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Demistocracy: a means to rebalance political powers in contemporary France?

An ethical inquiry into democratic innovation

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Abstract

This paper starts by taking a Foucauldian genealogical approach to uncover the power imbalances which underpin the French political arrangement in 2022. It advances that such imbalances are two-fold. First, it notes the separation, or lack thereof, of the legislative and executive powers. Second, and crucially, it recognises a power asymmetry between the governing powers and the citizenry of France. It explores how to resolve such power asymmetries and ensure ethical governance, by investigating innovative democratic practices. In doing so, I subscribe to a rule-based instrumentalist approach. In order to anchor this research in a concrete context, I focus on the claims of the Gilets Jaunes – *Yellow Vest protesters* – to Citizens' Initiative Referendums (RICs), and on the government's response, i.e., its attempt at furthering participative and (pseudo)deliberative practices – The Grand Débat National (GDN). I suggest why RICs are not necessarily the way forward. Additionally, following an empirical ethics methodology, I provide an explanation as to why the GDN failed to rebalance powers. I finally broaden our épistèmes, and analytically argue against Estlund's postulate for democratic authority by invoking Brennan's epistocratic argument. Estlund's argument is particularly relevant for my argumentative purposes as it intends to provide support for a democratic political arrangement that is epistemic in nature. I proceed to sketch research avenues for democratic innovation in France by suggesting that we should favour a hybrid system: demistocracy. I conclude and briefly address potential concerns with this proposal.

Keywords: democracy, democratic innovation, deliberative democracy, epistocracy, ethics, power (im)balances, France, Yellow Vests, Grand Débat National, Citizens' Initiative Referendums.

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List of Acronyms

BRVDO – Bad Results Version of the Demographic Objection

CP – Competence Principle

C(X) – Conclusion X

DO – Demographic Objection

EL – Enfranchisement Lottery

GDN – Grand Débat National (Grand National Debate)

MP – Member(s) of Parliament

PX – Premise X

RCC – Regional Citizens' Conference

RIC – Referendum d'Initiative Citoyenne (Citizens' Initiative Referendum)

QAR – Qualified Acceptability Requirement.

1 | Introduction

In 2017, French citizens were called to the polls to elect their new president. The second round of the presidential elections saw two candidates face off: Emmanuel Macron, head of his new centre-right party *La Republique en Marche* and Marine Le Pen, the face of her extremist right-wing party, the *Rassemblement National*. At the time, the defeated presidential candidate of the left-wing party *La France Insoumise,* Jean-Luc Mélenchon, did not give any voting instructions for the second round (Mélenchon, 2022). This caused quite a media uproar given his liberal social values and the fact that he stands opposite of Le Pen on the political spectrum. In response, after identical results and a mirror face-off during the 2022 elections, Mélenchon repeated multiple times "not one vote for Mme. Le Pen" with a sarcastic tone, as if to mock Macron's apparent 'intellectual superiority complex' and disconnect with most of the population (Ibid.). There are indeed two interesting aspects of Mélenchon's 2022 intervention which are relevant to my analysis in what follows.

First, Mélenchon made it clear that he trusts his voters not to give a vote to Le Pen. He considers it patronising to give any voting instruction, as it implies that voters are not competent enough to discern the populist, xenophobic rhetoric of Le Pen and independently come to a reasonable decision. "They [French citizens] are capable of knowing what to do, they are capable of deciding what is good for the country. We will never lose faith in our democracy. Therefore, one should not give a single vote to Mme. Le Pen" *(*Mélenchon, 2022).[1] This leads us to the second point.

Subtly, Mélenchon put the onus on Macron to expand his political programme and compromise with his followers. One way for the incumbent President to achieve this was to agree to revitalize France's democratic system and give citizens more political decision-making power. Macron took the cue rather instantly. In fairness, one of Mélenchon's agenda points was to establish a Sixth Republic and fundamentally shake-up the semi-presidential democratic

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[1] Arguably, Mélenchon gave instructions about who *not* to vote for, leaving it open whether his followers should abstain from voting or compromise their values and beliefs to vote for the incumbent president. He made it clear that ¬ A does not necessarily imply B. Whether abstaining or casting a 'white vote' amounts to indirectly voting for Le Pen is another discussion, one which is beyond the scope of this paper.

system which has been in place since 1958 (La France Insoumise, 2022). Additionally, the first large-scale crisis that Macron had to deal with, the Yellow Vests protests, fought against the status quo regarding the French political arrangement, and for the implementation of Citizens' Initiative Referendums (Référendum d'Initiative Citoyenne, here on forth RIC) (Gilets Jaunes, 2021). Many Yellow Vests' claims can indeed be found in Mélenchon's 2022 political programme.

In his 2022 speech, minutes after Mélenchon's, Macron explicitly acknowledged the discontent, disillusionment *qua* apathy shared by a large part of the population. He agreed to introduce "something new that can gather the diverse convictions and sensibilities [of our nation] in order to build with them [the diverse convictions' bearers] a common action at the service of our nation" (Macron, 2022a). He reiterated the need to instore an additional deliberative or consultative procedure, one which allows citizens to express themselves directly on topics under (potential) legislative consideration.

That France is fractured and could benefit from a renewed system is clear (Connaughton, 2021). One must nevertheless recognise what we know about misinformation and manipulative practices in French politics. We must also acknowledge that approximately 30% of the French population falls prey to populist rhetoric if we cumulate votes for Eric Zémmour, Marine Le Pen and Nicolas Dupont-Aignan, all extreme-right candidates. One should note that in 2022, the proportion of the population voting for far-right parties grew by 12 percentage points compared to 2012, and 6 points compared to 2017 (Ministère de l'Intérieur, 2012; Ministère de l'Intérieur, 2022). This raises questions pertaining to whether France's democratic political arrangement is sustainable and ethical, as I explore in this thesis.

Our guiding research question is therefore the following: *how can we harness institutional reform in 2022 France to resorb the divide which populist discourses sustain, and rebalance political powers in an ethically justifiable way? Should we favour a deliberative-consultative procedure or referendums initiated by citizens?*

This leaves us with two distinct but related sets of philosophical questions. First, one might ask, when, if at all, it is it a *judicious* idea in a country like France to give its citizens in 2022 more direct decision-making power. Given the pervasiveness of populism in French

politics, should we fundamentally re-think our political system so that only knowledgeable *qua* relevantly informed citizens make decisions? Which of the two options will guarantee an effective, representative, and stable form of governance that won't swiftly collapse into tyranny, *as Plato would worry* (Schuldenfrei, 2008)?

Second, based on the theoretical answers of the first question set and based on lessons from previous reform attempts in France, how should such a governance shape up? Should it take the form of RICs? Or should it systematically incorporate a deliberative procedure which brings together citizens and thematically relevant expert advice? What are the necessary (and sufficient) conditions that such a procedure or institution should (not) exhibit, given the French context's constraints? Which option is most likely to rebalance political powers, and guarantee systematic and sustainable representation?

As applied to the French context, I argue against the widespread idea that a democratic arrangement is a fundamentally *ethical* form of governance.[2] Instead, I sketch arguments in favour of installing a representative enfranchisement epistocratic council, the details of which I will expand on in due course. I argue to bypass the traditional nomenclatures and propose research avenues into a novel hybrid system: demistocracy.

In order to support this proposal, I first take a Foucauldian genealogical approach and provide a historical exposé to shine light on the power imbalances that jeopardise ethical governance in France. This allows me to motivate and contextualise my research project.

Second, I provide additional background information about both the current political climate in France and make important philosophical distinction to clarify my theoretical-ethical stance.

Third, I proceed to analysing the successes and failures of the Grand National Debate, following an empirical ethics methodology. This will allow me to draw from oversights and mistakes made in previous democratic innovation experiments.

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[2] I chose to focus on the French context given the timeliness of this debate in France. However, some of my theoretical conclusions could be extended to other democratic contexts. My more 'applied' conclusions, i.e., the research avenues which I sketch out, are written specifically according to the particularities and cultural sensibilities of the French case.

Fourth, I expose David Estlund's proceduralist argument on the authority of 'democracy'. His postulate is particularly relevant in my investigation as his goal is to argue for democratic political arrangements based on 'a concern for the quality of political decisions, properly constrained by other principles', such as the *Qualified Acceptability Requirement* (Estlund, 2008).

I will then object to his argument by invoking Jason Brennan's argument for epistocracy, particularly Brennan's *Competence Principle*. Ultimately, I find myself conceding that only on instrumentalist grounds is Estlund's Demographic Objection to Brennan strong (Brennan, 2017; Brennan 2018).

This leaves me with a clear direction to sketch research avenues for constructive reform of the French political arrangement, one which is based on compromise and combines elements of democracy and epistocracy.

2 | Contextualisation: *A Historical Toppo from Montesquieu to De Gaulle*

Before delving into analytic philosophy, I contextualise the case of democratic innovation in 2022 France. Following a Foucauldian genealogical methodology will allow me to shine light on the power dynamics which structure and constrain the current political arrangement in France (Gutting, 1990). It will enable my reader to develop a historiographical perspective that goes beyond the limitations of rational thought and consciousness and allow me to better motivate my research project (Ibid.). In fact, power imbalances underpin many of France's current political issues. Concretely, abstracting at this deeper level will enable my reader to (a), better grasp how the current power (im)balances affect the political climate in 2022 France and (b), understand the scope, purpose and guiding principles or 'spirit' of this paper.

2.1 | A methodological detour: Foucault, historiography, and the genealogical method

2.1.1 | Mapping the scope & my positionality

There are several reasons why the overarching spirit of this paper is Foucauldian. First and foremost, Michel Foucault's work often originated in the contemporary experiences and social debates which he was exposed to. Inspired by real concerns in contemporary society, he famously published a *History of Sexuality* in 1976 during the era of sexual liberation in France (Gutting, 1990). Indeed, the Veil law legalising the voluntary interruption of pregnancy was passed in 1975 (Assemblée Nationale, 2019). He has even characterised his writings as a 'history of the present' (Foucault, 1995; Gutting, 1990). Similarly, this thesis is inspired by current events and debates that have contributed to shaping the political climate of France, of which the author is a citizen. Given the delicate nature of this topic and my positionality, I would like to iterate that I am aware of my own emotions, sympathies, and 'invisible' biases. I do not use

these to misrepresent other positions and unfairly justify my findings. I instead leverage my specialised experiential knowledge to provide as complete a critical assessment as I can.

Foucault wrote that a 'new mode of the connection between theory and practice had been established' (Foucault, 1980, p.126). We no longer can consider intellectuals as neutral observers who embody a 'universal' account of justice, law, and who, as such, are antithetic to despotic power (Foucault, 1980, p.128). Intellectuals today work within their sectors or contexts of origin, 'at the precise points where their own conditions of life or work situate them' (Ibid.). They rarely operate within universal modalities (Foucault, 1980). Foucault goes on to contend that this provides them with a better awareness of problems which are specific to their 'precise points' *qua* positionality (Foucault, 1980, p.126). Prestige, for the 'specific' intellectual, is not derived from the universal applicability of his conclusions but from his status as 'absolute savant' (Foucault, 1980, p.129).

Furthermore, Foucault makes the normative claim that suggestions or decisions about how to remedy specific problems are the prerogative of those immediately involved in these struggles. However, Foucault considered himself to be neither a specific, nor a universal intellectual. Rather, he thought of himself as a historian of thought, a 'critical' intellectual: '[one who] does not speak with the authority of universal principles or of specific social responsibilities but simply on the basis of his historical eruditions and analytic skills' (Foucault, 1980, p.129).

