I. Introduction

The point of this essay is to explore notions of democratic accountability that may be workable at the global level. I try to develop a conception of democratic that is broad enough to encompass notions of democratic accountability that operate (imperfectly) within domestic settings. But, this conception necessarily embodies conflicts among fundamental democratic norms, conflicts that play out very differently in global and domestic contexts.

To say that one agent, A, is accountable to another (B) is to say that A has a kind of duty (moral or legal) to B. It is a normative claim that may, possibly, be supported by saying that B has certain rights or powers with respect to A such as the right to demand an account of why A took or failed to take certain actions. Or B may have some kind of authority to compel A to act in some particular way or to penalize her after the fact.

One model of accountability is expressed in the principal-agent framework at least when that is construed normatively.¹ The rights of the principal to hold the agent to account are expressed, in this case, as the set of reward/punishment schemes that she is entitled (morally or legally) to impose on the agent. So, we say that citizens may hold elected officials to account through elections but not by demanding kickbacks from them.²

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¹ One can construe such relations positively by simply defining as a principle, someone who has the capacity (in fact) to establish and enforce a reward scheme for another.

² Namier described a kickback scheme in 18th C England, in the Structure of Politics at the Ascension of George III.
public administration, we can think of elected officials (or perhaps the electorate itself) as standing in this kind of relationship to public agencies.³

For present purposes we distinguish two forms of accountability: political and legal. Political accountability: political officials, however they attain authority hold agencies to account by offering sanctions and rewards. In the case of well functioning democracies, elected officials or the electorate itself may, at prescribed times and according to prescribed procedures, punish an agency by removing a leader, reducing budgets, limited its jurisdiction, etc.⁴ This may be done for “cause” or not; whether cause is required is a political decision. So, I want to say that political accountability is fundamentally arbitrary in the sense that it is up to the “principal” to base decisions on cause – reasons – or not. Indeed, as I will argue, in its purer forms, the political principal need not even offer reason at all or may be prohibited from doing so.

Legal accountability is different: it is necessarily based on reason of a certain kind.⁵ The agent is put on notice, through the enactment of prior law/standards, as to what is required of her to keep her job/jurisdiction/freedom and risks penalty only for violating those legal standards. So, in this respect, legal accountability is not arbitrary but is based on reasons. This not to say that legal accountability is more predictable, in fact, than political accountability. That depends

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³This is complex insofar as elected representatives are themselves accountable to their electors or perhaps, as Burke thought, to some broader constituency. After all, when an elected representative holds a public agency responsible he is not acting for himself but, instead, on behalf of others. Perhaps it is better, still taking a normative view, to see the electorate as a principal and all public officials as agents who have complex duties with respect to each other. The forms of this relationship – the lines of accountability and their specific content – seem endlessly variable. More shall be said on some of this variation below.

⁴One could object that political accountability as I have defined it only exists against the background of some legal norms: that is, whatever norms are in place to conduct and regulate elections and to allow the political bodies to conduct business in a procedurally acceptable manner.

⁵Throughout this paper I use “reason” in a broad sense to include any kind of justification of an action that represents it as required by pre-existing norms. This requirement can be indirect and turn on considerations of moral or legal theory. The important features of everything that qualifies are that it is not arbitrary, can be implemented by an independent third party, and can be subjected to challenge according to understood practices of discourse. This is meant to rule out relations of force and bribery as well as of arbitrary whim.
on contingent facts: political actors may be statistically predictable while legal standards must be applied by imperfect and opinionated human agents.

There are “institutional” implications to this distinction. Political accountability is best exercised directly by the person(s) who has the right to hold another to account. Since it is fundamentally arbitrary, it cannot really be delegated, at least not completely and perfectly, and preserve its political nature. Legal accountability pushes in the other direction: it ought not to be exercised by interested person(s), but should be imposed by a dispassionate third party. Someone whose personal interests are not involved: a judge or a court.

Political and legal accountability are substitutes but, as I have suggested, they have quite different properties. As an example the Athenians, who were suspicious of elections and of permitting public officials to serve repeatedly, imposed legal accountability in the form of an “exit” audit on its public officials (euthenai). They also applied legal accountability to those who proposed decrees to the assembly (graphe paranomen). At the same time they permitted political accountability of officials by ostracism (where no reasons could be given) and impeachment (eisangelia) or political trials in the Assembly.

