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# Cross-Border Influencers: Democracy and Externalities

*Saul Levmore*<sup>†</sup>

## ABSTRACT

*This Article explores the fact that United States law permits domestic cross-border political influences while restricting foreign interference in elections. It tries to show that the law is inconsistent in trying to balance its faith in democracy (in a given jurisdiction) with its concern for externalities. Laws forbidding all cross-border attempts to influence politics would seem to reflect the view that decision-making processes across a border should be respected rather than subject to interference, assuming that the other jurisdiction is reasonably democratic. The analysis explores, and offers examples of, the interaction between a faith in democracy and the consideration of externalities, such as cross-border pollution.*

## I. INTRODUCTION

The United States<sup>1</sup> does not allow foreigners to influence U.S. elections by giving money to political parties or candidates, but many other countries do allow cross-border influence. Indeed, the variety of policies among countries is remarkable; some do not allow cross-border contributions, some allow them all, some put limits, and some distinguish corporate contributions.<sup>2</sup> Some countries, like the United

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<sup>1</sup> Following popular, though perhaps incorrect, practice, this Article uses United States, U.S., and America interchangeably.

<sup>2</sup> For United States law, see 52 U.S.C § 30121 (2022). India, as of 2016, relaxed its legal definition of “foreign” for purposes of foreign contributions, which are still unlawful. See Milan Vaishnav, *Political Finance in India: Déjà Vu All Over Again*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Jan. 31, 2019), <https://carnegieendowment.org/2019/01/31/political-finance-in-india-d-jvu-all-over-again-pub-78280> [<https://perma.cc/6YDZ-WT6A>]. Canada, France, Israel, Mexico, and Brazil do not allow any foreign corporations or entities, or domestic corporations, to make political donations. See Jieun Lee, *Foreign Direct Investment in Political Influence* 4 (Oct. 28, 2018) (unpublished paper) (available at [https://www.internationalpoliticaleconomysociety.org/sites/default/files/paper-uploads/2018-10-28-21\\_42\\_07-leejieun@umich.edu.pdf](https://www.internationalpoliticaleconomysociety.org/sites/default/files/paper-uploads/2018-10-28-21_42_07-leejieun@umich.edu.pdf) [<https://perma.cc/8YX3-K9YB>]). At the other extreme, South Africa has no campaign restrictions, and Italy does not re-

States, that forbid financial contributions from outside the country, do permit cross-border contributions across domestic borders, such as those of states and cities. Meanwhile, Canadians cannot contribute to the campaigns of U.S. political candidates and cannot even (lawfully) influence the American political process by purchasing campaign t-shirts or bumper stickers. This prohibition is in place even though, like constituents of neighboring jurisdictions within the U.S., Canadians are greatly affected by U.S. policies.

Within the United States, residents of one state are free to try to influence political outcomes in another state—by giving money, and certainly by visiting and campaigning, and buying all the t-shirts they like at inflated prices—so long as they do not actually vote in the “foreign” location. They cannot, of course, pay directly for votes either, even though some voters might like to sell their votes to interested parties. Short of voting, voters in one state can appeal to Congress in order to change practices in another state, and while Canada and its citizens can communicate with and travel to Washington, they are unlikely to get as much of a hearing as U.S. citizens. After all, politicians only rely on the votes of the latter for reelection. Given that the U.S. prohibits foreign contributions in domestic elections, it is something of an irony that U.S. citizens, as well as our national politicians, regularly try to influence democratic elections in other countries, and are permitted to do so by U.S. law.<sup>3</sup>

This Article tries to make sense of why the law permits domestic cross-border influences while restricting foreign interference in U.S. elections. It shows that the law is inconsistent when it attempts to balance its faith in democracy with its concern for externalities. Laws forbidding *all* cross-border attempts to influence politics would seem

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strict foreign donations. *Id.* In the middle are Germany and Russia, which allow corporate giving if firms are not majority foreign-owned. *Id.* Japan has recently legalized foreign corporate contributions. *Id.*

