternatives. Whereas Somin seems to be advocating a universal right to move, I would suggest a better strategy is to create a more institutionally pluralistic world. This might even extend to non-territorial associations, such as online communities; those communities would have to control real resources and facilitate the transfer of value in a way that circumvents the state. So far, the only viable mechanism for this has been distributed ledger technology (blockchain). Charter cities (discussed on pages 74–5) could also be part of the mix. But most important is the ability to exclude: some associations will experiment with open borders, while others could take a different approach.

There is another reason for a more pluralistic approach to movement: we cannot be sure of the effects of migration. Somin cites a range of evidence, which he summarises in the article, suggesting that on balance migration has positive effects – for example, in relation to the



welfare state (pp. 127–30). It is impossible here to assess that evidence, but I will make a few comments on how we should approach the evidence, and indeed what counts as evidence. We need to establish timescales. The short-term effects of migration may be beneficial, especially if migrants are disproportionately of working age (as they tend to be), but at the very least we need to assess their contribution over their expected lifetimes. What about their children? Should we count their contribution, given that children inherit genes and cultural traits from their parents? Somin's discussion of the effects of migration has rather short temporal horizons.

Numbers also matter. People are to varying degrees 'groupish'. How the group structures the behaviour of its members will depend on group size and geographical distribution. Given chain migration and family reunification, a group may well increase in size, so how its members behave when they make up (say) 0.1 per cent of the population may be quite different from how they would behave were they to constitute 10 per cent.

5 | ECONOMIC AND NON-ECONOMIC CRITERIA

Finally, what counts as a benefit of migration? The contribution to the labour market is certainly a good, but if all preferences count, then we cannot make economic gain a proxy for preference satisfaction. To be fair, Somin does discuss culture, although it is largely in defensive and sceptical terms: defending against the claim migrants undermine culture (pp. 134–5) and sceptical about the concept of homogeneity (p. 94). (On the second point, homogeneity is what people choose to make of it – to desire 'homogeneity' does not require proving it has any ontological status.)

If we extend the timescales and broaden out what counts in a cost–benefit analysis of migration, it may still be the case that free movement wins out. And historical examples might suggest that anxiety over immigration is misplaced. But the confidence margins are wide. Academic history can be selective and marked by confirmation bias; what appear to be comparable historical examples are far from exact. There can be reasonable disagreement over the evidence. For that reason, an experimental approach to migration is preferable to asserting a universal right to move. We should hedge. Let us see how the open borders jurisdictions fare before following them.

NOTE

¹ While this comment is directed at both Somin's article and his book, all the page references are to his book.

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How to cite this article: Graham P. The right to move and the right to exclude: Ilya Somin and 'foot voting'. *Economic Affairs*. 2021;41:309–312. <https://doi.org/10.1111/ecaf.12470>