

Epistocracy and the Problem of Political Capture

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Abstract. Concerned about the harmful effects of pervasive political ignorance, epistocrats argue that we should amplify the political power of politically knowledgeable citizens. But their proposals have been widely criticized on the grounds that they are susceptible to manipulation and abuse. Instead of empowering the knowledgeable, incumbents who control epistocratic institutions are likely to selectively empower their supporters, thereby increasing their share of power. Call this the *problem of political capture*. In this paper I argue for two claims. First, I claim that the problem of political capture for epistocracy has been overstated. Incumbents who want to increase their share of power will encounter certain obstacles that complicate the task of capturing the system. Second, however, I claim that if the problem is nevertheless sufficiently serious, it militates against not just epistocracy, but also many other institutions. The problem of political capture is thus far wider than typically recognized.

Keywords: epistocracy; political ignorance; political capture; abuse of power; qualification exams

Introduction

Driven by concern about the potential harms of widespread political ignorance, several political philosophers have recently defended *epistocracy*, a political arrangement where more political power is allocated to those who possess more knowledge of politically relevant facts (López-Guerra, 2014; Brennan, 2016; Jeffrey, 2018; Mulligan, 2018; Gibbons, 2021; Hédoin, 2021; Hédoin, 2023). Although there are different forms of epistocracy, common to each is the assumption that we can avoid or mitigate some of the negative consequences of pervasive political ignorance by amplifying the political power of more knowledgeable citizens.¹ Most defenses of epistocracy are thus *instrumental*, with epistocracy being justified, if at all, because it would produce better outcomes than alternative political arrangements (Kogelmann and Carroll, 2024).²

The supposed instrumental benefits of epistocracy have been widely challenged. Some critics have argued that selectively empowering more knowledgeable citizens would produce *worse* outcomes than we currently experience, because such citizens, despite being more knowledgeable than others, are also more prone to various harmful epistemic vices.³ More generally, many philosophers have urged that democracy has important epistemic advantages over epistocracy, even if political ignorance is widespread in modern democracies.⁴ And some philosophers and political scientists have even argued that it is not possible to properly implement epistocratic proposals whatsoever (Reiss, 2019; Ingham and Wiens, 2021; Kogelmann, 2023a).

Perhaps the most frequent criticism of epistocratic proposals, though, is that they are susceptible to manipulation and abuse (Bagg, 2018; Soon, 2018; Klockslem, 2019; McGoey, 2019;

¹ Throughout this paper, “more knowledgeable citizens” should be taken to refer elliptically to citizens who possess more knowledge of politically relevant facts.

² For a notable exception, see Brennan (2011). In this paper I set aside non-instrumental arguments, whether for or against epistocracy.

³ Friedman (2006), Gunn (2019), and Hannon (2022) argue along these lines, though see Gibbons (2022a) for a response.

⁴ For relevant discussion, see Landemore (2013), Schwartzberg (2015), Goodin and Spiekermann (2018), Bhatia (2020), Siscoe (2023), van Bouwel (2023), and Lucky (forthcoming). But see Ancell (2017) for a more critical take on much of this literature.

Vandamme, 2019; Gibbons, 2022b; Somin, 2022; Gibbons, 2023; Benson, 2024). In principle, the political power of more knowledgeable citizens will be amplified under epistocracy. But in practice, those responsible for crafting the epistocratic institutions which allocate political power are likely to abuse their position, easily exploiting their role to amplify their own power rather than empowering the knowledgeable. And with the relevant institutions captured by self-interested actors, the potential instrumental benefits of epistocracy are much less likely to materialize. This is the *problem of political capture*.⁵

In this paper I argue that this account of the problem of political capture for epistocracy is incomplete. Pushing back against the prevailing view, I argue that the problem is not as severe as critics maintain. Incumbents who control epistocratic institutions will encounter obstacles which complicate the process of capturing these institutions, and these obstacles somewhat mitigate the severity of the problem of political capture. Importantly, though, the problem cannot be eliminated entirely, and the harm it threatens remains. However, I suggest that if the problem of political capture is indeed a problem, it is not just a problem for epistocrats. In fact, the problem of political capture is wider than commonly recognized.

In Section 1 I outline the problem of political capture, explaining the particular way in which it arises for epistocratic institutions. In short, incumbents who control the content of the qualification exams required to determine to whom political power is to be allocated can instead choose to tailor the examinations to selectively empower their supporters, thereby increasing their share of power. In Section 2 I discuss some reasons to think that the severity of the problem has been overstated by critics of epistocracy. First, opponents may sometimes be able to mount successful legal challenges to incumbents, resulting in the qualification exams created by incumbents being declared unlawful. Second, even if unable to mount successful legal challenges, opponents may be able to adapt to the

⁵ Cf. Kogelmann (2021: 69-70).

strategies of incumbents, convincing their supporters to acquire the information necessary to pass the relevant qualification exams, thereby impeding the attempted capture. I conclude, though, by conceding that political capture is nonetheless a serious problem for epistocracy. Section 3 discusses some implications of this fact. Most notably, I argue that if political capture militates against epistocratic institutions then, all else being equal, it militates against other institutions too—including some institutions that are much more widely supported than epistocratic institutions. Section 4 concludes.