India permits limited contributions from foreign entities, and places various limits on contributions, especially to individuals rather than parties, but enforcement of these rules is difficult and rare. See Ellen L. Weintraub & Samuel C. Brown, *Following the Money: Campaign Finance Disclosure in India and the United States*, 11 *ELECT. L. J.* 241 (2012). Canada does not allow corporate campaign contributions at the federal level, though some provinces allow corporations to contribute to parties. For the federal Canadian rule. See Canada Elections Act, S.C. 2000, c 9, § 363(1) (Can.). For a discussion of provincial rules, see D. M. Brock & H. J. Hanson, *Raising, Spending, and Regulating Party Finances in the Provinces*, 9 *CAN. POL. SCI. REV.* 55 (2015). Israel does not allow campaign contributions by corporations to national political candidates. See LAW LIBRARY OF CONG., *CAMPAIGN FINANCE: AN OVERVIEW: AUSTRALIA, FRANCE, GERMANY, ISRAEL, AND THE UNITED KINGDOM 2* (2009). France has a nearly total ban on entity contributions, other than political parties and certain groups. *Id.* Within the United States, Alaska now restricts partially-foreign-owned corporations from spending in its elections process. See *Recent Legislation*, 132 *HARV. L. REV.* 2402 (2019).

<sup>3</sup> See, e.g., Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd–1, et seq. (1977) (prohibiting the bribery of foreign officials but allowing for bona fide expenditures on a foreign campaign).

to reflect the view that decision-making processes across a border should be respected rather than subject to interference, assuming that the other jurisdiction is reasonably democratic. It is easy to explain United States interventions in favor of freedom and against totalitarian regimes, but if our legal system reflects some confidence in democratic processes, there is a good argument for restricting one democracy's citizens from influencing another democracy. The very reason we do not want others to support candidates for election in the U.S. suggests that we might hesitate before allowing American citizens to directly influence the democratic processes elsewhere.

Likewise, we might scrutinize more closely the practice of American citizens influencing elections in other cities or states within U.S. borders. It is therefore remarkable that a foreign country's attempt to influence U.S. elections is regarded as criminal,<sup>4</sup> while it is taken for granted—by the law and by citizens—that citizens of one U.S. state are permitted to give money or otherwise interfere with the democratic process of another state.<sup>5</sup> A jurisdiction's citizens or leaders are always free to try and convince another jurisdiction to take account of externalities. A state can go to Washington D.C. much like Russia can go to the United Nations, but it is the former process that has a greater chance of success and yet it is the latter's attempt to influence matters across the border that is regarded as more objectionable. If this inconsistency is not already striking enough, anyone who is uncomfortable with the role of money in politics more generally, ought to be troubled by domestic cross-border influencers because, at least in the U.S., cross-border political contributions are regularly permitted.<sup>6</sup>

These opening remarks, as well as almost everything that follows, must continue to take account of the usual existence (or unavailability) of a higher authority that can offset externalities through a democratic process at the higher level of government. For example, if Ohio is made better off by polluting in a way that harms Pennsylvania, the latter can try to bargain with Ohio, or influence its elections, but it

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<sup>4</sup> See, e.g., Press Release, Dep't of Just. Off. Of Pub. Affs., Grand Jury Indicts 12 Russian Intelligence Officers for Hacking Offenses Related to the 2016 Election, (Jul. 13, 2018), <https://www.justice.gov/opa/pr/grand-jury-indicts-12-russian-intelligence-officers-hacking-offenses-related-2016-election> [<https://perma.cc/F43D-737U>].

<sup>5</sup> See *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 227 (2014) (holding that restrictions on citizens' financial contributions towards out of state political campaigns are constitutionally impermissible); see also Richard Briffault, *Of Constituents and Contributors Does Election Law Serve the Electorate*, 2015 U. OF CHI. LEGAL F. 29, 36 (2015).

<sup>6</sup> See Tyler S. Roberts, *Enhanced Disclosure as a Response to Increasing Out-of-State Spending in State and Local Elections*, 50 COLUM. J.L. & SOC. PROBS. 137, 140 (2016) ("Political actors have contributed over \$135 million directly to candidates running in other states' elections during the 2016 cycle . . ."); Briffault, *supra*, note 5, at 42-43; see also Justice John P. Stevens (Ret.), 2014 Harold Leventhal Lecture: Oops!, (Sept. 12, 2014), [https://www.supremecourt.gov/publicinfo/speeches/JPS%20Speech\(DC\)\\_09-12-2014.pdf](https://www.supremecourt.gov/publicinfo/speeches/JPS%20Speech(DC)_09-12-2014.pdf) [<https://perma.cc/8PK3-N39K>].

can also appeal to Congress to pass federal legislation controlling pollution across the country, and, therefore, in Ohio.