Without claiming to be an 'absolute savant', I am writing about the French context from the perspective of an academic and citizen of the French polity. This makes me particularly well-positioned to grasp the subtleties of the problems which I address (Foucault, 1980, p.126). I do not have any serious claim to political power, however, based on Foucault's distinction between the universal, specific, and critical intellectual, I position myself at the juncture

between the specific and critical. Indeed, my objective is merely to suggest research avenues pertaining to democratic innovation in the French context, with the hope that it could lead to a more ethical mode of governance.

2.1.2 | The Archeological and Genealogical Methods

Foucault developed the archeological and genealogical methods to provide new levels of understanding in our historical analyses. He conceives of history neither linearly nor temporally, but rather 'spatially' (Foucault, 1980, p.69-71). The key idea behind his archaeological method is to uncover the power structures which regiment our modes of thought – *épistèmes* (Gutting, 1990; Foucault, 1969, p.175). These lie at an unconscious level, beyond the rules of grammar and logic, and they define one's perception of their own conceptual possibilities. Uncovering épistèmes allows one to critically analyse how these power structures constrain our thinking and said thinking's concrete iterations in a particular domain, and in a particular time (Ibid.; Gutting, 1990).

Foucault displaces the predominance of the subject, as found in traditional historiographies, to instead focus on the power dynamics which structure our understandings (Ibid.; Foucault, 1969). While archeological methods can only allow one to perform comparative analyses, they serve as the basis for genealogical analyses. The objective of employing a genealogical approach is to demonstrate that systems of thought are not the outcomes of rationally 'inevitable' trends, but rather, are the results of related historical junctures, as conceived of spatially (Gutting, 1990).

As such, this paper starts with a (limited) genealogical approach; I provide a historical account which focuses on uncovering the power dynamics that operate at an unconscious level in and constrain the contemporary political arrangement of France. I investigate how the governing powers – *as Montesquieu conceives of them* – have been balanced in France. I then critically assess literature on the topic and suggest research avenues that transcend our

épistèmes and commitment to democracy. The ultimate objective is to propose potential solutions for more ethical governance in France, by focusing on how to rebalance powers both between the citizens and the governing class, and between the governing powers.

Ethical governance is simply defined here as a collection of the best governance practices, this includes a balanced balance of powers. I address the concept of just governance later in this paper when I delineate my analytic ethical framework in more detail. Invoking Foucault will allow me to provide my reader with a more complete understanding of French politics, whilst identifying obstacles to the safeguarding a stable and balanced balance of powers.

2.2 | The separation of powers à la Montesquieu

To understand the power dynamics which regiment the French political landscape, I refer to Montesquieu's classic *De l'Esprit des Lois*. One of his most influential postulates emphasizes the prevalence of separating the legislative, executive and judiciary powers for the safeguarding of liberty (Montesquieu, 1899). The legislative power refers to law-making, the executive power to the safeguarding of the constitution and the armies, and the judiciary pertains to the branch of governance which administers justice, according to the laws. Montesquieu wrote:

"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner."

(Montesquieu, 1899, pp.151-152)

There is dispute concerning extent of the powers' separations, however Montesquieu spoke of distributed powers – *pouvoirs distribués* (Krause, 2000). It is all a careful game

of power distribution that must occur, one in which the checks and balances that constitute the political arrangement are an integral part of a moderate separation of powers.

As the Revolution progressed, the 18th Century in France was marked by political turmoil and democratic innovation. Published in 1748, Montesquieu's work can be regarded as one of the most influential pieces of writing of the 18th Century in political philosophy. His work is still instantiated today in the French Republic's Constitution. In the following section, I will explain how this takes shape in the contemporary French context.

2.3 | The Vth Republic – implications of a semi-presidential regime

2.3.1 | Separation of Powers and the 1958 Constitution

The current Constitution of France spells out in what ways the different powers are to be separated. It was written in 1958 amidst the French-Algerian war, and in reaction to the Algiers putsch. It follows the political visions of Michel Debré, a proponent of the Westminster parliamentary system and of there being a powerful Prime Minister. It also abides by the vision of the Général de Gaulle, who intended to consolidate the role of the President of the Republic as the guarantor of our institutions. The rationale behind writing a new Constitution was so consolidate French governance.

From Montesquieu to De Gaulle, France has, at least on paper, maintained a strong iteration of the separation of powers; its political arrangement can be coined *semi-presidential* or *semi-parliamentary*. In 1962, the Constitution was revised to make the election of the president one which systematically requires universal suffrage. However, French citizens also directly elect representatives in legislative elections. The aggregation of these representatives forms the Assemblée Nationale – National Assembly. The President must always appoint a Prime Minister who belongs to the majority

party or coalition in the Assemblée Nationale. That Prime Minister then appoints their cabinet. This means that there can be, and there have been, instances where the President and Prime Minister are of opposing political affiliations. It is coined cohabitation. However, given the legislative elections occur just about six weeks after the election of the president, it is rare that the President and the Prime Minister find themselves to be of opposing political colours. Currently, President Macron and Prime Minister Borne are both members of the same party; this greatly helps advance their party's agenda.

Additionally, the 1958 Constitution grants the president more executive powers than its predecessors, especially in crisis situations. If a situation fits the criteria that make a 'crisis', as defined by the Constitution, then the President may for a limited amount of time and in specific circumstances, assume responsibility for all powers, "les pleins pouvoirs". Furthermore, the 1958 Constitution also consolidates governmental powers. Article 49-3 of the Constitution allows the government to pass laws without submitting them for debate in the Assemblée Nationale (Bruel, 2016). Granted, there are checks and balances to these provisions, such as but not limited to the topics it may be used for and the number of times 49-3 can be invoked per parliamentary session. However, the 49-3 function which speeds up the legislative process is often still considered controversial (Durand, 2022).

2.3.2 | Recent crises and concentration of power in the Vth Republic

Given the historical backdrop of its inception, the Constitution is especially equipped to help govern crises. There are also additional legal provisions which allow the government to declare a 'state of emergency' for a maximum period of one month that can be extended if approved by law. In such cases, civil liberties can be constrained, assets can be seized to help deal with said crisis and the government may take extraordinary measures to manage inflation (DILA, 2022). During crises, if the President and the Prime Minister are of the same

political leaning, power becomes increasingly concentrated in their (four) hands.

The COVID-19 pandemic triggered a state of *sanitary* emergency in France (DILA, 2020). No law yet covered such emergencies, therefore the Philippe government promulgated a law in concert with the Macron administration to codify a *state of sanitary emergency* (Assemblée Nationale, 2020). New decrees which restrained freedom of movement – such as strict lockdowns and curfews – were approved. The past two pandemic years directly affected people's perception that the government and their representatives can disregard their political power under the cover of '*state of emergency*', regimes which are regarded by many as controversial (DILA, 2021a). More importantly, it reinforced existing sentiments that the executive and legislative powers may not be sufficiently separate from one another, but that they are too separate from the citizenry's concerns.

The various direct addresses by Macron to the public on National TV sharpened the divide between him and many French citizens for it entertained some protesters' anti-establishment claims, and the feeling that powers were not sufficiently separate (Macron, 2020(a); Macron, 2020(b)). Macron addressed the population about the government mandated safety measures, a topic which usually pertains to the legislative realm (Ibid.). Additionally, these constraints on civil liberties had not been submitted to public debate (DILA, 2020; DILA; 2022). Similar anti-establishment feelings had already been violently expressed as they reached their acme in the end of 2018 during the Yellow Vests Protests. As tensions dwindled in the winter of 2019, the consequences of the sanitary state of emergency on French citizens' civil liberties revived tensions well past the end of the pandemic restrictions, and sustained them throughout and beyond the election season of 2022.

The power imbalances which are affecting the good health of French politics are two-fold. First, the governing powers do not seem to be sufficiently

separate from one another, especially the legislative and executive. Second, this concentration of legislative-executive powers appears to dampen political decision-making power from the citizens, especially in crisis situations.

In this section I provided historical background into the organisation and functioning of the contemporary French democratic political arrangement. I followed a genealogical approach, focusing on the power dynamics that influence and constrain our modes of thought. In doing so, I have laid the foundations for a more nuanced understanding of the current system's unbalanced balance of power, and motivated research about claims to change it. How do we go about rebalancing these powers in such a way that it can ensure good *qua* ethical governance?

3 | Democracy and tyranny

In this section, I take a theorical-historical detour in Athens to review the basic principles of democracy and of other modes of governance. The idea is to introduce modes of governance which we often dismiss as they lie beyond our internalised assumptions and constrained modes of thought, our *épistèmes*. I continue drawing a 'history of the present' pertaining to the contemporary French political arrangement (Foucault, 1995). I provide contextual insight into why granting more direct power to citizens without also ensuring they have the means to adequately inform themselves on a topic is not necessarily a judicious idea. I proceed to clarify philosophical argumentative strategies and further delineate my analytic ethical framework.

3.1 | Introducing epistocracy: Plato's typology of reason and ideal political system

Although Athenian, Plato was no fan of (participative) democracy; he was one of its most fervent critics. To understand Plato's ideal political system, I refer to his typology of modes of thought (Schuldenfrei, 2008). It is beyond the scope of my argument to critically assess Plato's argument or extensively lay it out. Instead, I provide a short overview of his main points to introduce the concept of epistocracy and challenge the underlying assumptions which constrain our conceptual fields of good *qua* ethical governance and ultimately, the array of possibilities for democratic innovation we consider.

Plato posits that all people desire the good. What distinguishes them is what they perceive to be good. This, he claims, is a direct function of their modes of thought. Plato distinguished five different kinds of people: the wisdom lover, the lovers of honor and victory, the money lover or oligarch, the lover of freedom and equality or the democrat, and finally, the anarcho-tyrannical man. He outlined what society would look like, were it governed by each 'type' of person, as enumerated above (Ibid.; Plato, 1974 – Books 8 & 9).

With respect to governance, Plato expected that for all described regimes, the principal worry is that they collapse into the form of regime beneath it. For instance, he described the democratic man as one who is primarily concerned with freedom and equality, regarding all desires equally and abstaining from disciplining the frivolous from the essential desires (Ibid.). He expects that if people place excessive emphasis on their desires, these will grow to be 'more demanding until they cannot be harnessed anymore with reasonable restraint' (Schuldenfrei, 2008, p.281). This would, ultimately, lead to democratic regimes collapsing into anarcho-tyrannical ones where freedom takes precedence, above all. In his mind, the ideal regime is one where the wisdom lovers rule, i.e., the Philosopher Kings (Plato, 1974). In contemporary philosophy, the kind of regime whereby political power is granted to the knowledgeable is coined an epistocracy.

Often, proposals to strengthen democracy focus on strengthening direct democratic procedures. However, following Platonic logic, should too much freedom be granted to the electorate, the system runs the risk of collapsing into a tyrannical one. The pervasiveness of populist discourses, misinformation and exclusionary politics in 2022 France paints a somber image that may well support the aforementioned assumption.

3.2 | Populism and its iterations in contemporary French politics

In *What is Populism?* Jan Werner-Müller seeks to provide his readers with means to identify and help deal with populism. He proposes that in addition to being critical of the establishment or elites, populists are also anti-pluralist. "Populists claim that they, and they alone, represent the people" (Werner-Müller, 2017, p.3). He adds that this claim to ultimate representation is not only empirical, but also normative (Ibid.).