1. The Problem of Political Capture

The implementation of any novel political institution carries the risk that the outcomes it produces diverge significantly from what those who support it intend. Naturally, intervention into a complex political system can cause unintended negative consequences even in the absence of deliberate wrongdoing. For example, critics of increasing the minimum wage fear that an increased minimum wage can have disemployment effects, even if this is not what supporters of such increases intend.⁶ But another perhaps more worrying possibility is that political institutions can be *captured* by agents who wish to use these institutions to further their own ends, often at the expense of others. For instance, sometimes interest groups can capture the regulatory process, using it to further their (typically pecuniary) interests at the expense of the public good (Stigler, 1971; Posner, 1974; Carpenter and Moss, 2014; Lindsey and Teles, 2017; Holcombe, 2018). In such cases, the divergence between the outcomes intended by supporters of regulation and the eventual outcomes produced results not from unintended consequences—or not *only* from unintended consequences—but from the malfeasance of actors who deliberately exploit their position.

⁶ See Neumark and Wascher (2008: Ch. 3) for an overview and discussion of the effects of minimum wages on employment.

Concerns about capture of this kind are quite common. For example, in his work on the merits of secrecy in government, Brian Kogelmann writes that “[one] perennial concern with politics is the possibility of self-interested actors capturing the political system and using it for their own private gain” (Kogelmann, 2021: 69). For another, Alex Guerrero defends the use of lotteries to select public officials at least in part on the grounds that doing so would help to prevent capture, worrying that elected officials often use their power “to advance the interests of the powerful, rather than to create policy that is responsive or good” (Guerrero, 2014: 142).

It is perhaps unsurprising, then, that such concerns have frequently been raised about epistocracy. If anything, that epistocracy is vulnerable to capture is taken to be somewhat obvious. As Ilya Somin puts it:

It is difficult to believe that real-world governments can be trusted to objectively identify the more knowledgeable segments of the electorate and exclude the rest. For obvious reasons, they will be tempted to bias the system in favor of the supporters of their party or ideology (Somin, 2023: 292).

Or consider Justin Klocksiam, who writes that:

It’s not merely that the potential for abuse exists in epistocratic systems, but that there is a high degree of certainty that if such a system were to be adopted...it would be used specifically to prevent members of ethnic minority groups and other vulnerable people from voting (Klocksiam, 2019: 24).

Proponents of epistocracy intend for political power to be (re)allocated in such a way that the political power of more knowledgeable citizens is amplified, thereby mitigating the harmful effects of widespread political ignorance. But if critics such as Klocksiem, Somin, and many others are correct, then epistocratic institutions will instead be abused, with self-interested actors exploiting them to further their own ends.

These are serious concerns, so it is worth investigating them more closely. In what ways could epistocratic institutions be captured? To answer this, it will be helpful to first examine how epistocratic institutions function. Although there are many different proposed forms of epistocracy, virtually all of them require some mechanism to separate those who possess the desired knowledge—typically knowledge of facts deemed politically relevant—from those who do not possess such knowledge.⁷ In contemporary epistocratic proposals, this mechanism usually comes in the form of a qualification exam, though one could in principle rely upon suitable proxies (such as educational attainment) to identify the relevant people.⁸ In a simple form of epistocracy such as *restricted suffrage*, for instance, failure to pass mandatory voter qualification exams would result in disenfranchisement (Brennan, 2016: 211-4). Or consider membership of an *epistocratic council* tasked with vetoing incompetently written legislation, which would only be granted by passing a different kind of qualification exam (Ibid, 215-8). And so on for other forms of epistocracy such as plural voting, the enfranchisement lottery, what Brennan calls *Government by Simulated Oracle* (or *enlightened preference voting*), and so on.⁹

The examinations required may vary substantially, depending on the form of epistocracy in question. A minimally demanding examination restricted to “basic facts and fundamental, largely

⁷ One exception is *values-only voting*, a political arrangement where “[citizens] are charged with the task of defining the *aims* the society is to pursue while legislators are charged with the task of implementing and devising the *means* to those aims through the making of legislation” (Christiano, 2008: 104). However, values-only voting is arguably a form of democracy, so I set it aside in what follows (cf. Brennan (2016: 209)).

⁸ See Jones (2020) for discussion of some proposals involving educational proxies.

⁹ For a defense of plural voting, see Mulligan (2018). López-Guerra (2014) defends the enfranchisement lottery. And for more on Government by Simulated Oracle, see Brennan (2016: 220-2; 2021), though see also Ahlstrom-Vij (2022), who calls this approach *modelled democracy*.

uncontested social scientific claims” is, for various reasons, more appropriate for restricted suffrage (Brennan, 2016: 212). But a much more demanding examination requiring knowledge of many complex fields (such as economics, political science, and so on) is more appropriate for an epistocratic council with the power to veto legislation. In what follows these differences can be set aside. The important point for our purposes is that it is these examinations which are held to be vulnerable to capture and subsequent abuse. Articulating the worry that epistocracy is susceptible to abuse, Somin notes that:

The government would have to come up with a test of political knowledge, determine what items should be on it and how much weight each should have, and also determine what level of knowledge counts as being “fully informed”...Each of these steps could easily be abused by a government intent on maximizing the leverage of its supporters and minimizing that of opponents (Somin, 2022: 33).

By tailoring the content of qualification exams in certain ways, for instance, those who design the examinations may be able to selectively empower members of groups who tend to support them, rather than selectively empowering those who possess a greater amount of political knowledge regardless of whether they are supporters or not.¹⁰ Or, as Klockslem suggests, the examinations could be designed in such a way that certain groups are discriminated against. But the general idea is that the process of implementing and devising the qualification examinations central to epistocracy is susceptible to capture and abuse.

¹⁰ There may be cases where it is possible both to buttress one’s power by capturing the process of creating epistocratic qualification exams *and* at the same time to selectively empower more knowledgeable citizens. But in what follows, I am concerned with cases where these two aims preclude one another.