In any event, however common it is to appeal to the national government in order to solve externality problems, it is an imperfect solution. Pennsylvania may argue for national legislation, but states that are less affected by Ohio have as much power at the national level as does Pennsylvania. There might be more states like Ohio that want to pollute as they please, so to speak, than states like Pennsylvania that want to restrict their neighbors' pollution. Put differently, when Pennsylvania can get relief in Washington D.C., it need not rely on the ability of its citizens to pay—by way of campaign contributions—for more favorable political outcomes in Ohio. When no higher authority is available to control externalities or when the externality problem is unlikely to be well addressed at the higher level, we should therefore expect a greater call for—rather than more restrictions against—cross-border influencing at least in principle.

## II. THE CONFLICT BETWEEN FAITH-IN-DEMOCRACY AND EXTERNALITIES

Free-speech considerations aside—as there is always an argument that New Yorkers should be able to speak and give money wherever they like—we might criticize a New Yorker's donation to a candidate running for election in Arizona, whether state or federal, on grounds that Arizona residents should be trusted to decide their own fate and to vote according to their own preferences—an idea this Article will call a “faith-in-democracy” view. After all, Arizonans have more knowledge about local issues than do most distant influencers.

If that is not the case, then why not allow New Yorkers to pay people in Arizona to vote one way or the other (unenforceable as most such contracts would be)? One response is that vote-buying favors the wealthy, but wealthy people are also likely to have the time and money to travel and influence politics in ways that are currently permitted. Moreover, vote-buying may in fact help less privileged people if only because their votes are valuable assets that can be used or sold. Citizens in Arizona, and especially poorer citizens or those who care little for politics, might benefit from New Yorkers' more direct involvement in their elections and the newfound attention New Yorkers would pay to local issues in Arizona. Poorer eligible voters may value payments (in kind or in cash) from New Yorkers far more than they value their own individual votes or limited political power. This counterintuitive argument is pursued elsewhere, so the present Article is

primarily concerned with cross-border influences rather than vote-buying more generally.<sup>7</sup>

There are important reasons to reject the faith-in-democracy approach, and to instead be permissive about cross-border influencing. One is that democracy is in fact not inconsistent with allowing affected parties located elsewhere to have a say.<sup>8</sup> What happens in Arizona affects New Yorkers not just in the U.S. Congress, but also because of environmental and immigration concerns (to take two examples). The behavior of people and firms in Arizona crosses many borders. Arguably, democratic principles do not require that residents of Arizona be the only ones who should vote on Arizona's laws. Similarly, factories in Ohio have great impact on people in Pennsylvania, if only because of the prevailing winds. It might actually be undemocratic to tell the citizens of Pennsylvania that their only recourse is to go to Congress, as they have more interest in what goes on in Ohio than do the voters in states located far away and upwind from Ohio. Other laws might affect faraway states about as much as they do neighboring states. Policing, health care, and school policies in Arizona have great impact on other states. On the other hand, following this reasoning, it would seem that Canadians should get some say in U.S. politics. Canadians could argue for the right to contribute to campaigns and they might even insist on the right to get something like fractional votes in U.S. elections.<sup>9</sup> As an initial matter, democratic principles seem to justify the U.S. prohibition on foreign contributions. Yet by allowing the U.S. to contribute internationally, democratic principles might, at the same time, justify the demand by citizens of Canada and Pennsylvania to have voting power in the U.S. and Ohio, respectively.

A different and more practical approach to cross-border effects is to take account of the fact that it is simply difficult, for both practical and constitutional reasons, to restrict cross-border influences.<sup>10</sup> New

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<sup>7</sup> See generally Saul Levmore, *Voting with Intensity*, 53 STANFORD L. REV. 111 (2000).

<sup>8</sup> See, e.g., Robert E. Goodin, *Enfranchising All Affected Interests, and Its Alternatives*, 35 PHIL. & PUB. AFFS. 40, 48-49 (2007).