Populism is fundamentally a form of exclusionary identity politics; it poses a threat to a defining element of democracy, pluralism. Populists' discourses advance that whoever does not abide by their stance is not a part of *the people* – who they "always

[define] as righteous and morally pure" (Ibid.). Irrespective of whether this is the case, they consider any opposing stance to theirs as one of the immoral, corrupt elite in both the political arena and in public spaces (Werner-Müller, 2017, p.106). To the extent that a populist finds views opposing to theirs illegitimate, they cannot be expected to embody the genuineness that is required to engage in proper argumentation (Christiano, 2008, p.190). Indeed, the very criteria that define populists are antithetic to listening or wanting to learn from one another in order to discern the most defensible arguments, with the objective of advancing justice and the common good (Ibid.). This goes against the critical value of equality, stated in Article 1 of the French Constitution. One should note that a populist can be of either side of the political spectrum, whether extreme left or right. What matters here is that they are closed-minded in their reasoning and interactions with other political participants.

France observed a rise in the proportion of the electorate that votes for extreme (right) parties. After the first presidential electoral round in 2022, the Institut Français d'Opinion Public (IFOP) estimated voting intentions were distributed as follows, 51% for Macron and 49% for Le Pen (IFOP & Fiducial, 2022, p.6). This prediction fell within the statistical margin of error. More strikingly, in just 10 years the proportion of right-wing voters grew by 12 percentage points, it now represents almost a third of the French electorate (Ministère de l'Intérieur, 2012; Ministère de l'Intérieur, 2022). Werner-Müller classifies Le Pen, the main antagonist of French politics, as a populist (Werner-Müller, 2017, p.1). These past few years, Le Pen tried to tame her image and distance herself from her openly antisemitic predecessor and father, but her fundamental principles and ideas remain unchanged. She openly defends her proposal for a ban on hijabs in public spaces – textbook exclusionary politics based on whitewashed notions of feminism, and grotesque conflations between the religion Islam and the extremist ideology, Islamism (Public Débat, 2022).

Meanwhile, new vocal extremist candidates started taking up space on the political stage, i.e., Eric Zemmour. They contribute to instilling fear and spreading misinformation. In doing so, they are further polarizing the public opinion. They are

controlling the narrative by tapping into people's emotions, thereby making it more difficult for reason and logic to take precedence (Werner-Müller, 2017). Take for instance the official website of Zemmour, the top three themes for which he has 'easy-access links' to sub-pages are security, purchasing power and immigration (Zemmour, 2022). Following Hannah Arendt's definition of political judgement as the capacity to make proper distinctions, it seems a large percentage of the French electorate is incapable of making proper distinctions between a peaceful religion and a political ideology which attempts to justify itself by invoking the aforementioned religion (Arendt, 2017).

The extent to which populism may influence the balance of governing powers is an interesting question, but that is not my main focus. Rather, in thinking about innovating for more ethical governance and rebalancing the power structures of our political arrangement, it is critical to consider how populist dynamics and consequences are likely to affect a political arrangements' functioning. Populist discourses take up a large part of the current political scene in France. Suggesting improvements to its governing system without considering this would not be judicious. Before I proceed with my argumentation, an important distinction needs to be made between different types of political philosophy arguments.

3.3 | Proceduralists, Instrumentalists and Political Justness

In political philosophy, there are two broad types of arguments for political arrangements which operate on different levels. What distinguishes them is where they ground normativity.

Proceduralist arguments root normativity exclusively in deontological claims that pertain to the justness of a decision-making process, despite its immediate consequences. For instance, a democrat proceduralist would contend that democracy is the most just political system as it distributes political power equally within the electorate, or because it allows every voice to be heard equally.

'Legitimacy' of a political arrangement is defined here as "the moral permissibility of the state's issuing and enforcing its commands owing to the process by which they were produced" (Estlund, 2008, p.2). Estlund's pro-democracy argument which I will assess is proceduralist, with a focus on the epistemic quality of political decisions.

Conversely, the epistocratic argument which I will be invoking is ultimately instrumentalist. This entails that it considers that the goodness *qua* justness of a political system is a function of the consequences it induces. In other terms, it is a type of consequentialist argument which denies the postulate that a political system can be just *if and only if* its decision-making processes are just too. The epistocratic argument is based on the underlying premise that 'the justness of the results produced by a political system confers it legitimacy' (Christiano, 2017).

Additionally, instrumentalist arguments operate in a non-ideal context. Brennan writes "Given what we know about rent seeking, corruption, and abuses of power, which is likely to deliver better results, some form of epistocracy or some form of democracy?" (Brennan, 2017a, p.207). In an applied context, especially in politics, this should be taken with a pinch of salt. It would be rash to think that the end justifies any means, as there are important considerations beyond the scope of our discipline – *in political psychology or in sociology* – which can impose constraints on controversial 'means' and ultimately, affect a predicted outcome.

A recurring critique by instrumentalists, however, is that proceduralist democrats fail to explain *what* it is that makes an equal distribution of power truly just, and *why*. This tracks back to the core of our issue. France is a democracy but the negative *qua* contested consequences of the present democratic political arrangement seem to outweigh the principles which justify its democratic system in the first place. However, although the epistocratic argument, by virtue of being instrumentalist, tends to be better suited to the complexities of realistic conditions, it cannot be considered a given that it would fare better if enacted.

Insofar as my objective is to provide research avenues for democratic innovation in France, I consider both proceduralist and instrumentalist concerns separately. I will delineate key aspects of Estlund's proceduralist argument in *Democratic Authority* and Brennan's epistocratic arguments in *Against Democracy*. In the meantime, however, I specify my ethical stance and assess a recent attempt at democratic innovation. This will allow me to more light into how to 'democratically innovate' and tackle the power imbalances in the French political arrangement.

3.4 | Ethical Stance

I previously claimed that I stand at the juncture between the specialist and critical intellectual (Foucault, 1980). As such, I would not be argumentatively charitable if I claimed that my ethical stance is purely critical in the Foucauldian sense, and that I do not make normative claims.

My research objective is to suggest avenues for more ethical and stable governance in France. I base my research on a critical assessment of historical phenomena and dynamics regarding the balance of (governing) powers and on an analysis of the most recent attempt at rebalancing these powers. I intend to sketch solutions for how these could be better balanced – both between the powers themselves and between the people and the powers. I do this by investigating epistocracy and democracy.

Estlund advances that instrumental political philosophers are 'utopophobic' (Estlund, 2008). Utopophobia is defined as "the fear of normative standards for politics that are unlikely to even be met" (Ibid., p. 14). It seems, however, that the values stated in the French Constitution set high expectations and that they are not the least bit utopophobic. Just take France's infamous stance regarding secularism and the wearing of religious garments or signs in public institutions. As a nation, France is very attached to its values and to their enactment in everyday life. For instance, by the front of every French public school is the national motto 'liberty, equality, fraternity'. The

Constitution and constitutional council guarantee that these rules and values are upheld in every piece of legislation. Given this, it is not guaranteed that the instrumentalist way, is the way forward here.

My scope of analysis might encompass the entirety of the French polity, but this very polity is diverse, plural and I do not pretend to play the universalist. Speaking of the polity as 'one' should be done with much caution. Equality is a critical French value, but there are structural power imbalances which jeopardise representativity, the equality of opportunities to express oneself on a matter, and the 'equality' of an outcome. Without going into a full discussion on what equality and equity mean, I take it as a constitutional and democratic requirement that there be no invidious comparisons made between citizens.

I define ethical governance as a balanced balance of powers, one which respects the values of the French constitution. However, one might ask what we mean by 'just' governance. I do not claim that there is such a thing as a universal 'just' governance, I (only) mean 'just governance in the French context', based on the values of the French Republic and given the specificities of 'French' contexts. Specifically, I consider epistemic quality and representativity as my main normative requirements; I will elaborate on these in due time.

My (meta)ethical stance might be considered a rule-based approach to instrumentalism, similar to rule-based consequentialism, except the focus is on the legitimacy of a political arrangement or decision. While we strive to uphold the values of the Constitution above all else, we recognise that the outcome brought about by constitutional means may contradict the very values which were meant to justify a given policy. Often this is due to structural power imbalances which may steer a desired outcome opposite what it was intended for, or which may bring about unwanted consequences.

In such cases where we shift the focus on the outcome, one may object that my framework risks collapsing into an act-based consequentialist or instrumentalist approach. I anticipate this objection by referring to Foucault; we should adopt the

specialist intellectual approach and consider involving specialists and their analyses in our political decision-making processes. Even procedurally, there is more to democratic authority than simply its fair allocation of political power (Estlund, 2008). Foucault wrote that specialist intellectuals, thanks to their privileged positionality, 'have powers which can either benefit or irrevocably destroy life' (Foucault, 1980, p.124). This (re)introduces the 'epistemic' dimension which is central to the acceptance of a political arrangement and to my argumentation.

In this Chapter, I introduced the idea that there may be other systems, such as Plato's or Brennan's, that challenge the notions that the justness of a political system must be grounded in the justness of its decision-making procedure, or that democracy is necessarily the best mode of governance. Indeed, I showed that populism could be a threat to effective democratic governance. I concluded this section by detailing my ethical framework. This will give me the proper grounds to assess the latest attempt by the French executive and legislative branches to rebalance political powers, both between the governing powers themselves, and vis-à-vis the people.

4 | The Yellow Vests, Citizens' Initiative Referendums, and the Grand National Debate

In this section, I delineate the case which inspired my research in democratic innovation. Following an empirical ethics methodology, I assess the Philippe government and Macron administration's experiment with the Grand National Debate (here on forth the GDN) against the criteria of my overarching ethical framework, and those required by the nature of the GDN. The purpose of this section is to review the latest attempt at democratic innovation in France with the hope that it can guide our research project in a constructive direction.

4.1 | The Yellow Vests and the Citizens' Initiative Referendum

In late 2018, France saw a mass protest movement shape up and take to the streets: the *Gilets Jaunes* – or Yellow Vests. The movement originally started by contesting the rise of fuel's prices, as induced by the legislation of a carbon tax (DILA, 2021b; Bouillon et al., 2022). While the more moderate protesters only disagreed with the means, some protesters denied climate change altogether. To avoid being pegged as climate change sceptics, the movement included combating climate change in its revendications (Voïta, 2019). Contrarily to emission quotas, this carbon tax is imposed on individual consumers, proportionally to their personal emission of CO_2 gases (DILA, 2021b). The motivation for implementing this tax, namely contributing to reducing greenhouse emissions and slowing down climate change, tends to disproportionately affect residents who often are relegated to rural or suburban areas because they cannot afford housing in the centre of a metropolis. They rely on their cars to reach urban areas to work, access healthcare and educational facilities, whereas urban citizens can rely on well-developed public transport networks.

Over 300 000 people wearing bright construction yellow vests occupied roundabouts, toll points and roadblocks during the first day of national protests – these then occurred on a weekly basis (Bouillon et al., 2022). The protests were marked by violent confrontations between the Yellow Vests and the police. This garnered

incommensurate media attention and contributed to polarizing the public opinion on the topic. The government's reaction, or lack thereof, over the course of the protests fuelled discontent and corroborated one of the movement's prime contentions: the elitist Parisian class of technocrats is out of touch with the majority of those they are meant to represent.

One of the Gilets Jaune's main revendication pertains to the implementation of a Référendum d'Initiative Citoyenne – Citizens' Initiative Referendum (RIC). They suggest multiple RIC procedures, I outline the four most popular. One proposes to allow citizens to submit a law proposal. Should that proposal gather 700 000 signatures, then it would need to be submitted for debate and vote in parliament (Novethic, 2022). Second, there is the constitutional RIC which would allow citizens to change the Constitution (RIC France, 2022). Third, the abrogation RIC would allow the dismissal of a law proposal or the abrogation of a current law. Finally, the revocation RIC procedure would enable citizens to vote on the dismissal of an elected official for questionable behaviour, such as but not limited to fraud, public indecency etc. (Ibid.; Gilets Jaunes, 2021). Overall, RICs can be considered a tool for direct democracy. Different iterations of it, or other direct democracy initiatives have been implemented in several countries across the globe, especially in the last two decades.