Call this form of capture *selection capture*, so called because the mechanisms used to select those citizens possessing the appropriate amount of political knowledge are the ultimate site of capture. Selection capture seems to be what most critics of epistocracy have had in mind when criticizing epistocracy on the grounds that it is susceptible to capture (Bagg, 2018: 8; Soon, 2018: 4; Klockslem, 2019: 24; Somin, 2022: 33; Gibbons, 2023: 18; Somin, 2023: 292; Benson, 2024: 200-2). However, before proceeding, it's worth outlining another form of capture which epistocracy would arguably be in a *better* position to mitigate than alternatives such as electoral democracy—were it not for the problems presented by selection capture.

Interest group capture, as the name suggests, involves interest groups influencing or pressuring legislators to respond to their preferences, even when doing so is at the expense of the general public. Oversimplifying somewhat, interest groups tend to be significantly better-informed than ordinary citizens about the specific legislative issues of concern to them. Acquiring political information is costly, requiring a serious investment of time and effort, while offering few corresponding benefits for the typical citizen. For such citizens, then, political ignorance is rational.¹¹ Interest groups, though, are incentivized to acquire this otherwise costly process of acquiring information. And since they possess such information, they are “better able to monitor the quality of their political representation”, furnishing legislators with incentives to cater to their interests (Lohmann, 1998: 812).¹² By such means, interest groups can, in principle, capture the legislative process.

Importantly, one might think that there is a sense in which epistocracy could more effectively prevent interest group capture than other political arrangements such as electoral democracy. One of the reasons interest group capture arises is because well-informed members of interest groups can monitor and sanction representatives who fail to cater to their preferences. Contrast this favorable

¹¹ On the rationality of political ignorance, see Downs (1957) and Somin (2021).

¹² See Kogelmann (2023b: 74-5) for related discussion.

position with that of the electorate, members of which are generally ill-informed and thus unable to hold political representatives meaningfully accountable (Guerrero, 2014). However, under certain forms of epistocracy, the electorate is more well-informed by design, and so it is arguably in a better position than a corresponding democratic electorate to monitor the behavior of representatives.¹³ In short, the asymmetry in the ability of interest groups and regular citizens to monitor the behavior of representatives is reduced under epistocracy, and this reduction makes it more difficult for interest groups to capture the legislative process.

Here, though, epistocracy encounters an important problem. Whatever ability epistocracy possesses to reduce the threat posed by interest group capture lies in its ability to selectively empower politically well-informed individuals who are reliably able to monitor the behavior of representatives and sanction them if they are judged to be too beholden to the preferences of interest groups. But as we have already seen, if selection capture occurs, incumbents may instead choose to empower whoever they think best supports their chances of maintaining or buttressing their power rather than empowering politically well-informed citizens. Consequently, selection capture undermines the ability of epistocracy to mitigate interest group capture. When selection capture occurs, there is no guarantee that politically well-informed citizens will see their power amplified, and thus no guarantee that the behavior of representatives will be more closely monitored.

Ultimately, whether epistocracy would be well-positioned to prevent interest group capture is a complicated question that cannot be settled here. Perhaps, though well-informed, the citizens empowered under epistocracy would still be *insufficiently* well-informed to properly monitor the behavior of their representatives. Perhaps well-informed citizens simply wouldn't care about many

¹³ Won't politically well-informed citizens have influence under democracy as well as epistocracy? Yes, but this influence is diluted to a large degree by the presence of other citizens who are not politically well-informed. Accordingly, even if well-informed citizens are willing to sanction representatives for responding preferentially to interest groups, they may be unable to when outnumbered by other citizens who may not even know about the relevant instances of interest group capture.

cases of interest group capture. The point I would like to stress here is this: even if it were true that epistocracy could *in principle* reduce the extent to which interest group capture occurs, selection capture means that, *in practice*, this potential advantage of epistocracy is thoroughly undermined.

In a sense, then, selection capture is a fundamental problem for epistocrats, a problem that needs to be addressed before epistocracy is even in a position to realize its purported instrumental benefits. Indeed, it is a problem that needs to be addressed before other problems facing epistocracy can be addressed. For example, the problem of unintentionally empowering politically irrational citizens could be addressed by refining the relevant qualification exams to avoid this outcome.¹⁴ For another, if standard epistocratic proposals neglect certain valuable standpoints (as some recent critics maintain), this could again be addressed by suitably amending the relevant qualification exams.¹⁵ But such responses to these problems presuppose that those with the ability to refine the examinations are interested in solving whatever problems need to be solved rather than abusing their position. Addressing the problem of political capture is therefore of paramount importance for proponents of epistocracy.

2. Mitigating the Problem of Political Capture

The language used by critics of epistocracy conveys the impression that capture of epistocratic institutions is all but inevitable, and that incumbents with the power to shape the content of epistocratic qualification exams will easily be able to do so in ways that increase their power. However, in this section I show that we have good reason to believe that capture isn't as straightforward a process as critics have claimed, that there are in fact notable obstacles that any incumbent who intends to capture epistocratic qualification exams will face. First is the possibility that attempted capture will

¹⁴ See Gibbons (2022a: 266-70) for further discussion.

¹⁵ See Lenczewska (2021) and Keeling (forthcoming) for such criticisms.

be subject to legal challenges of some kind, thereby increasing the likelihood that qualification exams crafted by incumbents with the intent to increase their power will be declared unlawful. Second is the possibility that opposing parties will be able to effectively adapt to attempted capture by incumbents, mobilizing their supporters to acquire a sufficient level of political information and thereby thwarting the efforts of incumbents to disenfranchise them. Both obstacles together make it more difficult for incumbents to reliably capture epistocratic institutions.