<sup>9</sup> If Canadians had a 1/10 vote in U.S. elections, what about its possible participation in the elections carried out in states close to the United States-Canada border? And could we by treaty agree that the Dutch get a 1/20 of a vote here while we voted in elections in The Netherlands? Any fractional voting would have us dominating the voting of a smaller democracy, and any solution that involved unequal fractions would seem to miss the philosophical point; Pollution in India might affect 300 million people here and only 15 million in The Netherlands, but if that externality is why Americans and the Dutch ought to be able to vote in Indian elections, it would seem that one-person-one-similarly-partial vote is better than giving each Dutch person 20 times the vote offered to each American. It has been argued that children should vote in elections perhaps through the proxy of parents who would get extra votes on behalf of their children. See, e.g., Maura Priest, *Why Children Should be Allowed to Vote*, 30 PUB. AFFS. Q. 215 (2016). If so, it is notable that no one is reliably equipped to vote for Canadian interests.

<sup>10</sup> This is due in part to the incentives produced by institutional design. See, e.g., James G.

Yorkers can easily choose to visit Arizona or boycott its products. They can use newspapers and their own members of Congress to favor or disfavor Arizona based on how people in Arizona behave or vote. One can have considerable faith in democracy without thinking that it is free from undesirable interest-group influences. A well-positioned interest group in Arizona might cause a majority there to lose on an important matter, and this interest group might be offset by one located in New York. In some cases, an out-of-state interest group might overcome the influence of a well-organized but anti-majoritarian group in Arizona by working its magic in Washington D.C., but there are surely cases in which the best route is to influence Arizona through more direct cross-border actions. The idea, and even reality, of offsetting interest groups suggests that we do not need cross-border voting rights so much as the right to lobby, educate, and even donate to campaigns across borders. The same might be true when thinking about international borders; various forms of foreign influence (if permitted) can take the place of voting rights.

In short, the faith-in-democracy approach—which would seem to favor restricting cross-border political influences—runs up against the concern about externalities affecting cross-border jurisdictions. This concern is greater when it is unlikely that it is mitigated by appealing to a higher, supervising, democratic authority. Uncertainty about the location and strength of this conflict makes it unsurprising that there are inconsistencies in law’s treatment of attempts to influence politics across borders. The next sections take a closer look at these inconsistencies.

### III. DEMOCRATIC PRINCIPLES AT WORK

It seems counterintuitive that people would have resisted giving New Yorkers a vote, or even a partial vote, in Mississippi in the 1960s, while also admiring New Yorkers who traveled to Mississippi as Freedom Riders during that same period. This seeming contradiction is likely explained, however, by the idea that we are comfortable with cross-border influencers when they advance widely held ethical and political intuitions, such as the immorality of legally codified racial

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Gimpel et al., *The Check Is in the Mail: Interdistrict Funding Flows in Congressional Elections*, 52 AM. J. POL. CI. 373, 374 (2008) (“Voters can cast only one vote in only one House race . . . . By contrast, citizens can donate to as many candidates as they choose as often as they like . . . .”). It is also due to the courts’ interpretation of campaign contributions as a form of constitutionally protected speech, see *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010); *Sykes v. Fed. Election Comm’n*, 335 F. Supp. 2d 84 (D.D.C. 2004).

segregation, through grassroots initiatives. Indeed, well-advertised protests can be more influential than a limited number of cross-border votes. Somewhat similarly, at least from a lawmaking point of view, we might be comfortable with the U.S. “paying” India to reduce pollution,<sup>11</sup> but we might be fearful of a Russian attempt to influence U.S. elections.<sup>12</sup> The Russian case is about protecting democracy, while the other is about advancing certain ethical norms that benefit the larger world. It is hard to think of rules about cross-border attempts to change laws without referring to the moral sentiments of those who seek to change the laws in faraway places.

There are harder cases. We like to think that we go to war in foreign countries only if we abide by a strict democratic process. At the same time, we abhor the idea of foreigners influencing our own inclinations to intervene abroad, even though they might be guided by similar democratic rulemaking. It is, for example, likely that most Americans, and American lawmakers, would be uncomfortable with an attempt by the Indian or Swiss government to lobby for one kind of health care system in the United States. Reactions might range from a concern that drug makers in those countries had captured the political process there to the disadvantage of the U.S., that foreigners simply have no business meddling over here (even though the U.S. is hardly a non-meddling entity), that our political system is best at responding to a problem that reflects local realities, or some version of American exceptionalism. The same might be true if a foreign government tried to influence the way in which American cities tackled homelessness. We might even resist attempts by an otherwise friendly ally to give cash to homeless Americans. In these cases, the reasoning might be that we can observe successes and failures abroad, and we can choose to copy or ignore strategies undertaken there.