The rationale behind systematising RICs is to avoid that the concentration of executive and legislative powers dictates policymaking and jeopardises the constitutional value 'liberty' and its concrete iterations in the French political life (Montesquieu, 1899). The idea is to require more direct democratic procedures and to restore political decision-making power to the electorate. Given this backdrop, Macron officially launched the 'Grand Débat National' (GDN) in January 2019. *"The Grand Débat National['s] objective was to channel political emotions towards a discursive resolution of the crisis"* (Dobler, 2020, p.2). This was Macron's first attempt at rebalancing powers and directly involving citizens in key timely debates on such a broad, national scale. In the following section, I outline the organisation of the GDN and argue that it can be considered a tool of political communication rather than a

device to ensure more 'direct' democracy or more involvement by the electorate in political decision-making.

4.2 | An attempt at deliberative democracy: The Grand Débat National

4.2.1 | A brief outline of the Grand Débat National

The GDN was the first large scale attempt at involving citizens in the revitalization of the French political arrangement. As mentioned above, it resulted from the Gilets Jaunes protests. Macron famously stated that in launching the GDN he hoped to 'transform, with citizens, anger into solutions' (Macron, 2019). The GDN can be seen as an attempt to move towards a more participative-deliberative democratic procedure, not to a straightforwardly direct democratic procedure. The objective is to find means which ensure citizens have a platform to express their grievances and an opportunity to tangibly contribute to shaping policy accordingly. This example is particularly pertinent for my analytic purposes as deliberative democratic procedures focus on the epistemic quality of a decision-making procedure, while safeguarding the value of equality (Christiano, 2008; Olson, 2008).

The GDN centred around four main themes: the ecological transition, fiscality and public spending, democracy and citizenship, and the organisation of public services. It was organised in multiple channels to allow citizens to choose the means of communication they found most suitable for their civic participation (Grand Débat National, 2019). These ranged from online contributions, to registers of grievances – which found their origins in the years leading to the French Revolution – to local public debates, pop-up neighbourhood stands which gathered testimonies, and regional citizens' conferences (Ibid.). All these methods of participation were contested on some level but the most promising remains the Regional Citizens' Conferences

(RCCs), which happens to be the most deliberative of the procedures (Courant, 2019; Dobler, 2020).

4.2.2 | The ideal of deliberative democracy

In her report, Dobler showed that for all the modalities of the GDN, we can identify significant methodological issues which jeopardised its representative character and its procedural legitimacy (Dobler, 2020). Although her report is not philosophical, Dobler appears to be making normative assumptions about the political ethics standards against which a (deliberative) democratic procedure should be assessed. Focusing on deliberative democratic procedures is pertinent for my argumentation, and in the French context given the prevalence of populist discourses. Indeed, deliberative democracy focuses on epistemic representativity and quality (Christiano, 2008).

By procedural legitimacy Dobler refers to the necessity for thorough deliberation on public policy making. In taking this stance, she abides by a proceduralist stance and Habermas' application of his Theory of Communicative Action to deliberative democracy. Briefly, Habermas' overarching claim is that politics should ensure that argumentation and justification take centre stage in the decision-making process (Olson, 2008; Habermas, 1996). Habermas argues that no political argument is truly justified if an individual who wishes to pronounce themselves on the matter at hand cannot share their epistemic stance. He goes on to add that all epistemic stances should be considered equally and that participants should be free from external forces and coercion when communicating (Ibid.; Olson, 2008). As such, representativity, confrontation of different epistemic stances and non-coercion are necessary conditions for making an ethically justified political decision within the framework of a deliberative democratic procedure.[3]

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[3] Note that these are necessary but not necessarily sufficient conditions for making a justified political decision.

Thomas Christiano (2008) argues in the same spirit that several fundamental values are exemplified in a process of democratic deliberation. It is beyond the scope of this essay to deeply examine the similarities and subtle divergences between Christiano and Habermas. Suffice to say that the former's account is heavily influenced by Habermas, that his argument is based on a principle of equality between citizens in the concerned polity, and that his clarity is an asset for my analytic purposes.

The first fundamental value is the ideal of equal respect to be embodied by citizens; for deliberative democracy to function, they are to treat each participant equally by both listening and learning from others, that is, "by being willing to accept the force of the better argument" (Christiano, 2008, p.190).

Second, the process must embody citizens' willingness to advance justice and the common good in their society. "To the extent that citizens genuinely try to learn from one another and attempt to discern the most defensible ideas, citizens show that they desire to advance morally desirable aims" (Ibid.). I would like to clarify that this is the case, irrespective of how they envisage justice and the common good (Ibid.).

Third, and crucially, the process of public deliberation should be *egalitarian*. It should ensure that every point of view in a polity is given a fair hearing and that no citizen is dismissed based on invidious comparisons. This last value is what underpins what Dobler refers to as 'representation' and what I refer to as epistemic representativity. Without it, the other (dependent) ideals lose forcefulness. This last but central value is in line with the ideals of the French Constitution. Article 1 states that "France is an indivisible, secular, democratic and social republic. It guarantees equality before the law for all citizens without distinction of origin, race, or religion" (French Constitution, 2019).

By no means does public deliberation necessarily entail that all parties end up agreeing on the outcome of a deliberation, however, according to

Christiano "public deliberation has instrumental value in a democratic society because it leads to the development of an informed, rational, and morally sensitive citizenry" (Ibid., p.191). This is a particularly timely point given how polarized the French political landscape has become and given the epistemic element of my argument (Connaughton, 2021).

I do not wish to place too much importance on specific forms of deliberative democracy. Rather, I wish to shine light on obstacles, owed to imbalanced power structures, that have challenged and compromised the deliberative nature of the GDN. This will allow me to take these obstacles into account when I suggest further research avenues for democratic innovation. What matters for my argumentative purpose is that we take Christiano's well laid-out criteria for deliberative democracy's procedural legitimacy as necessary conditions upon which I assess the modalities of the GDN, thanks to empirical findings such as those of Dobler.

4.2.3 | Back to the GDN, and beyond

The GDN was launched as a reaction to the demands of the Yellow Vests for more direct democracy. In an attempt to compromise and account for epistemic representativity and quality, the Macron-Philippe duo set up a democratic deliberative 'platform' that they conceived as a debate of an unprecedented scale. However, the influence of the political majority was so palpable it cannot be said that participants were free from external forces or coercion during communication (Rouban, 2019).

One of the primary structural issues with the GDN is that it was conducted as an inter-ministerial mission (Grand Débat National, 2019). Two ministers were charged with driving it to fruition; it thereby cannot be considered free from political forces. The topics under discussion were constrained to four themes but the revendications of the Yellow Vests went far beyond those four themes (Ibid.; Gilets Jaunes, 2021). A panel of guarantors

was set up to ensure that the principles and values of the debate were respected. These included 'transparency, neutrality, equality, inclusion, pluralism, respect for all stances' (Dobler, 2020; Grand Débat National, 2019a). However, guarantors' recommendations, such as those pertaining to the format of online interactions, were not always taken into consideration (Demiaux & Ploquin, 2019). More concretely, the online platform consisted of questionnaires with closed questions *qua* multiple-choice questions. They also included open-ended questions in a 'propositions' section. All questions were directed and presented in such a way that they didn't foster dialogue between participants, nor did they allow citizens to express themselves freely on a topic. The online platform resembled an information poll, a top-down consultative, participative democratic procedure rather than one which encouraged interaction and deliberation (Dobler, 2020). The same can be said of the registers of grievances, pop-up neighbourhood stands and local public debates.

Interestingly, local public 'debates' formed the core of the GDN but almost half were organised by Members of Parliament (MP) of the presidential majority, 47.5% to be exact (Dobler, 2020, p.7). When a MP was present, these took the form of Q&A sessions. They had no clear nor binding structure to guarantee deliberative procedures were put into place, only succinct methodological or informational tool kits (Grand Débat National, 2019a; Grand Débat National, 2019b; Grand Débat National, 2019c). As such, these sessions did not promote the confrontation of one's opinions with others', they did not embody the spirit of public democratic deliberation.

Crucially, regarding the representativity of debates, the independent organisation l'Observatoire des Débats, drew alarming but somehow predictable conclusions. First, even though the access to debates was greater than previous initiatives with 60% of French citizens being able to access one in their place of residence, it still primarily had an urban character. Citizens of urban zones could all access a debate within, on average, 20 km of their homes

(Fourniau, 2019). French cities of more than 30 000 inhabitants held the most debates "with the notable exception of urban areas home to disadvantaged neighbourhoods" (Dobler, 2020, p.5; Fourniau, 2019). Second, it is worth nothing that the sociological traits of the participants did not resemble those of the Yellow Vests (Rouban, 2019; Blin, 2019). The average age of GDN participants was 57 years old, about 10 years above the average age of Yellow Vest protesters. Additionally, 55% of participants were men, of which 49% were retired, and about 62.4% of participants held higher education degrees. Conversely, a majority of protesters identified as jobless or working class; only 15% of protester held executive or managerial positions (Bedock et al., 2018; Dobler, 2020).

Regarding the analyses of the online responses and registers of grievances, the methodologies were filled with shortcomings too. Besides the difficulty for the supervised learning algorithms used to provide reliable natural language processing analyses. i.e., pick up on sarcasm when one responds to an open question with a rhetorical one, there are structural issues which the GDN did not manage to bypass (OpinionWay, 2019). Given the French Constitutional Council decision of November 15th 2007, it is not allowed to gather statistics pertaining to race or ethnicity in France. As such, there is no way to verify that the responses are representative of the population or to show that they instead, whitewash some of the social issues which were discussed (INSEE, 2007; French Constitution, 2019). This is just one of the many ways in which representativity could not be guaranteed.

The Regional Citizens' Conferences (RCCs) were the modality of the GDN that most resembled a deliberative one; the recommendations of the panel of guarantors were, for the most part, met (Dobler, 2020). Citizens were randomly chosen from a pool of 85% of all French mobile numbers and 15% of all landline numbers. This massive operation was undertaken by a third party, Harris Interactive (ResPublica & Missions Publiques, 2019). Five criteria were

considered in order to constitute 'diverse panels of citizens': age, gender, socio-professional category, place of residence and size of said place of residence (Ibid., p.6). These are arguably necessary criteria to ensure more diversity, but they are not necessarily sufficient.

The RCCs scored – albeit marginally – better on political pluralism and significantly better on deliberative procedures than any other modality (Dobler, 2020). Participants were assigned to thematic work groups with up to 7 other peers. They all provided an individual testimony and brainstormed as a group before formulating a concrete proposal for the resolution of a given issue. In contrast to the other modalities, participants went further than solely identifying a problem. Each group worked towards delivering a proposal and presented it in a plenary session. Proposals were not debated in plenary sessions, but they were thematically organised and handed as recommendations to relevant political representants (Ibid.; ResPublica & Missions Publiques, 2019).

It is important to remember that the GDN did not have any binding effect on policy making. It involved citizens further by giving them more of a 'direct' say, but it did not entrust them with any tangible power to make or unmake laws. The non-binding nature of the GDN's outcomes, especially in its most deliberative iteration, the RCCs, and its wide mediatisation render it a mere consultative exercise and tool of political communication. It is an arguably failed experiment in deliberative democracy rather than a genuine innovative democratic procedure, which is what the Yellow Vests hoped for.