In what follows, I make three assumptions. First, I assume that the relevant parties act in their self-interest, aiming to increase or preserve their power. Second, I assume that one party or group has unilateral control over the process of creating the content of qualification exams. So, while qualification exams can be subject to legal challenge once made, the initial act of creating such examinations is entirely the responsibility of one party or group. Third, I assume that there is no willingness among rival parties to cooperate.¹⁶

In a sense, each assumption makes attempts to capture epistocratic institutions more likely to occur. Parties will be motivated to increase or preserve their power and, through their control over the content of qualification exams, they will have the opportunity and means to do so. And the second assumption in particular ensures that incumbents will face fewer obstacles than they would otherwise. Given unilateral control, there is no need to secure the agreement of perhaps unwilling opponents during the process of devising the examinations. However, as we'll see, there is also a sense in which the first and third assumptions make capture *more* difficult, for they ensure that incumbents will be faced by opposing parties with a strong interest in resisting attempted capture.¹⁷

¹⁶ Usually, the second and third assumptions would be jointly satisfied. Parties with unilateral control would typically not cooperate with rivals, while shared control over the content of qualification exams seems to suggest a degree of cooperation. Strictly speaking, though, neither assumption entails the other. Unilateral control does not entail non-cooperation since parties without control may acquiesce to the attempted capture of controlling parties for various reasons. And non-cooperation does not entail unilateral control since there could be multiple parties responsible for creating the qualification exams who nevertheless engage in rivalrous activity. Accordingly, I distinguish both assumptions.

¹⁷ One might complain that these assumptions make it easier to mount a case against the claim that epistocracy is susceptible to capture. But note that dropping these assumptions has the same effect: if we drop the first assumption,

2.1. *Legal Challenges to Attempted Capture*

When thinking about the possibility that incumbents will attempt to use their control over the content of epistocratic qualification exams to increase their power, one must not overlook the likely responses of other parties who will not support—or even outright oppose—the actions of incumbents. Incumbents plausibly have an advantage over their opponents because they, by assumption, unilaterally control the content of qualification exams. Nevertheless, opponents will very often not be powerless, and they can draw upon available resources to challenge incumbents.

These resources may include existing institutions through which opponents can mount *legal challenges* to the activities of incumbents. Suppose a single party in control of a local government attempts to implement epistocratic qualification exams of some kind and is reasonably suspected of tailoring the content of these exams in ways that will, in expectation, increase their share of power. But suppose further that opponents appeal to an independent judiciary, and that members of this judiciary ultimately decide that the qualification exams are unconstitutional (or otherwise unlawful). In effect, the judiciary, prompted by the complaints of opponents, will have blocked the efforts of incumbents to tailor the examinations to their advantage.¹⁸

Why think that epistocratic qualification examinations could be found unconstitutional? Consider an analogy with *gerrymandering*, the practice of setting the boundaries of electoral districts in such a way that a certain group (or groups) gains an electoral advantage. Historically speaking, this practice has been successfully legally challenged on occasion. Eliding much detail, the important point for our purposes is that, in the United States at least, gerrymandering has sometimes been found

parties in control of qualification exams lack the self-interested desire to increase or preserve their power; and if we drop the third assumption, opposing parties will no longer be unwilling to cooperate. On balance, then, I think it is more reasonable to include the relevant assumptions.

¹⁸ As an additional consequence, rational incumbents who anticipate such legal challenges may be less inclined to attempt capture to begin with—or at least be inclined to devise subtler ways to tailor the qualification exams in their favor that are less likely to be successfully legally challenged. More on this below in Section 2.3.

unconstitutional (specifically, violating the equal protection clause of the Fourteenth Amendment). Notably, many of these legal challenges were motivated by concerns that the gerrymandering in question was inappropriately driven by an urge to increase the power of certain racial groups.¹⁹

In much the same way, efforts by incumbents to tailor qualification exams in their favor may be challenged on the grounds that they are unconstitutional, especially if (as suggested by Klockslem above) these exams are tailored specifically to prevent certain racial groups from voting. More generally, incumbents must attempt to implement epistocratic qualification exams within a pre-existing background legal framework, the dictates of which may impede their goals. This, in effect, places constraints on incumbents, rendering the process of attempting capture much less straightforward than critics of epistocracy claim.

2.2. *Opponent Adaptation*

Even setting aside the prospect of legal challenges, and even if incumbents have unilateral control over the content of qualification exams, ensuring that they increase their share of power is not a simple matter. A preliminary obstacle overlooked thus far is the possibility that incumbents cannot reliably identify content that is disproportionately known by their supporters but not by supporters of opposing groups, or that incumbents cannot reliably identify a threshold of knowledge past which disproportionately many of their supporters lie, and so on. One might think for various reasons that empirical evidence about the sort of facts likely to be known by different demographic groups is undependable. Perhaps the sample sizes involved in the relevant empirical literature are insufficiently large, or perhaps the findings are not consistently replicable. If so, control over the content of qualification exams does not provide a reliable way for incumbents to increase their power.

¹⁹ Relevant cases include *Miller v. Johnson* (1954), *Shaw v. Reno* (1993), and *Bush v. Vera* (1996).

However, the empirical literature on levels of political information among voters is immense, and it is highly plausible that findings which suggest that certain demographic groups possess more political information (or more information of a certain kind) are reliable.²⁰ And since this information is readily available to incumbents, they can accordingly use it to tailor examinations in ways beneficial to them. Tailoring the examinations may be a non-trivial process requiring much time and effort, but it is certainly something which determined incumbents could undertake.