There are yet more ways to cross borders. Many jurisdictions favor their own members, even when there is a principle of free trade in the background. State universities regularly favor in-state applicants and students. A good argument in favor of allowing this practice is that if the favoritism were forbidden by federal law, then each state’s voters might be disinclined to subsidize their own state’s universities, and everyone would be worse off because there would be less education rather than more. For example, Oregon benefits from the good

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<sup>11</sup> See Michael P. Pelletier, Chargé d’Affaires, U.S. Embassy & Consulates in India, Remarks at Air Quality Workshop: Combatting Air Pollution in North India (May 17, 2016), <https://in.usembassy.gov/u-s-india-partner-address-air-pollution-promote-development/> [https://perma.cc/2MTX-LLKL].

<sup>12</sup> See Michael Wines & Julian E. Barnes, *How the U.S. Is Fighting Russian Election Interference*, N.Y. TIMES (Aug. 2, 2018), <https://www.nytimes.com/2018/08/02/us/politics/russia-election-interference.html> [https://perma.cc/W7XP-4SR2].



state universities in California, even if Oregonians are unlikely—or disfavored when they try—to attend them. Still, Oregon probably benefits from well-educated citizens in California.

But what about a state that says it will only purchase goods manufactured in-state—assuming the required items are available in-state? The preference might be both political and emotional. People are more likely to favor, and even be charitable towards, people who are in the same community, however defined or imagined. In some ways, this is like an individual who only wants to date people of her own religion or race—or only date a fellow Texan. States might be better off if all states promised not to favor in-state producers, but this is difficult to monitor and less intuitively appealing to most people.

If a state were to require its state employees to reside within the state, it is conceivable that an employee could object with a kind of takings claim,<sup>13</sup> even though their loss is not one of real or even physical property. Many state regulations hurt some citizens more than others and have a secondary effect on interstate trade, but conventional Commerce Clause law,<sup>14</sup> as well as takings doctrine, does not come into play. Note that there are cities, like Chicago, that require all City employees, including their police and firefighters, to live in the city.<sup>15</sup> This requirement can be understood as enhancing performance because of the increased likelihood that an emergency worker will be available when needed.

Cross-border influence involves both carrots and sticks. States can cooperate—as when some agree to favor university applicants across the border—as well as discriminate. It seems obvious why the Constitution requires the U.S. President, and every Senator, to be a citizen, thus barring cross-border influences at this high level.<sup>16</sup> Similarly, most states forbid an out-of-state person from running for governor. Yet a CEO who does a good job in one firm can move to another after proving her worth, while a governor cannot easily do so. It seems efficient to hire someone on the basis of observations about successes

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<sup>13</sup> See U.S. CONST. amend. V.

<sup>14</sup> See *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 363–64 (2023) (holding that California's Proposition 12, which requires veal calves, breeding pigs, and egg-laying hens, to be housed in systems that comply with specific standards, was constitutional and rejecting petitioners' claim that the Court had authority to invalidate Proposition 12 under the dormant Commerce Clause).

<sup>15</sup> OFF. OF THE INSPECTOR GEN. OF THE CITY OF CHICAGO, IGO REVIEW OF PERSONNEL RULE RESIDENCY WAIVERS 2 (2011), [https://igchicago.org/wp-content/uploads/2011/10/Residency-Report\\_final.pdf](https://igchicago.org/wp-content/uploads/2011/10/Residency-Report_final.pdf) [<https://perma.cc/HF2P-CPT4>].

<sup>16</sup> U.S. CONST. art. II, § 1, cl. 5; U.S. CONST. art. I, § 3, cl. 3. A typical city charter also restricts cross-border talent and reflects a distrust of voters, as it requires a mayoral candidate to meet an age and residency requirement, and also to be registered to vote in the city. On the other hand, in many states, a member of the legislature must live in-state but is not compelled to live in the district he or she represents. Perhaps loyalty is not much of an issue in this setting.

and failures at another firm; why should voters not be permitted to recruit a candidate for governor after observing his or her behavior in another state? The apparent explanation is that a resident is less likely to be disloyal—but the example shows once again that democratic voting is not always trusted. Corporate shareholders and directors can look for the CEOs with proven records elsewhere, just as city managers (as opposed to mayors) can be hired from distant jurisdictions.<sup>17</sup> Voters, however, cannot vote for leaders with the best records if the candidate happens to reside across the relevant border.<sup>18</sup>