This negatively affected the GDN's modalities' legitimacy and left many citizens discouraged. It explains why some Yellow Vests organised parallel debates, 'les vrais débats'[4] in protest of the GDN (Jourdain & Caldini, 2019). Additionally, as Dobler put it eloquently:

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[4] The true debates.

"If the GDN consisted of a unique exercise in its scope and geographical coverage, successfully multiplying tools for citizens' participation, shortcomings in the methodological choices made and poor representativeness of its public lessen the scientific validity of its outcomes and the legitimacy of the initiative itself" (Dobler, 2020, p.9).

I reviewed the latest attempts at incorporating a novel democratic procedure and briefly assessed them against the ethical criteria of Christiano – and by extension Habermas' broad conception(s) of deliberative democracy. I conclude that, although innovative, the GDN did not meet the procedural deliberative criteria, and cannot be considered deliberative democratic addition to the French political arrangement. Furthermore, it failed to meet the types of demands of the Yellow Vests, which is a claim to more direct power irrespective of whether there is a public deliberation – i.e., it did not have instrumental value either. I have shown that this is owed to unbalanced power structures pertaining to (a) a concentration of the legislative and executive powers and (b) representativity in the debate's modalities.

Moreover, the non-binding character of the GDN and its politization not only compromised its good functioning but it may have contributed to even further polarizing the French public opinion (Demiaux & Ploquin, 2019). Instead of fostering more knowledge on issues of concern, tangibly shaping policy and rebalancing political powers, it appears that the widely mediatised GDN resembled more a tool of political communication to appease tensions. This supported the Yellow Vest protesters' contention that their claims are not respectfully considered by the establishment. Three years on, in 2022, France has never been so polarized, and populist discourses still so common practice.

Having now painted a thorough picture of the French political context, I turn to arguments in analytical political philosophy to substantiate my analysis. This should enable me to assert that systemising a RIC, granting more direct democratic decision-making power to the electorate, is not the option which best rebalances power asymmetries and ensures ethical governance, in line with the values of the French Constitution.

5 | Estlund's Epistemic Proceduralism vs. Brennan's Epistocratic Argument

5.1 | Foreword

Given I assessed attempts at rebalancing political powers with democratic deliberative procedures, I now turn to considering a direct democratic procedure: RICs. Considering the pervasiveness of populism in French politics, the key issue concerning the implementation of RICs is *epistemic* in nature. To defend their enactment, it must be shown that democracies are an epistemically authoritative form of governance and that RICs contribute to rebalancing governing powers too. As mentioned earlier, referring to David Estlund's argument on democratic authority is pertinent given it is his objective to defend democracy based "on a concern for the *quality* of political decisions, properly constrained by other principles" (Estlund, 2008, p.1). He challenges the notion that "democracy empowers the masses without regard for the quality of the political decisions that will result" (Ibid.).

Before I delineate Estlund's argument in more detail, there are a few matters I must address. Estlund starts *Democratic Authority* by discussing the relationship between theory and practice. He argues that the practical application of philosophy requires the integration of many other disciplines in which philosophers do not tend to be well versed in. He adds that in grappling with the complexities of a practical situation, one risks losing sight of the philosophical issues (Estlund, 2008). He worries that high-level abstract principles do not have sufficient applicability at the practical level and that they cannot offer concrete solutions (Ibid.). I challenge these contentions, first by invoking Foucault and reiterating that specialist academics are epistemically privileged due to the centrality of their positionality within the issue at hand. Second, the research process for this paper included literature and empirical evidence in social science; interdisciplinary academia is in the realm of possibilities. Third, I do not simply try to apply a high-level theory. Instead, I have taken a genealogical approach in which, as a starting point, I scrutinised the power structures underlying the political

arrangement in France throughout history. I do not mean to ascertain a moral truth deductively, but rather to have good reason to accept a conclusion, based on strong evidence.

Another important point pertains to definitions. By *authority*, Estlund refers to the moral power of an agent, typically the state, to morally permit or forbid certain actions or practices by others 'through commands' (Estlund, 2008, p.2). By *legitimacy*, Estlund refers to the moral permissibility of the aforementioned agent – i.e., the state – to enforce a command. As previously mentioned, he grounds legitimacy in a proceduralist argument (Ibid.). And finally, by *truth*, he only means that there are some views about a matter X that are erroneous, and other views less so. However, he does not (and need not) address what, specifically, constitutes truth. He only accepts the concept of truth and what this might imply for his epistemic argument (Ibid., p.5). By *fairness* I mean only equal opportunity or say, as it pertains to political decision-making. I choose this definition based on the prevalence of 'equality' in the French Constitution and my commitment to epistemic representativity.

5.2 | Reconstructing Estlund's Argument

In this section I roughly reconstruct David Estlund's argument in *Democratic Authority* in informal logic. His book is based on a collection of papers, as such the idea is to shine light on Estlund's argumentative strategy. This reconstruction could be more detailed, but the goal is not to test the validity or soundness of each intermediate argument. Rather, the purpose is to facilitate my succinctly explaining his argument and objecting to some of its steps.

<u>STEP 1</u>

Assumption - The bindingness and legitimacy of a political decision is not owed to the correctness of said decisions, but to the kind of procedure that produced it (*Proceduralism*).

P1. The fairness of a political procedure is the basis for democracy's moral importance *qua* legitimacy.

P2. Giving every citizen in an electorate equal opportunity to affect an outcome is (prima facie) a fair procedure.

P3. Flipping a coin is also a fair procedure, but it is generally not considered an appropriate means of decision-making in politics (*cf. Condorcet's Jury Theorem*).

C1. There is something about democracy that can justify authority and legal coercion beyond the *prima facie* fairness of the procedure, that element is epistemic in nature (*cf. Condorcet's Jury Theorem*).

<u>STEP 2</u>

P4. Authority, in politics, does not immediately follow from expertise and consent, that would lead to the expert-boss fallacy: *"We can always say to the experts 'You may know better, but who made you boss?'"* (Brennan 2011, p.713).

P5. The question is not how democracy may produce the most epistemically justified solutions, but rather, in what ways it has epistemic value that can account for the degree of authority we think it should have.

P6. An ideal deliberative situation constitutes an ideal epistemic situation, not one which constitutes the truth – e.g., deliberative democratic procedures.

P7. Epistemic Proceduralism does not require democratic procedures to be highly accurate.

P8. The Jury Theorem does not support the kinds of epistemic claims that epistemic proceduralism requires for political legitimacy and authority. *It is too disanalogous with political decision-making.*

P9. Normative consent is a basis for authority (i.e., *normative consent is non-consent not nullified. For instance, you are under my authority because you would be morally wrong to refuse to consent*).

P10. Contractualism-inspired solution: Rather than say a justification must be acceptable to everyone, we say that it must be acceptable to everyone except the crazy, vicious etc – *there will be some list of things that disqualify certain points of view for this purpose*. This is the Qualified Acceptability Requirement.

C2. Democratic authority is derived from both the fairness of its procedure and its ability to pass the Qualified Acceptability Requirement.

<u>STEP 3</u>

P11. If a justification of epistocracy is based on the expert-boss fallacy, then that version cannot pass the QAR.

P12. If a mode of political arrangement cannot pass the QAR, then it cannot be authoritative in the sense that legitimacy requires.

P13. Epistocracy commits the expert-boss fallacy (Estlund, 2008).

C3. Epistocracy cannot pass the QAR.

Figure 1. Estlund's argumentative logic in *Democratic Authority*

5.3 | Three Clarificatory points

Before object to Estlund's argument, there are three things I wish to clarify. Importantly, I would like to reiterate that it is beyond the scope of this paper to debunk every step in Estlund's argument for democratic authority.

First, let me address P3 and P8, premises three and eight, and C1, the first intermediate conclusion. Jury Theorems are mathematical models which attempt to prove the ability of crowds to make correct decisions (Dietrich & Spiekermann, 2021). They do not focus on democratic rights nor on the fairness of a decision-making procedure. Instead, they aim to determine how many minds it takes to achieve a decision that can be attributed epistemic quality. Their purpose is to show that collective decision making is better than random. Estlund refutes Condorcet's pioneering iteration it on three counts. First, political decisions are rarely binary. Second, we are faced with a threshold issue: what level above randomness is acceptable to confer authority to a democratic system? Third, Estlund writes 'if you were to ask, ""How could a person be dumber than a coin flip?" the answer would be "easily"' (Estlund, 2008, p.16). In short, Jury Theorems are not an appropriate basis for conferring democratic authority based on a concern for democratic procedures' epistemic quality.

Second, Estlund defines normative consent as non-consent, non-nullified. In concrete terms, this means that if, for instance, I do not allow you to read my private journal, then you are not permitted to read my journal. There are no conditions that would nullify non-consent in the same way that there are conditions that may nullify the authority of consent, i.e., coercion. 'If there were conditions that nullified non-consent, the result would be morally equivalent to consent' (Estlund, 2008, p.9).

The rationale for adopting this definition of normative consent is owed to the conceptual necessity that laws are binding. For instance, it is broadly accepted that whether a jury wrongly or rightly convicts a defendant, their decision has authority even if it is incorrect and unjust. The situation transposes to legislation. It is not because one does not consent to a particular law that said law has no authority, and that they are morally permitted to violate it. That would defeat the purpose of having laws in the first

place. Indeed, the converse entails that we should only follow laws that we consent to and that we should disregard any prescription or prohibition that we do not consent to. This would imperil the idea of the rule of law (Estlund, 2008). For purposes of argumentative charity, I grant this rather convincing account to Estlund.

Finally, an important 'intermediate' argument is Estlund's case for the Qualified Acceptability Requirement (QAR). As he established that Jury Theorems cannot provide the kind of epistemic claims necessary to ground democratic authority, Estlund invokes Contractualist theory to develop the QAR. It demands that any distribution of political power be justifiable to all points of view. As such, the QAR implies that power distributions are to be exempted from qualified objections. A qualified objection, in this context, is one that is formed reasonably (Estlund, 2008, p.217). Estlund provides a list of what he means by reasonable – he excludes vicious and crazy views for instance, but he does not specify what disqualifies a view (Ibid.). He takes the QAR as a necessary condition for justifying a political procedure.

Inspired by Contractualism he writes: "What it is for [a law] to be just here is for it to be permitted by principles that could not be objected to by anyone in an imaginary choice situation in which all participants promoted their own reasons but no one presses their interest at the unreasonable cost of others" (Estlund, 2008, p.8). It is beyond the scope of this essay to discuss contractualists' grounding of their normative claim that rightness or justice are determined by the consensus of a given imaginary collective choice scenario (Ibid.). In fact, Estlund rebuts contractualist arguments by imploring the circularity in their definition of justice or rightness, among others (Estlund, 2008). He contends that the objective of contractualist (democratic) political arrangements is to have a tendency to produce just decisions. However, to do so one needs to have an idea of what justice is. As such, Estlund restricts the contractualist 'logic' to consensuses on justification – he remains within the epistemic realm. The QAR has "no necessary connection to Contractualism" (Ibid., p.17). This way, justice may be understood in different ways; it leaves room for pluralism. While we may attack Estlund's argument for the QAR on the grounds that he does not define what he means

by 'crazy' or 'vicious' points of view, there is a general sense that some points of view may be crazy or vicious – i.e., they are based on invidious comparisons – and that is all Estlund needs for his proceduralist argument.