But incumbents are not the only ones for whom the relevant information is readily available. Opponents, too, can access such information. And herein lies another obstacle confronting incumbents. Members of opposing parties can learn what sort of information is disproportionately possessed by supporters of incumbents but not by their own supporters. If they can learn about such information, they can anticipate the sort of questions that are likely to be included in an epistocratic qualification exam. And if they can do this, they can attempt to mobilize their own supporters, urging them or otherwise incentivizing them to acquire the relevant information.²¹ In short, opponents can *adapt* to the strategies of incumbents, thereby preventing them from gaining an electoral advantage.

One might think that the result of this back-and-forth process involving attempted capture by incumbents and adaptive mobilization by opponents would result in many supporters on all sides possessing more politically relevant information. And if so, one might even view this as a welcome outcome from the perspective of epistocrats. After all, proponents of epistocracy view political ignorance as a source of much harm; if public political ignorance is lessened as a result of these dynamics, then so much the better. However, one could reject the idea that this process would lead to an improved epistemic standing on the part of the electorate while still thinking that opponent

²⁰ For some overviews of the relevant empirical literature, see Caplan (2007), Somin (2013), Brennan (2016), and Rutar (2022).

²¹ How might opponents incentivize their supporters to acquire the relevant information? One simple strategy could be to pay them to do so (Lupia, 2016: 174-7) and Somin (2023: 299-300). Thanks to an anonymous referee for their helpful discussion on this point.

adaptation constitutes a serious obstacle to the efforts of incumbents to capture the system.²² And this, of course, is what is important for the purposes of ascertaining the difficulty of capturing the system.

2.3. *Limitations to Legal Challenges and Opponent Adaptation*

The prospect of facing legal challenges and the ability of opponents to adapt in response to attempted capture together constrain the ability of incumbents to increase their share of power by tailoring epistocratic qualification exams. Contrary to previous presentations of the problem of political capture, then, the process of capturing epistocratic institutions is neither simple nor straightforward.

With that said, it is also important to note that there are serious limitations to legal challenges and opponent adaptation as obstacles to capture. Let's begin with the former. Naturally, the most obvious limitation to legal challenges is that they can fail. Opponents may be able to mount a case, but the court may ultimately side with the incumbents. Alternatively, courts may decide that questions regarding the propriety of epistocratic qualification exams are nonjusticiable (that is, outside the scope of their authority).²³ In either case, legal challenges to incumbents will not prevent them from capturing the system. Lastly, even if legal challenges are successful, incumbents are likely to switch to strategies involving more subtle ways to tailor the content of qualification exams in response. In the same way that opponents can adapt to incumbents attempting to capture the system, incumbents can themselves adapt in turn to reduce the likelihood that their examinations are ruled unlawful.

At first glance, then, opponent adaptation poses the more formidable challenge to incumbents. Rather than needing to rely upon legal institutions that could side with incumbents, opponents need

²² Bagg, for instance, is skeptical of the claim that mobilizing supporters to pass qualification exams would “yield substantial benefits in voter quality” (Bagg, 2018: 898). I set this issue aside in this paper.

²³ Indeed, the United States Supreme Court has decided in recent years that questions related to partisan gerrymandering are nonjusticiable. Perhaps cases related to epistocratic qualification exams would receive similar treatment. For some relevant cases, see *Lamone v. Benisek* (2019) and *Rucho v. Common Cause* (2019).

only to, first, anticipate in advance the sort of questions likely to be included by incumbents in the relevant qualification exams, and second, mobilize their supporters to acquire the information necessary to answer such questions. But even here there are limitations to what opponents can realistically achieve. Most prominently, opponents face a serious disadvantage in relation to incumbents: while the latter can tailor qualification exams to select for citizens who are *already* likely to possess information of some kind, the former must somehow persuade their voters to acquire the relevant information (assuming they do not already possess it). But given the steep costs of acquiring political information, this is no trivial task. Ultimately, as Jason Brennan puts it in his discussion of the enfranchisement lottery, “breeding competent voters is significantly harder and more likely to fail than *selecting* for them” (Brennan, 2016: 215). If so, the ability of opponents to adapt to incumbents is compromised.²⁴

Overall, then, the problem of political capture is somewhat mitigated by the ability of opponents to mount legal challenges to incumbents or adapt to the attempted capture by appropriately mobilizing their supporters (or both). But both strategies are seriously hamstrung by important limitations. Thus, while the problem of political capture is not as severe as critics have suggested, it is still a serious problem.

3. Generalizing the Problem of Political Capture

3.1. The Ubiquity of Political Capture

The problem of political capture for epistocracy arises because epistocratic institutions give self-interested actors the opportunity to increase their power. And although it is plausibly not as severe a

²⁴ Two additional problems are worth mentioning. First, as noted by Samuel Bagg, the financial cost of trying to train supporters to pass the qualification exams could increase the extent to which opponents are dependent upon wealthy interest groups (Bagg, 2018: 898). Naturally, this paves the way for capture by other means. Second, any adaptation strategy adopted by opponents could in turn be adopted by incumbents, potentially nullifying any gains opponents could hope to make. Both problems further weaken the ability of opponents to effectively adapt to incumbents.

problem as critics of epistocracy have suggested, the prospect of capture remains a threat worth taking seriously.