#### IV. CROSS-BORDER EXTERNALITIES

Consider the case, already introduced, involving Ohio (O) and Pennsylvania (P). O has factories that employ many people but that also pollute the atmosphere. Prevailing winds drive these pollutants to the east, to a neighboring, receiving, jurisdiction, P. Voters in O might rationally prefer a free market rather than laws that taxed or discouraged the pollution, because they do not take the cost and preferences of P's citizens into account. A different kind of externality, perhaps imagined, is where P's citizens value scenic beauty, that for some reason does not appeal to citizens of O. O will not take P's (pure) preferences into account. If there is some negative externality running in the other direction, P and O might simply agree that each will behave in a way that satisfies the other. If not, a law-and-economics reaction, beginning with the Coase Theorem, is that the government of P could buy the factories in O and install better smokestacks, or shut them down with some payment to employees.<sup>19</sup> But the more interesting application of the bargaining idea is for P, or interest groups in P's jurisdiction, to pay the polluting state, O, or interest groups within it, to enact laws that reduce the pollution or save the scenic view.

Another version of this kind of cross-border interference, or influence, would be for citizens of P to finance the election of political candidates in O who promise to reduce the pollution. Finally, and somewhat equivalently, P, or some of its offended citizens, might pay voters

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<sup>17</sup> See, e.g., MICH. COMP. LAWS § 141.1549(3)(b) (2023) (creating an appointed emergency manager position which does not require local residence).

<sup>18</sup> See *Qualifications for Governor in Each State*, BALLOTPEDIA (Jul. 2020), [https://ballotpedia.org/Qualifications\\_for\\_governor\\_in\\_each\\_state](https://ballotpedia.org/Qualifications_for_governor_in_each_state) [<https://perma.cc/723X-JSMN>].

<sup>19</sup> See R.H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960); Fred S. McChesney, *Rent Extraction and Interest-Group Organization in a Coasean Model of Regulation*, 20 J. LEGAL STUD. 73 (1991). For a re-interpretation of Coase's case study of lighthouses that argues that public-private bargaining reaches an efficient result, rather than private-private bargaining as Coase originally indicated, see Elodie Bertrand, *The Coasean Analysis of Lighthouse Financing: Myths and Realities*, 30 CAMBRIDGE J. ECONOMICS 389 (2006). Readers might notice a moral hazard in the text's example: savvy businesses in jurisdiction P might threaten to start businesses in order to extract payments.

in O to change the outcome. These recipients would vote for new environmental laws or for politicians who are dedicated to reducing the problem that largely affects the neighboring and receiving state, P. Cross-border payments can in this way change the political outcome and take account of the negative externality suffered by non-voting, cross-border citizens. It is apparent that voters in O, and especially poorer voters, might be better off with a rule that allows or even encourages payments from abroad, and this is especially so if some of the transferred money is directed to workers in O who are made worse off by the political change influenced by across-the-border actors. This is the essence of the concern-for-externalities argument in favor of allowing cross-border payments or other intrusions.

The assumption, or trick, of eliminating wealth effects is not entirely fanciful, but size effects must be considered. I have often heard citizens of the Netherlands and of Canada say—perhaps tongue-in-cheek—that they ought to be permitted to vote in American elections, because American policies, and especially its trade and tax policies, have a great impact on these smaller economies.<sup>20</sup> Trade and tax policies might dissipate across larger populations. Canadians might worry more about U.S. tax policy than people in the U.S. would worry about Canadian tax policies. As such, the case for allowing the smaller country to influence the larger country's politics might be stronger than the other way around.

Any discussion of cross-border voting is fanciful, and not simply, or entirely, because of political objections. Dutch and Canadian citizens do not pay taxes to the United States; they would hardly agree that the U.S. could draft them in case of war; and they would not consent to arrangements that give Americans comparable votes in elections in their countries, if only because of the vast number of U.S. voters (even taking voter turnout into account). Even if each American is given a modest fraction of a vote, these votes would overwhelm the voters who live in Canada and the Netherlands. A fraction based on some proportionality argument would be likely to lower voter turnout in the U.S. close to zero. Relative size does not, however, explain much. It seems absurd to say that residents of Pakistan and Bangladesh, two sizable countries with (conveniently) the same voting age as India, should vote in Indian elections, though there are even greater externalities in that context.<sup>21</sup> Cross-border externalities or conflicts

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<sup>20</sup> See Clémence Michallon, *America Should Allow Other Countries to Vote in the 2020 Election*, THE INDEPENDENT (Mar. 22, 2019, 7:31 PM), <https://www.independent.co.uk/voices/2020-us-election-vote-trump-campaign-a8836076.html> [<https://perma.cc/7H2X-KCPH>].