5.4 | Objection: Brennan's Epistocratic Argument

To object to Estlund's procedural argument, I refer to Brennan's procedural claims, more specifically to his Competence Principle. Although the validity of Brennan's general epistocratic argument lies in instrumentalist claims, he responds to Estlund by demonstrating that epistocracies with restricted suffrage are less intrinsically unjust than democracies with universal suffrage (Brennan, 2011). He contends that while Estlund provides good support for his 'Democratic Authority' argument, he overlooks other principles and some iterations of epistocracy which operate without committing the expert-boss fallacy.[5]

5.4.1 | The Six Epistocratic Claims

In this section, I clarify the six underlying assumptions of Brennan's argument:

1. The electorate in a democracy is systematically ignorant, irrational, misinformed and generally mistaken about political issues (Brennan, 2017a). The pervasiveness of populism in 2022 French politics confirms this hypothesis for the French case.

2. Lack or distortion of information prevents one from voting for optimal policies and from selecting candidates that promote such optimal policies. The implication is that the electorate in democracies tends to advocate and vote for

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[5] This section is inspired and thoroughly expands on my theoretical paper 'Valluy, C.(2019). Epistocracy: An analysis of a political system's (un)justness. *University of St. Andrews'*. Here, my research is constrained by recent developments in French politics and applies to this specific context.

suboptimal policies and politicians. Epistocrats agree that if the electorate were better informed, they would vote for better policies (Ibid.; Althaus, 2003).

3. Epistocrats "deny that the crowd generally has wisdom or that knowledge is an emergent feature of collective democratic decision-making" (Brennan, 2017b, p.56-57). This implies that the implementation of direct democratic procedures alone cannot guarantee good governance.

4. In most cases politicians implement policies based on the wishes of their electoral base, regardless of whether these policies are optimal or not. Given claims one through three, epistocrats advance that politicians then risk implementing sub-optimal policies (Brennan, 2017b).

5. Epistocrats reject instrumentalist and proceduralist arguments for democracies: they deny deontological claims for democratic universal suffrage or argue that these are outweighed by the poor results produced by democracies with universal suffrage (Brennan, 2017a).

6. Epistocrats argue in a non-ideal framework that regardless of the problems it will face in "the real world", epistocracies will likely produce more substantively just outcomes than democracies (Brennan, 2017b, p.56-57).

Although any of these claims could theoretically be rebutted, we accept claims one through four included, for the purpose of our argumentation. These assumptions fit with the current political context of France. However, we assess and challenge claims five and 6.

5.4.2 | Two Normative Claims

Indeed, Brennan formulates two normative claims or principles upon which his argument for epistocracy relies (Brennan, 2011). These two principles are namely the Competence Principle (CP) and the QAR. He provides 'procedural support' for these claims in his 2011 paper, "The Right to a Competent Electorate".

Brennan argues that having the right to vote implies holding political power, irrespective of how 'small' that power may be. Denying the moral significance of voting binds one to conceding that it is permissible to deny voting rights to the ignorant on the grounds that their political power is insignificant. If this were the case, the epistocrat's argument would be futile.

Brennan includes an epistemic element to this understanding of voting, conceived as an exertion of political power. The CP asserts that it is morally wrong for one to exercise their political power over another if that power is not exercised reasonably or competently. This entails that irrational, unreasonable, crazy, or vicious views should not be expressed through direct suffrage. Granted, there is no necessary connection between the moral significance of voting and the negative right not to have incompetent political power exercised over us, but before I go into critical analyses let me move on to Brennan's second normative claim.

Like Estlund, Brennan adopts the Qualified Acceptability Requirement. However, to avoid being charged with elusiveness as to *why* a view may be disqualified – as Estlund very well could be – Brennan formulates the CP (Brennan, 2011). Together, he claims, these two principles constitute necessary conditions for the determination of a just and balanced allocation of political power. I will not evaluate the validity of these claims, as ultimately, they rely on further deontological claims beyond the scope of my analysis. Instead, I accept both claims and assess how democracies and epistocracies deal with both

principles. These concur with my commitment to epistemic representativity and quality.

5.4.3 | The Competence Principle

In addition to supporting the QAR, the rationale for devising the CP is to avoid developing an epistocratic account that can be charged with the expert-boss fallacy. In doing so, Brennan directly challenges P4 and the entirety of Step 3 in my outline of Estlund's argument. Both philosophers agree that the political value of education is beyond qualified denial. However, both also allege that it can be denied without disqualification that a polity would be better governed by those with relevant education (Brennan, 2011, p.713).

Estlund contends that most epistocratic arguments rely on the following three tenets:

"

1. *The Truth Tenet: there are true (at least in the minimal sense) procedure-independent normative standards by which political decisions ought to be judged [instrumentalist concerns].*
2. *The Knowledge Tenet: some (relatively few) people know those normative standards better than others.*
3. *The Authority Tenet: the normative political knowledge of those who know better is a warrant for their having political authority over others"* (Estlund, 2008, p.30).

By formulating the CP, Brennan can re-formulate the Authority Tenet 'negatively'. He coins it the Anti-Authority Tenet: "when some people are morally unreasonable, incompetent or ignorant in the sphere of politics, this warrants them *not* having political authority over others" (Brennan, 2011, p.713).

At first glance, this seems to facilitate the epistocrat's task, as they do not need to show what qualifies individuals to hold political power, they need only specify what disqualifies individuals from having such power. Granted, it could be argued that this reconfiguration does not sufficiently depart from the original Authority Tenet. By specifying disqualifications for holding power, Brennan's epistocracy implicitly sets a vague, abstract standard for being granted political power. If we deprive the ignorant of political power, that effectively places the 'knowers', all-powerful, over the ignorant. The nuance between the two tenets is so subtle that basing the epistocratic argument upon it is a risky argumentative move, but it echoes Estlund's stance on the QAR (Estlund, 2008; Brennan, 2016). Recall him writing "Rather than say that a justification must be acceptable to everyone, we might try saying that it must be acceptable to everyone except the crazy, the vicious and … well, there might be other things that it makes sense to put in there. We will finesse the details by simply saying that there will be some list of things that disqualify some point of view for this purpose" (Estlund, 2008, p.4). Although Estlund rejects the Truth and Authority Tenets, he too sets an abstract epistemic standard – the Knowledge Tenet. On both sides of the debate, we agree that it is undeniable that when it comes to political decision-making, some are more relevantly educated than others. As such, for argumentative purposes, let us grant the Anti-Authority Tenet to Brennan.

5.5 | Procedural evaluation of Democracy and Epistocracy

By developing his Anti-Authority Tenet, Brennan lays the groundwork to rebut Estlund's argument. In accepting the QAR and in formulating the CP, Brennan makes it clear that Estlund does not own up to the hidden premise which underlies his claim that certain 'crazy' views need not be considered in the QAR, i.e., that there are some views who are irrelevant on the grounds that they are crazy, among other disqualifying

criteria. The underlying premise in question could be the CP. The reason as to *why* some views may be discarded is owed to the fact that one has the negative right to not have incompetent political power exerted over them.

From here, we can either argue that this corners Estlund into accepting Brenann's epistocratic account, or we could assume that there is some other reason as to why it is permissible to disqualify certain views. For instance, in the case of the French context, views that make invidious comparisons between the citizens of a same polity could be disregarded on the grounds that they go against the very fundamental values of 'equality' and 'fraternity'. Let us assume that this is Estlund's rationale; I will reveal that the objection he raises against Brennan is in the same spirit.

In any case, given one of the defining criteria in democracy is universal suffrage, a democratic political arrangement cannot guarantee that political power – irrespective of its 'weight' – be exercised competently. Democratic arrangements cannot pass the CP. This is particularly pertinent because Brennan contends, following QAR reasoning, that any citizen in a democracy can reasonably require that the system pass the CP (Brennan, 2011, p.723). Recall that for the argumentation's sake we have accepted the first epistocratic claim, namely that the electorate in democracies is generally misinformed, ignorant or (the 'or' being inclusive) suffers cognitive biases. We also empirically substantiated that this is the case in 2022 France. A French citizen could thereby reasonably object to a political decision on the grounds that it was made incompetently, or that it was made by incompetent citizens.

Brennan adds that a violation of the CP entails subjecting citizens' liberty, livelihood, and property to incompetent people (Brennan, 2011, p.717). He refers back to the jury analogy and claims that this would not be accepted in court. In fact, there are requirements pertaining to mental conditions for being part of a jury (United States Courts, 2022). For argument's sake let us accept the jury analogy.

Along this line of argumentation, I conclude that in failing to account for the CP, democracies also violate the QAR. Conversely, epistocracies – or in the minimal sense, Brennan's epistocracy – accounts for the CP. Brennan, however, concedes that

epistocracies cannot pass the QAR. He claims that it is not reasonable to expect an entire electorate to agree on the practical considerations about power distribution. As such epistocracy is unjust on one count, whereas democracy is unjust on two counts.

Given that both political arrangements are intrinsically unjust, Brennan posits that epistocracy is less intrinsically unjust than democracy. To argue for this procedurally, Brennan advances that beyond failing the CP, voting age laws which restrict suffrage in democracies do not pass the QAR either (Brennan, 2011; Brennan, 2016). The arbitrary age at which a voter is considered competent enough to participate in democratic procedures is reasonably objectionable. He goes on to write "it is an injustice that certain seventeen-year-olds are declared incompetent to vote, especially when former Ku Klux Klan grand wizard David Duke is declared competent" (Brennan, 2011, p.719). In fact, there is debate in France about lowering the voting age to 16. A number of candidates in the 2022 presidential elections including Mélenchon and Green Party candidate Yannick Jadot promised to lower the age to 16 in their respective political programs.

Brennan continues by arguing that a 'properly administrated' voter examination required by a hypothetical epistocratic system could track the epistemic requirements that voting laws set better than these laws do. As such, they could perhaps pass the QAR. What he does not explicitly state but is crucial to his argument, is that voter examinations (theoretically) give equal opportunity for enfranchisement to all citizens whereas age-based voting laws do not (Ibid.; Lopez-Guerra, 2014). Given we are performing a procedural analysis, the actual consequences of either system, and these consequences' moral significance are not of our concern, yet.

He concludes:
"

1. *Both (a) voting age laws and (b) policy enforcing decisions made by incompetent or unreasonable juries are intrinsically unjust, but (b) is more unjust than (a).*

2. *Restricting suffrage to those who can demonstrate competence would be about as unjust as (a)*

3. *Universal suffrage would be about as unjust as (b)*

4. *Therefore, universal suffrage is more intrinsically unjust than restricted suffrage"* (Brennan, 2011, pp.719-720).

Despite the relative frailty of the Anti-Authority Tenet upon which Brennan builds his argument, it appears that on a procedural level, epistocracy is less intrinsically unjust than democracy is. This gives Brennan strong grounds to conjecture that epistocracy can produce more substantively just outcomes than democracy. We address this and objections to Brennan's instrumentalist claims in the following section.

5.6 | Rebuttal: The Bad Results Version of the Demographic Objection

In this section I proceed to critically evaluating epistocracy and democracy on an instrumental level. While my procedural assessment corroborates Brennan's by suggesting that epistocracy could produce substantively just outcomes, Estlund raises an objection to show that there are strong reasons to believe otherwise. Estlund formulates the Bad Results Version of the Demographic Objection (BRVDO), an instrumentalist version of the proceduralist Demographic Objection (DO). Brennan successfully refutes the DO but considers the BRVDO as the strongest objection to epistocracy (Brennan, 2011; Brennan, 2017b). If Brennan can also refute the BRVDO, then we have good reason to accept his argument. If he fails, then we are left with a solid body of findings to suggest novel research avenues. I now proceed to outlining the DO, prior to critiquing Brennan's rebuttal.