Another example is the use of impeachment which, it is claimed, subjects officials to a legal rather than political standard. Senators sit as judges rather than as legislators in an impeachment trial and are obligated to apply a legal rather than a political standard. Obviously, in both cases, legal accountability is sometimes bent to serve political purposes. Insofar as this occurs, it is an instance of imperfect or defective legal accountability and not of political accountability.

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6 This raises the issue of transitive political accountability: the president stands in a political relationship to agencies whereas voters stand in that relation to the president. So, is a presidential decision to fire an agency political or legal? I am inclined to put this on the political side of the distinction since the firing can be arbitrary on the part of the president or based on the forecast of an arbitrary response by voters in a future election.

II. Delegation in Folk Democratic Theory

Consider a modern polity that has relatively well functioning political institutions: a relatively fair electoral process for selecting a legislature/government and a system of effective public agencies and courts. I want to claim that, in common sense democratic theory, the people or electorate stand as political principals in relation to the other institutions and their occupants. Their choices and decisions are to be treated, for this reason, as needing no justification, at least if those decisions are made within a certain institutional context (an election or perhaps a referendum). Their acts are considered sovereign in this sense. Indeed, seeking or demanding reasons from voters is discouraged or forbidden, perhaps out of worries about voter intimidation or bribery, or perhaps as a sign of respect for the sovereign nature of the voters’ decisions.  

One step along the delegation path, members of the legislature stand in for the voters as representatives and can act for political or other reasons as they choose. They are expected to give reasons of a certain kind in the form of political justifications or party platforms but these are only loosely related to the actual actions they take. Their reasons are, in fact, directed more to the voters (to support the claim that they are acting on their behalf and in their interest) and not directly to parties to whom their ordinances are directed. And, in any case, in the common sense theory I am articulating, manifestos or campaign “promises” are not enforceable in courts but only (if at all) politically.  

Take another step along the path and we get to administrative agencies. Agencies are required to give reasons for certain of their actions: and those reasons may (at times) be policed by courts or other agencies. Agencies are, as well, subject to political controls: their budgets can be slashed, their jurisdictions stripped, their leaders fired. So, they are subject both to reason and to arbitrary (willful) control.

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8And in any case, even if reasons were somehow extracted, there is every likelihood that they would be sparse, ill-formed and incoherent.
Finally we reach courts. Judges are generally highly insulated from political accountability though not completely so. They are required to give reasons and the reason giving process is regulated both internally (by other judges, either by higher courts, or by other courts who pay greater or lesser deference to their rulings) or externally by those who do or do not comply with judicial orders or, more generally, with judicially interpreted law.

Folk democracy, so far as I have stated it, makes no claim about how much delegation can be justified; it says only that if authority is delegated to elected or unelected officials, there is an expectation of justification or reason giving in return. Moreover, it insists on reserving a kernel of authority to the people: the power to remove officials without any explanation.

So, what kind of reasons are required from those exercising delegated powers? Let’s distinguish between reasons directed upwards – toward others agents who wield delegated power – and reasons directed downward toward those whose powers have been delegated. We are concerned mostly with the latter. Downwardly directed reasons must explain why people ought to respect a decision and do what is required to comply with it or bring it about. Such reasons need to be represented as extensions of earlier popular judgments, perhaps contained in statutes or in plausible interpretations of electoral results; or perhaps embodied in the constitution or in some widely accepted interpretation of it. Reasons of this kind aim to articulate views that each person, acting disinterestedly, could reasonably accept as her own.

More concretely there is variation in reason giving practices across institutions and from one polity to another. Legislators are expected to give reasons to the people (explaining why they are taking an action or not) and to other officials (spelling out what is required or expected of them). Agencies have to explain why their actions are authorized in statutes, consistent with constitutional norms, and should be permitted to stand by courts. And courts have to explain why their own commands are legally required and to other actors why their apparently attractive policy choices are illegal.
There is cross national variation as well: in the UK, acceptable reasons offered by a court or an agency are limited to acts of parliament or to the common law where that does not conflict with the former. In the US, courts can draw authority directly from the constitution, which is thought to be a kind of popular expression by the people acting in what Madison called, their highest sovereign capacity. To varying degrees many postwar European states permit their constitutional courts to reference the written constitution, and permit their ordinary courts to refer to other, transnational, sources. But of course all of these sources require interpretation and so one expects that courts and agencies will not mere point to a source but give an account of its meaning for the present application.