One might think that any level of risk of capture whatsoever militates against epistocracy. If so, the problem of political capture counts decisively against epistocracy. But this way of viewing the danger posed by capture has some deeply uncomfortable implications, for all manner of institutions are at risk from capture. Importantly, this includes some institutions that are much more widely supported than epistocratic institutions.²⁵ Let us consider just three examples—speech restrictions, immigration restrictions, and redistributive taxation—while bearing in mind that the problem is far broader than presented here.

Speech restrictions are defended on a number of grounds. Some of these restrictions are relatively uncontroversial, such as prohibition against threats, blackmail, and the like.²⁶ Some, such as restrictions against hate speech, are more controversial, but they have some notable advocates (Waldron, 2012). And they are also increasingly defended on the grounds that they are necessary to combat the spread of misinformation (Rini, 2019; Sim, 2019; Brown, 2021; Millar, 2022; Fritts and Cabrera, 2022).

However, focusing especially on the latter justification, the worry becomes clear, for such restrictions are susceptible to abuse in a way analogous to epistocratic qualification exams (Gibbons, 2023: 17-9). Rather than sincerely attempting to identify falsehoods and then preventing their spread, those who control such restrictions are likely to abuse their power, sanctioning political and ideological opponents for spreading misinformation while ignoring the misinformation of allies. The very same assumption of self-interest that drives the problem of political capture for epistocracy drives a parallel

²⁵ Indeed, one might argue that the state itself as an institution is at risk from capture. So, if any level of risk of capture militates against an institution, then it militates against the state in its entirety. This, of course, is a conclusion that most shy away from. Some notable exceptions include Rothbard (2002), Higgs (2004), Casey (2012), and Huemer (2013).

²⁶ Though see Block (2008).

problem of political capture for speech restrictions. The power to restrict speech affords one the power to restrict speech in ways favorable to oneself, in much the same way that the power to craft epistocratic qualification exams affords one the power to craft such exams in ways that increase one's power.

And so it goes with the power to restrict immigration and the power to redistribute wealth. Like speech restrictions, both have been defended on numerous grounds.²⁷ But like speech restrictions—and like epistocratic institutions—both can be abused by incumbents to increase or buttress their power. Suppose a party has strong evidence that the greater the number of low-skilled immigrants, the greater their share of votes (and the lesser the share of votes for their main opponents).²⁸ This party then knows that by controlling the number and background of immigrants coming into the country, they can increase their share of votes; and, of course, by increasing their share of votes, they increase their prospects of electoral success. Or suppose a party knows that by increasing the extent to which they redistribute the wealth of certain groups, these groups will opt to leave the jurisdiction. And suppose further that groups who support this party tend also to support redistributive policies, thus choosing to remain within the jurisdiction. This party then knows that by controlling the power to redistribute wealth, they can increase their share of votes and thereby increase their prospects of electoral success.²⁹

If the possibility of political capture militates against epistocratic institutions, then it militates against speech restrictions, immigration restrictions, and redistributive taxation. In each case, the relevant powers can be abused by self-interested incumbents searching for ways to increase or buttress their power.

²⁷ See Wellman (2019) and Barry (2018) for helpful overviews of the respective literatures.

²⁸ For some relevant empirical literature regarding how different levels of immigration of either high-skilled or low-skilled workers impacts the Democratic Party and the Republican Party, see Gimpel (2014) and Mayda, Peri, and Steingress (2022).

²⁹ On the use of redistributive policies to shape the electorate, see Glaeser and Shleifer (2005).

3.2. *Political Capture and Basic Rights*

Of course, the view that *any* level of risk of capture militates entirely against an institution is implausible. Such a view rules out even institutions that reliably offer huge benefits while having low risk of being captured (or are such that, if captured, pose relatively little threat). On a practical level, eliminating any level of risk of capture, or corruption more generally, is likely impossible (Ceva and Ferretti, 2021: 169). And the relentless drive to hold political actors accountable for misconduct has well-documented downsides (Halachmi, 2014). Thus, entirely preventing capture is likely neither possible nor desirable.

More plausible is a view according to which the problem of political capture is somehow more serious for epistocracy than for other institutions. If the problem of political capture is more serious for epistocracy than for other institutions, then it may count decisively against the former but not the latter. But why might the problem of political capture be more serious for epistocracy than for other institutions?

Suppose, following Rawls and others, that one views political liberties such as the right to vote as *basic* (Rawls, 1999: 53; Rawls, 2001: 44). The intuitive idea when delineating a class of basic rights is that certain rights and liberties are more important than others (Freeman, 2007: 45).³⁰ Given their importance, any instances of capture which threaten such rights are *prima facie* more serious than instances of capture which threaten non-basic rights. If so, capture of epistocratic institutions, because it directly impacts the basic right to vote, is *prima facie* more serious than capture of institutions which threatens non-basic rights.

³⁰ More specifically, for Rawls, basic liberties are those which “provide the political and social conditions essential for the adequate development and full exercise of the two moral powers of free and equal persons” (Rawls, 2001: 45). These two moral powers are the capacity for a sense of justice and the capacity for a conception of the good (Rawls, 2001: 18-9; Rawls, 2005: 19).

Even if we accept Rawls' account of basic rights, one obvious limitation of this argument is that it cannot show that capture of epistocratic institutions is more serious than capture of speech restrictions, for the latter also regulate the basic right of freedom of speech.³¹ At most, conditional on accepting Rawls' account of basic rights, this argument shows that both capture of epistocratic institutions and capture of speech restrictions are *prima facie* more serious than capture of the power to restrict immigration and the power to redistribute wealth.