5.6.1 | The Demographic Objection

P1. Political knowledge is not shared equally amongst the members of an electorate and amongst demographic groups.

P2. Some demographic groups are more privileged and advantaged than others in accessing that knowledge.

P3. Affluent groups tend to have better access to education.

P4. Affluent groups will thereby tend to have more relevant political knowledge than minority groups.

P5. Invidious comparisons between citizens are unjust.

P6. Epistocracy grants political power to those who have sufficient relevant political knowledge.

P7. Epistocratic systems will tend to overrepresent affluent groups and further underrepresent minority groups.

P8. Therefore, epistocratic systems are unjust.

Let us accept P2, P3 & P4 – after all, it is not outrageous to claim that affluent citizens are more likely to attend private schools, university or pursue their education longer than financially unstable people who must resort to working sooner for survival. Some empirical studies also support this claim (Althaus, 1998; Delli Carpini & Keeter, 1997). We also previously accepted P1 and P5, empirically and deontologically, respectively.

The procedural DO concludes by claiming that this unbalanced distribution of political power, itself based on structural power imbalances pertaining to access to knowledge, is unjust (Brennan, 2017b; Estlund, 2008). It perpetuates invidious comparisons between citizens. The BRVDO, however, concludes that this very discrepancy will affect epistocracy's likelihood to produce substantively just outcomes; the underrepresentation of some demographic groups will offset the (epistemic) advantage of having knowledgeable citizens in power (Brennan, 2017b).

Indeed, Estlund (2008) contends that indirectly disenfranchising a minority group through the formal disenfranchisement of unknowledgeable, irrational citizens can reasonably be objected to. Given we are attempting to

find a political arrangement that passes the CP, QAR, and which does not make invidious comparisons between citizens, we shall pursue our argumentation in the same spirit.

An epistocracy would deprive a decision-making process of important epistemic stances, thereby rendering solutions to a problem merely 'partial'. Say for instance that a minority demographic group is systematically negatively affected by facial recognition technologies, as is the case for people of colour (Buolamwini, 2017; O'Neil, 2016). The group who is being discriminated against is in a privileged epistemic position, due to their experiential knowledge, to weigh in on the matter at hand (Carel & Kidd, 2017). Depriving a political decision on the implementation of such technologies as border control from this group's perspective would likely negatively affect this minority group. At the very least, it would be reasonable to hypothesise that said legislation may overlook such types of concerns. Estlund indeed argues that there are empirically latent and inscrutable features which travel with any demographic group. He adds that their empirical inscrutability does not disqualify them, quite the contrary.

He also advances that it is not disqualified to object to an epistocratic arrangement based on the claim that there *may* be epistemically prejudicial features and biases that track a certain type of education, namely epistocratic education. To the extent that epistocracies grant power to 'the knowledgeable' they select for a certain category of 'conjectural features' (Estlund, 2008, p.216). This is similar to the way Machine Learning Algorithms perpetuate injustices through the integration of proxy variables for race such as neighbourhood, income range etc. (Angwin et al., 2016; O'Neil, 2016). While we may be able to correct a Regional Citizens' Conference for class, gender, and perhaps ethnicity, we cannot guarantee that there is no overrepresentation of classist, racist, or sexist members in that group which skews potential political decisions' outcomes. Objections for a political arrangement of the sort

are not disqualified, Estlund maintains. He concludes that the instrumental epistocratic argument cannot pass the QAR and that epistocracies are unjust.

5.6.2 | Brennan's attempted refutation of the BRVDO

Brennan rejects the BRVDO first by affirming that it assumes that individual members of an electorate vote selfishly and favour their self-interest. This assumption leads Estlund to argue that the class of 'knowers' will thereby disregard the interests of minority groups and promote their own, furthering structural injustices. However, Brennan invokes empirical studies that disprove the self-interested voter hypothesis; these studies show that voters tend to vote socio-tropically (Brennan, 2017a; Brennan, 2017b). He asserts that "the empirical literature on voter behavior finds that voters measure well in terms of motivation, but badly in terms of cognition" (Brennan, 2017b, p.66). In writing this, Brennan concedes to Estlund that cognitive biases are characteristic of voting behaviour, and that objections to a political arrangement which invoke 'conjectural features' that track a (political) education are not necessarily disqualified. This could be sufficient grounds to object to epistocracy by suggesting that the epistemic value of having knowledgeable voters in charge can be offset by said biases, and that epistocracies will not necessarily produce more substantively just outcomes than democracies.

Brennan then argues that the BRVDO presupposes that the electorate knows how to promote their self-interests through the act of voting. He retorts that while they may know their interests, they do not know how to choose the policies which will promote these interests. This can be exemplified with the voting base of Marine Le Pen. She claims that she wants to strengthen the purchasing power of working classes. However, her proposed policy is to reduce the value-added tax (VAT) on disposable energies from 20% to 5,5%, and to exit the internal European energy market (Rassemblement National, 2022). This would undoubtedly lead to a rise in fuel and gas prices that offsets

the reduction of the VAT. This is particularly striking, especially given the geopolitical situation in Ukraine.

By making this distinction between interests and policies, Brennan aligns himself with Christiano's values-only voting proposition, a proposition which he had already debunked (Brennan, 2017b). Brennan writes that one cannot form reasonable beliefs about political justice without a solid corpus of knowledge in social sciences (Ibid). He adds that it is ambiguous how one can undertake the "[disentanglement of] normative and empirical considerations" (Brennan, 2017a, p.211). In attempting to refute the BRVDO by distinguishing between voters' ability to discern political aims from the means to achieve these aims, Brennan (2017b) contradicts himself. This weakens the forcefulness of his rebuttal. Additionally, his 'concession' that voters know how to discern their self-interest could be considered sufficient grounds to reasonably formulate a BRVDO. Indeed, if a voter knows to promote their interests, then they may well be able to reasonably object that there are conjectural features that track epistocratic education and which may negatively affect their interests and ultimately, the justness of a political process' outcome. Recall that we are conducting an instrumental evaluation here; the justness of the results brought about by a political system confers it legitimacy.

In sum, Brennan's rebuttal does not provide enough support to be decisively skeptical of the BRVDO. He claims that Estlund needs to empirically prove that epistocracies produce suboptimal results, as compared to democracies. This, however, does not say anything about democracies' instrumental superiority; they too can be charged with a BRVDO due to their arbitrary voting laws (Brennan, 2017b).

All that it suggests is that we must experiment with different instantiations of epistocracy to confirm whether they are likely to produce better outcomes. Some iterations of it may suffer from the BRVDO less than certain (deliberative) democratic political procedures, such as some of the Grand Débat National's.

6 | The upshot: Demistrocracy

In Foucauldian fashion, I attempted to widen our thinking as applied to political arrangements by appealing to a modern iteration of Plato's ideal system. My analysis reveals that on an instrumental level, epistocracies tend to fail the QAR. They likely cannot escape the BRVDO; they risk compounding structural injustices and power imbalances between the polity and the governing class. In doing so, it is unclear how they could contribute to rebalancing the governing powers too. However, my critical comparative analysis has also suggested that democracies cannot pass nor the CP, nor the QAR. As such, there are strong grounds to speculate that RICs are not a solution to rebalancing political powers in France; they would lead to strong violations of the CP and thereby, the QAR.

Ideally, we need to suggest research avenues for some political arrangement that can pass both principles and produce substantively just outcomes, outcomes which do not compound invidious comparisons between citizens. In order to do so, I will end by referring to López-Guerra's model of the Enfranchisement Lottery (EL). The rationale behind invoking López-Guerra stems from the lessons learned by the GDN, namely the partial-success of the Regional Citizens' Conferences. Recall that participating citizens were randomly selected in such a way that it would mirror the demographic characteristics of France and ensure that minority groups are systematically represented (Dobler, 2020). Granted, the completeness and accuracy of the list of considered characteristics is open to debate, but the principle holds.

6.1 | The Enfranchisement Lottery

The EL is inspired by Athenian democratic practice of sortition.[6] Two distinct processes constitute it (Flanders, 2015). First, the EL system would disenfranchise all voters such that not one has the right to vote. Instead, it suggests selecting a demographically

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[6] For more information, refer to Lopez-Rabatel, L., & Sintomer, Y. (2020). *Sortition and Democracy: History, Tools, Theories (Sortition and Public Policy)* (1st ed.). UK: Imprint Academic. You could also refer to Aristotle. (1970). *Constitution of Athens and Related Texts (Hafner Library of Classics)* (96th ed.). New York: Free Press. (Original work published 328 BC).

representative set of voters which López-Guerra coins as 'pre-voters' (López-Guerra, 2010; López-Guerra, 2014). Given that the EL puts every citizen at the same starting level, i.e., nobody has the right to vote, and given the EL ensures all citizens have equal opportunity to be selected, it honours the democratic and French Constitutional ideal of equality (Ibid.). By assuming that all citizens can be enfranchised, it avoids invidious comparisons between citizens. The EL "has relatively solid democratic credentials" (López-Guerra, 2010, p.213). Second, the system would require 'pre-voters' to partake in competence-building exercises. In doing so, the system avoids the BRVDO altogether; instead of selecting voters based on their available and supposedly superior knowledge, it offers the opportunity for citizens to build their knowledge, to earn the right to vote. It breeds knowledgeable voters (Ibid.). A system of the sort would also "guarantee the systematic presence of fairly small groups", groups whose points of view are often overlooked due to lack of a platform for expressing them (Ibid., p.213; Brennan, 2017a). His system can arguably be considered a deliberative epistocratic one.

On the surface, the EL seems to avoid the normative claims which we set above. Its epistocratic character allows it to circumvent the CP. The fact that it does not select pre-voters *because* of their base level of knowledge makes it seem like it could pass the QAR and bypass the BRVDO. However, it does not seem unreasonable or disqualified for one to object to an EL on the grounds that there may not be a way to neutrally dispense 'relevant' or factual information on a given issue to 'pre-voters'.

López-Guerra concedes that his system may suffer from perceived (il)legitimacy by the relevant electorate, and that this could negatively affect an EL's stability. He writes "if people *believe* that the political process has been manipulated or rigged to favor one of the alternatives, political instability becomes more likely" (López-Guerra, 2010, p.224). Indeed, the process of allocation of political power in an EL is, *prima facie,* less transparent than in democratic settings with universal suffrage. This could, in turn, offset the benefit of adopting such a system. Whether this line of objection is qualified or not depends on the grounds on which it is founded, but for argument's sake let us grant that López-Guerra's EL system does not pass the QAR.

He concludes that we would need to experiment with epistocracy in order to empirically assess whether it could produce better results than democracies with universal suffrage, and especially those with direct universal suffrage.

6.2 | Demistocracy: a deliberative-epistocratic council

Based on my critical assessment, I would like to suggest research avenues for a novel system, one which draws from France's semi-presidential *democratic* political arrangement and López-Guerra's *epistocratic* EL system. I coin it demistocracy.

It must avoid invidious comparisons between citizens so that it cannot be charged with the (BRV)DO. I should pass the CP and aim to pass the QAR. Given demistocracy would have deliberative elements, I contend that it should also fulfil Christiano's conditions, namely that (a) the process must guarantee equal respect, (b) embody citizens' willingness to advance justice and the common good in their society and (c) that it cannot make invidious comparisons between (potential) participants (Christiano, 2008). Ideally, this system would address some of the claims made by the Yellow Vests and mistakes made during the GDN.