<sup>21</sup> See, e.g., Xinming Du et al., *Transboundary Air Pollution from Coal-Fired Power Generation*, 270 J. ENV'T MGMT. 110862 (2020); Mirza Sadaqat Huda, *Governance Challenges of South Asia's Energy Megaprojects*, 28 GEOPOLITICS 1, 11 (2022).

are better decided by discussion, international agreements, and delegation, or even by payments or threats of a sort. Externalities do not translate well to votes, though they surely influence votes within each jurisdiction.

#### V. DEMOCRACY, EXTERNALITIES, AND MARKETS

It is important to see that the “confidence-in-democracy” and “concern-for-externalities” approaches are not always in conflict. The more we think the first approach should dominate, the more a jurisdiction should be trusted when it allows or disallows payments or other interference from abroad. It might seem anti-democratic for Canadians to try to influence U.S. law, but note that the laws barring Canadian influence are also products of democratic processes, as would be laws that allowed such influence.

A very different but slightly weaker form of the confidence-in-democracy approach takes wealth into account and suggests that most democratic decisions are themselves choices *not* to rely on markets, and thus not to allow the buying and selling of policies, political power, or votes. In the case of O and P, depending on how money arriving from P is allocated to government projects or voters in O, people in O can be made better off by allowing outside interference from P. And yet, there is something startling and offensive about the prospect of vote-buying. If it really benefits recipients, even as it permits citizens of P to express their preferences, then why not favor markets for votes quite generally?

When O and P are jurisdictions under the control of an (apparently) superior entity, there is room for an indirect cross-border influencer in the form of the larger, often federal, government. P might put together a coalition to impose a set of national rules that will control O's pollution. If so, no payment to O is required. Voting against O can overcome a tort law solution, with its negligence rule aimed to control excessive pollution within O; the pollution in O might survive a cost-benefit analysis, and yet P might pay to reduce O's pollution. Of course, O can always bargain or “pay” to avoid such controlling legislation. In the case where O and P are not states within a nation, but sovereign and separate nations, the possibility of law's taking charge in this way is diminished. Countries in P's position might seek international treaties, but these can be ignored. They might try to involve the United Nations in the same way that states try to combine interests and impose rules by a national government, but, again, these rules have much less power. The European Union is a nice example of an intermediate “solution,” and it is no surprise that some of its rules, many of which can be imposed without the opportunity to be vetoed by

P's legislature, are welcome by some member countries, but much resented and resisted by others.

## VI. CONCLUSION

There is a conflict between confidence in democracy and a concern for positive and negative externalities. Within the United States, as well as in other countries that, in the domestic context, allow cross-border contributions to political campaigns, it is common for residents of one state to contribute to candidates or causes in another. The usual justification draws on externalities; people are affected, and sometimes simply morally offended (or thrilled), by what happens in other jurisdictions. It is difficult to limit this argument, and it is often in conflict with any faith-in-democracy view of the receiving jurisdiction. The conflict can be eliminated as an intellectual matter if we take the confidence-in-democracy argument further than is usually done, by reasoning that a jurisdiction can, through its own democratic process, implement legislation that welcomes—or forbids—outside contributions, with or without limits. Attempts to resolve the tension between democratic principles and worrisome externalities lead to the observation that one's views on cross-border contributions, whether in-kind or in cash, and even contributions within a single jurisdiction (which is to say debates about the wisdom of limiting private financing of political campaigns), quickly reflect the observer's preferences about the winners and losers. Those who contribute to causes that are later seen as obviously correct and ethically attractive are regarded as heroes, while those who fund causes or officials that come to be seen as destructive are regarded as reprehensible or even criminal. Laws and attitudes about cross-border influences are simply inconsistent, and often reflect underlying sentiments about results rather than a coherent view about the interesting question of when it is a good idea to allow cross-border influences between democratic jurisdictions, whether domestically or abroad.