But even here there are notable complications. Firstly, while Rawls does not consider the *right to immigrate* to be a basic right, he lists *freedom of association* as a basic right (Rawls, 2001: 44). And since certain instances of the abuse of immigration restrictions—for instance, cases where incumbents deliberately fail to prevent increases in the number of illegal immigrants entering the state in order to attain an electoral advantage—may be seen as violating the rights of free association of the citizenry, such abuses thereby involve the violation of basic rights (Wellman, 2008).³² Secondly, many philosophers reject the claim that economic liberties are not basic (e.g., Gaus, 2010; Tomasi, 2012; Cowen, 2021).³³ If economic liberties are basic, then abuses of redistributive policies which violate such rights therefore violate basic rights.

So, at the very least, it is philosophically contentious whether capture and abuse of epistocratic institutions (and speech restrictions) involves the abrogation of basic rights whereas capture and abuse of the power to restrict immigration or the power to redistribute wealth do not. Accordingly, it is yet

³¹ In *A Theory of Justice*, Rawls claims that freedom of speech is “required by the first principle of justice” (Rawls, 1999: 53; 197). In later work he clarifies that this is consistent with it being regulated to some degree (Rawls, 2001: 111-3). But such regulation—for instance, prohibitions against libel and defamation—is very different from abuses of the power to restrict speech.

³² One might reject such an account of freedom of association. Indeed, some philosophers argue that the right to immigrate is itself a basic right, and that immigration restrictions violate the rights of both citizens and immigrants alike to freely associate (Huemer, 2010; van der Vossen and Brennan, 2018). On such an account it is even clearer that abuses of immigration restrictions can involve the violation of basic rights.

³³ For related discussion, see Freiman and Thrasher (2019). And for a contrary view, see Patten (2014).

unclear whether the problem of political capture is more serious for epistocracy than it is for these other institutions.

3.3. *The Likelihood of Political Capture*

Even if the problem of political capture for epistocracy does not involve the abrogation of basic rights in a way distinct from capture of other institutions, it may still be more serious insofar as capture of epistocratic institutions is *likelier* than capture of other institutions. With a greater likelihood of capture, there is a greater risk involved in implementing such institutions.

Are there reasons to think capture of epistocratic institutions is likelier than capture of other institutions? This is a complicated empirical question, and thoroughly addressing it is beyond the scope of this paper. However, we can begin to address it in a preliminary manner by asking whether incumbents attempting to capture other institutions could encounter legal challenges and obstacles related to opponent adaptation to a greater or lesser degree than incumbents attempting to capture epistocratic institutions. These are not the only factors impacting the likelihood of capture, of course. To a first approximation, though, if such obstacles are present to a greater degree for other institutions than for epistocratic institutions, capture of such institutions is less likely. In contrast, if they are present to a lesser degree, capture of other institutions is more likely.

The Likelihood of Legal Challenges

Let's consider legal challenges first. In general, the likelihood of successfully mounting a legal challenge to incumbents depends upon the extent to which incumbents overstep the bounds set by existing legal and constitutional constraints. Flagrant violations of existing constraints are more likely to be successfully challenged than attempts to capture institutions that remain within the bounds set by the law. Naturally, these constraints will vary from state to state, and so the prospects of success for

opponents challenging incumbents will also vary from state to state. In countries such as the United States where content-based speech restrictions are presumptively unlawful, for example, incumbents may have a difficult time selectively censoring the speech of political opponents. But in countries that permit speech to be restricted in a wider range of circumstances, incumbents will have more opportunities to silence the speech of opponents in ways immune to legal challenges.

Similar considerations apply to immigration restrictions and redistributive taxation. Legal challenges can be mounted against certain ways of implementing both, at least in principle: local governments can file lawsuits against national or federal governments for failing to properly enforce immigration policy; certain forms of taxation may be prohibited by the relevant state's constitution; and so on. Again, the relevant constraints that undergird the legal challenges will vary from state to state, sometimes making legal challenges easier, sometimes making them harder. What's important for our purposes is that there are *some* constraints and that incumbents must operate within these constraints.

How severely will the relevant constraints impede incumbents attempting capture? In the case of speech restrictions, at least in states where content-based speech restrictions are unlawful, the relevant constraints plausibly make capture quite difficult to achieve. In states that permit speech restrictions under a wider variety of circumstances, however, incumbents are more likely to succeed. In the case of both immigration restrictions and redistributive taxation, incumbents have more discretion since both activities—enforcing immigration restrictions and collecting taxes—are considered by most to be largely uncontroversial functions of any state. With greater discretion, incumbents are plausibly well-placed to capture these institutions in ways that are difficult to successfully challenge.

In a sense, the very fact that epistocratic institutions are so controversial makes them more likely to be successfully challenged by opponents. Broadly put, many states have constitutional

constraints related in some fashion to political equality, and these constraints must be navigated by incumbents who wish to both implement epistocratic institutions and to defeat challenges to such institutions. In contrast, incumbents will be *expected* by most to secure their country's borders, establish a tax regime, and perhaps even to restrict speech to some degree. And under the guise of what are generally taken to be legitimate activities, incumbents can shape the relevant legislation in their favor.

Overall, the likelihood of incumbents facing legal challenges varies from state to state. And depending on the state in question, it will be easier to capture some institutions rather than others. But in general, it isn't clear that legal challenges to epistocratic institutions are especially likely to fail. In fact, since other institutions are dedicated to relatively uncontroversial activities that are expected of any state, it may be that legal challenges to capture of other institutions such as immigration restrictions and redistributive taxation are more likely to fail than challenges to epistocratic institutions. At the very least, this is yet another area where it is unclear whether the problem of political capture is especially pronounced for epistocracy.