I propose that, to avoid invidious comparisons with citizens and honour the ideal of equality, we maintain universal suffrage. By retaining this critical democratic element, the transition to demistocracy would be smoother; it would contribute to reducing perceived (il)legitimacy, fostering political stability, and making (BRV)DO types of rebuttals less forceful. Given both democracies and epistocracies can be charged with the BRVDO, I aim only to reduce the strength of a BRVDO line of argumentation, i.e., in practice, there is a sense in which excluding the mentally disabled or young children from the electorate is more morally permissible than excluding women or people of colour. However, an epistemic qualitative element must be included in my suggested system to ensure that the CP and thereby QAR, are not blatantly violated. This is where I invoke the EL.

In addition to enjoying the right to vote, all citizens would also benefit from the equal opportunity to participate in a deliberative – epistocratic council. This replaces the idea of 'pre-voters' put forward by López-Guerra. Similarly to the Regional Citizens' Conferences (RCC), citizens would be randomly selected in such a way that all minorities are systematically represented. I anticipate objections contending that this is particularly tricky in France given the prohibition of collecting and storing statistics that pertain to a person's ethnicity or race. Perhaps the government should review their policies on such statistics or rely on very telling proxy-variables (Angwin et al., 2016). The latter option being more realistic, I suggest that the government consults with unions and spokespeople of non-governmental organizations representing minority groups regularly, to ensure accurate representation and timeliness, similar to a 'feedback-loop' consultative mechanism. The objective would be to ensure that the proxy-variables they rely on track the demographic groups they aim to include, and that they do not perpetuate any existing structural injustices. This would contribute to restoring political power to groups who are systematically marginalized from political decision-making processes by guaranteeing their epistemic perspectives are properly and consistently represented. It would also ensure we fulfil Christiano's third condition (c).

Comparably to the RCCs, the council would need to be small enough so that every member has an opportunity to freely express themselves before small(er) workgroups – microcosms of the demographics of France – and then confront their opinions until the groups come up with a proposal that would not only be presented, but also debated in the council's plenary sessions. The small groups would attend audits of experts on relevant topics and legislation, similarly to the way MPs do so in specialised commissions. This, and the deliberative character of the council would ensure that the CP be respected. Additionally, any member could call in an expert for their work group to audit. In order to do so, they would need to provide good reason to their group that such an audit is relevant, based on their experiential knowledge. This could enable the council to broaden the considerations that are deemed 'relevant' for

an issue, all the while ensuring that the proposals they make are appropriate – i.e., constitutional, in the right format etc. Such a proposition would ensure we respect the ideals of equal respect and willingness to advance justice and the common good in society, Christiano's conditions (a) and (b). This deliberative form of knowledge-building has the advantage of being less objectionable than competence-building processes that set a clear epistemic standard which tracks conjectural features that may travel with epistocratic education (López-Guerra, 2014; Estlund, 2008, p.216).

The proposals that make it past plenary would then be submitted back to the Assemblée Nationale for consideration in debates. One of the key issues with the RCCs was the non-bindingness of its output. However, by ensuring that a demographically representative group of citizens can directly submit law proposals for debate, some direct political power is restored to the population. There is more opportunity for citizens to challenge law proposals that stem from an excessive closeness between the executive and legislative powers.

Regarding who sets the agenda, and how precise the questions that need treatment should be, let me clarify that given we retain universal suffrage, an elected government may set its political agenda. This does not mean that members of the council could not suggest that the government investigate other related issues. What matters is that such a council can ensure more nuanced understandings by, and spark debates, in parliament so that the outcome of political processes are more just – i.e., do not make invidious comparisons between citizens, are informed, effective – and so that political powers are more balanced overall.

Another important role that such an epistocratic council necessitates is 'veto' power: they should be able to veto 49-3 laws and force them to be submitted to debate. The same should apply to direct referendums' outcomes, and to politicians who have abused their power. This is especially pertinent when campaigns surrounding such referendums are corrupted by misinformation and populist rhetoric. The specificities of how and when a 'veto' could occur are open to research and interpretation.

Demistocracy would ensure that there are counter-powers to blatant violations of the CP. Furthermore, this is in line with several of the Yellow Vests' claims. However, rather than having these claims apply to a direct democratic procedure that likely violates the CP, they apply to an epistocratic deliberative procedure.

Regarding more practical issues, citizens could only serve a single term of two to three years – the exact length should be determined by specialists in political science. This could reduce abuses of power and ensure that no citizen is working for personal interests, i.e., to guarantee their own re-election. Hopefully this can contribute to dampening corruptive practices. In fact, this requirement could be transposed to MPs. Members of the council would need to be properly compensated in order to be incentivised to participate. I invite research into how this can be achieved so that all groups can be systematically included and so that participation is remunerated fairly *qua* equitably.

Overall, this system cannot guarantee that good policies or politicians govern France, but it can ensure that politicians who abuse their power do not, and that policies that make invidious comparisons between citizens do not come to fruition. The system has the potential to restore some political power directly to citizens. Furthermore, by being allowed to suggest laws, to censor politicians and to ensure law proposals of the 49-3 sort are submitted to debate, the council has the potential to disentangle the executive and legislative powers, ultimately rebalancing the governing powers too. Setting up a council of the sort can modernise 'democracy' in France, all the while respecting the spirit of France's most stable Constitution to date, and the semi-presidential system which we currently have in place.

Finally, this system has the potential to ameliorate the current decision-making processes in France by motivating the electorate and elected officials to better inform themselves and consult citizens more systematically. Brennan writes: "gridlock can increase the competence of political decision making" (Brennan, 2017a, p.217). Given that government or MPs' proposed policies risk having their suggestions overturned by such a council, I hypothesize that they may put more effort into formulating them. The

same goes for citizens when they exercise direct democratic power. Over time, this system may contribute to fostering a culture of informing oneself better and can contribute to reducing violations of the CP: it offers both back-end and front-end solutions (Ibid.).

By no means do I claim that this system is perfect, that my suggestions are complete, or that it can systematically procedurally pass the QAR.[7] However, I believe there are strong grounds to believe that it is likely to produce more substantively just outcomes than the system we currently have in place. I also believe is has solid procedural credentials. More research in related fields in social sciences needs to be conducted to hash out the details of 'demistocracy'. Finally, one would need to experiment with this system on a small scale to assess whether it can be considered a substantive democratic innovation for France.

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[7] Granted, given I retain universal suffrage as we know it, demistocracy may never entirely pass the 'procedural' QAR: voting laws impose invidious comparisons between citizens.

7 | Concluding Remarks

To conclude, I provide an overview of my argumentation, and I address some potential concerns with my proposal.

First, I took a Foucauldian genealogical approach to provide background information into the functioning of the contemporary French political arrangement. I shone light on the power imbalances which underpin said arrangement and contended that these power asymmetries are two-fold. First, the legislative and executive power are highly concentrated. Second, this closeness between governing powers appears to diminish the political power of the electorate, particularly in crises. Regardless of whether a separation of powers protects liberty, multiple claims within the French electorate echo this contention (Montesquieu, 1899). These claims to redistribution of political power stem primarily from political groups and citizens who feel wronged by the establishment. They request fundamental changes in France's political arrangement and jeopardise the stability of the current political system.

I suggested that the aforementioned power dynamics need rebalancing to ensure political stability and ethical governance. I proceeded to introduce the idea of epistocracy and anchor it in the French political context. I then specified my ethical stance, a rule-based instrumentalist approach which takes epistemic representativity and quality as its main normative principles.

I continued with the elaboration of the case which motivated my project, the Yellow Vests protesters' claim for RICs. Following an empirical ethics methodology based in Christiano's framework for deliberative democracy, I evaluated the government's attempt at resolving the conflict, i.e., the GDN. I concluded that none of the modalities of the GDN were deliberative. Rather, they can be considered participative or consultative. This analysis shone light on the obstacles that need remedying for genuine democratic innovation and rebalancing of governing and political powers. Those pertain to epistemic representativity and quality, and to the tangibility *qua* bindingness of hypothetical innovative procedures.

Finally, I broadened the field of conceptual possibilities for ethical governance by objecting to Estlund's democratic authority argument through the invocation of Brennan's

epistocratic argument. I concluded that neither philosopher propose systems which pass the QAR. Democracy, by virtue of granting universal suffrage violates the CP, and thereby the QAR. Similarly, Brennan's instrumentalist argument cannot escape the BRVDO, and thereby the QAR.

I sketched arguments in favour of a hybrid-system which I coined demistocracy. I do not make the strong claim that it should be implemented, instead I invite (inter-disciplinary) research on the modalities of implementing this promising system. I suggest that if additional research supports demistocracy's moral superiority, then it would be permissible to implement it. Following the Foucauldian rationale of broadening épistèmes and given the government is still experimenting with democratic innovation, it is appropriate to suggest research avenues, especially if they challenge the normative assumptions that are often taken for granted in liberal-democratic states like France (Brennan, 2016; Rey-Lefebvre et al., 2022). In fact, in early June, Macron announced the creation of a National Council of Refoundation, which should be launched after the legislative elections (Ibid.).

In the course of my argumentation I anticipated several objections, but there are points I would still like to address before parting with my reader. First, my research is inspired by timely issues in French politics. My taking the normative requirements of epistemic quality and representation stems from empirical observations – i.e., the prevalence of populism in French politics and the fundamental values of its Constitution. This is due to my positionality; I stand at the juncture between the critical and specialist intellectual. These could be objected to, but I believe that doing so is not philosophically charitable.

Second, Brennan has previously pointed out that there is empirical research in political psychology and on the effects of deliberation that suggests deliberative practices do not produce better voters (Brennan, 2014; Mendelberg, 2002). This is one of his objections against López-Guerra's EL. I retort that in the case of demistocracy, the role of the epistocratic council's members is not to vote, but to study specific issues and submit them for further debate – i.e., a 49-3 proposal. The fact that the government sets the agenda and that this is a starting point for discussion restricts the range of issues which council members can consider. A narrower scope can enable members to delve deeper in analyses and prevents them from

formulating too many suggestions for the consideration of relevant governing bodies. In a recent interview, Macron noted that this was one key methodological issue during the Citizens Convention on the Climate (Macron, 2022b). This seems contradictory to my argument given epistemic representativity is one of my normative requirements. However, the primary goal is to enable citizens to express themselves on issues under legislative consideration, and to raise concerns that would otherwise be overlooked. Additionally, the government's agenda is only a starting point, there is room to expand if the council's work groups see related issues that have been ignored and deems their consideration necessary. I leave it open how exactly this should be arranged; I only claim that too narrow an agenda may violate the requirement for epistemic representation, but an agenda that is too wide may compromise the epistemic value of said council and of its proposals.

Finally, one may be tempted to claim that the QAR is too demanding to ever be met. I agree with the statement that it is a strong requirement, but I contend that it should not be conceived of as a categorical one, contrary to Lopez-Guerra's line of argument (López-Guerra, 2014). Instead, we should consciously strive to pass it. As a reminder, I am operating in a rule-based instrumentalist framework. As such, sometimes the outcomes produced by a violation of the QAR may compensate for said violation. Should one object that conceiving of QAR violations on a spectrum is flimsy or a conceptual contradiction, I reiterate that we are operating in a non-ideal context; expecting no contradictions would be wishful thinking. Additionally, it is not necessarily epistemically desirable for a society not to disagree.

Furthermore, should one interject that my framework would then collapse into a purely consequentialist one, I retort that we should adopt the Foucauldian specialist intellectual approach and involve (experiential) experts to decide whether the unforeseen and prejudicial consequences brought about by the respect of a value, outweigh the upholding of said value. Simply applying either a proceduralist or instrumentalist argument cannot capture the complexities and contradictions which characterise political life. This is precisely what demistocracy attempts to facilitate.

8 | Reference List

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