The Likelihood of Effective Opponent Adaptation

As we have already seen, the ability of opponents to adapt to the strategies of incumbents makes it more difficult for incumbents to capture epistocratic institutions. Opponents can adapt by rallying their supporters and urging them to acquire whatever information is necessary to pass epistocratic qualification exams. Were they to succeed, incumbents would be unable to secure the increase in their share of power that they seek, and their attempt to capture the system would fail. However, we also noted an important limitation of this approach. Specifically, we noted that it may be easier for incumbents to tailor examinations in ways that select for citizens who *already* possess the relevant information than it is for opponents to incentivize citizens who lack the relevant information to acquire it.

Let's say that the more likely opponent adaptation is to prevent capture, the more *effective* such adaptation is. In general, it is plausible that the severity of the problem of political capture is greater, all else being equal, for institutions for which adaptation is less effective. Thus, if opponent adaptation is less effective in the case of capture of epistocratic institutions than it is for other institutions, then the problem of political capture is, all else being equal, more severe for the former than the latter.

How might opponents adapt to incumbents who attempt to capture speech restrictions, immigration restrictions, or redistributive taxation? A variety of strategies are available in each case. In cases of captured speech restrictions where incumbents sanction the speech of political opponents, opponents can veil their speech to avoid sanctions, shift their communication away from platforms likely to be heavily scrutinized, and so on. In the case of captured immigration restrictions, what strategies it would be rational for opponents to adopt depends on the details of what the incumbents are doing. For example, if incumbents are seeking an electoral advantage by increasing the number of immigrants likely to support them entering the state, opponents can try to appeal to these immigrants themselves, modifying their platforms in ways that undercut the desirability of incumbent platforms. And in the case of capture of redistributive taxation, opponents can again adapt by appealing to the effected constituents (or others) in ways that detract from the support for incumbents while increasing their level of support.

Much more could be said about each type of strategy, of course, as well as others not considered here. But enough has been said to make clear that opponents are limited in their ability to adapt to capture of such institutions in much the same way that they are limited in their ability to adapt to capture of epistocratic institutions: modifying one's communicative style (or modifying the channels in which one communicates) may not be sufficient to avoid sanctions, may make it more difficult to gain the widespread support necessary for electoral success, and so on; it is likely difficult for opponents to appeal to immigrants who are, as a group, already more likely to support incumbents;

and opponents may not be able to offer enough benefits to constituents who are affected by the redistributive policies of incumbents.

In general, then, opponent adaptation does not seem substantially more effective for capture of the relevant institutions than it does for capture of epistocratic institutions. And although it is difficult to know the precise degree to which each strategy can be effective, it seems clear that none can offer a reliable way to prevent capture. Thus, we are again left with the conclusion that it is unclear whether the problem of political capture is more serious for epistocracy than it is for other institutions.

3.4. *Political Capture, Bad and Worse*

We have seen that it is philosophically contentious to claim that capture of epistocratic institutions involves the violation of basic rights while capture of other institutions does not. And we have also seen that it is unclear whether capture of epistocratic institutions is likelier than capture of other institutions. Overall, then, it is unclear whether the problem of political capture for epistocracy is more serious than the problem faced by other institutions.

But suppose that the problem of political capture for epistocracy is more serious than that faced by other institutions, for whatever reason.³⁴ Even so, it does not follow that it would count decisively against epistocratic institutions but not these other institutions. It could nevertheless be the case that the problem is sufficiently serious for these other institutions, or at least some subset thereof, that it also counts decisively against them. We should not view the problem of political capture as only counting decisively against the most seriously afflicted institution. (And even if we did, it is not clear

³⁴ For instance, one might think that what counts against the implementation of epistocratic proposals is that they furnish self-interested actors with an *additional* institution to capture and abuse. The problem of political capture may not be unique to epistocratic institutions, but their implementation *intensifies* the more general problem of political capture. This seems plausible. But note that this is true of other institutions too. For instance, a state that implements new speech restrictions also furnishes self-interested actors with an additional institution to capture and abuse. And the same is true of other institutions. So, if intensifying the problem of political capture counts against epistocratic institutions, then it also counts against these other institutions.

whether epistocratic institutions are the most seriously afflicted.) Instead, we should view it as a problem that, for a potentially wide range of institutions, reliably leads to costs that exceed the institution's expected benefits. Epistocratic institutions may very well be among such institutions. But the same is likely true of other institutions, even if they are not as severely afflicted as epistocratic institutions.

4. Conclusion

In *Against Democracy*, when addressing the worry that epistocratic institutions could be abused, Jason Brennan writes as follows:

If epistocracy, warts and all, performs better at all than democracy, warts and all, then we should have epistocracy. I'm not arguing, and need not argue, that epistocracy will be wart free (Brennan, 2016: 223).

As a political system, epistocracy surely has its warts. And not least among them is the problem of political capture. Though I have argued in this paper that the problem of political capture is less serious than previously thought, it nevertheless remains a serious problem. However, I have also argued that other institutions—including some institutions the need for which goes unquestioned by many—have more-or-less the same warts. And this conclusion forces us to confront some uncomfortable realizations. Epistocratic proposals should be heavily scrutinized, for they may end up placing power in the hands of self-interested actors who want to abuse their power for their own ends. But the same is true of proposals for other institutions. Like epistocratic institutions, they run the risk of providing self-interested actors with more resources with which to further their goals, often at the expense of

others. The problem of political capture is not just a problem for epistocrats; it is a problem for everyone.³⁵

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