A well functioning political/legal system can be expected to exhibit a range of accountability ranging roughly from the political to the legal or, if you prefer, from the arbitrary or willful to the reasonable or deliberative. At least this expresses what I call minimal or “folk” democratic understandings. It recognizes what might called a democratic “deficit” that increases as one moves toward courts and away from the people. But it recognizes as well a kind of deliberative deficit that grows in the other direction.

There are, however, much stronger versions of folk democratic theory that do impose substantial constraints on delegations of authority. Consent theories provide common examples in seeing delegation as unjustified and illegal without consent. Rousseau’s version was perhaps the most extreme in claiming that the people cannot alienate the legislative power to a representative assembly. What strong theories have in common is that they see delegated authority as defective relative to authority directly exercised by the people. Such delegations may be necessary or advantageous in some ways, but it ought to be subject to controls to make sure it mimics what the people would want. But it is not the real or fully justified thing.

9That is not to say that there cannot be an elected assembly that makes rules – but those rules cannot be taken as laws but merely as acts of magistracy.

10Necessity may arise from technical considerations such as the size and expanse of society and need for a full time government. Advantages of representation include specialization, wisdom, temperance, and the selection of the “better sort” as representative.
III. Democratic Theory

We need to ask now about the normative status of folk democratic theory. Let’s assume for the moment that it is a good description of what is understood and expected of citizens and officials in democracies. Is it also a good guide to normative requirements in a well functioning democracy? Folk theory rests on a presumption: that citizens are, for the most part, reasonably authoritative as to their genuine interests, including interests they have in common. This is not to say that voters are infallible but only that their decisions are entitled to a high level of deference. And this expectation of democratic deference extends to their immediate elected representatives, though with qualifications owing to the agency relationship. At least this presumption holds where democratic institutions are reasonably well functioning (ie. Fair, frequent, and competitive elections, a well apportioned legislature with authority to shape public laws, an efficacious executive, a judiciary guided by law).

The alternative theory would be something like this: a polity is democratic if its policies reliably track some (attractive) conception of the common interests of its residents. Such a theory would be deliberative and committed to intelligently pursuing democratic objectives but it would not concede epistemic superiority to the people either as individuals or as electors, at least not on all issues. Such a theory might insist, for example, that while people may know what ends they want to achieve, the choice of public policies to achieve these means requires judgments of specialists Of course, professionals can be mistaken but their judgments ought to be contested in settings likely to yield better answers.

A folk democracy might, therefore, fail to be genuinely democratic if its policies failed to track common interests. It is easy to see how such a failure might occur: even well functioning elections are plagued with collective action problems that discourage people from becoming informed as to their genuine common interests or the best ways to achieve them. So, putting the people in a position where they can demand accountability from officials is a recipe for arbitrary policies which are manipulated by interested parties. On this account folk understandings of democracy are pernicious since they may produce or justify stupid and self defeating actions by
the people or their political representatives. Xenophon reported an Athenian during the
disgraceful trial of the generals shouting: “it is outrageous to say that the people cannot do
whatever they want.” This is a recipe for despotism – even if the despot is a multitude. So this
alternative theory – a deliberative theory – would challenge the basic presumption of folk theory.
It would demand not deference to popular will but to the best policy or, in the case of a
democracy, that policy which best reflects the real interests of the people.11

The Athenians themselves seem to have realized this problem: when they restored their
democracy in 403 it was moderated in various ways. Specifically, I think, in amplifying legal
forms of accountability relative to political forms and making it likely that the democracy would
act for (norm guided) reasons rather than arbitrarily (by will or passion). Still they did not
completely eliminate relations of political accountability. Why is that?

I think the best answer is that folk democratic theory supplies only minimal constraints
on democracy and specifically on democratic practices even if it does not provide a complete
normative theory of democracy. It operates as a constraint since it expresses not only a value but
an essential feature of any attractive democratic theory. Folk democratic theory demands that
there be frequent and fair elections, that electoral expressions by the people be paid full attention
by officials (especially that officials who lose elections leave office), and that representative
institutions have ample authority to make effective policy and transform law. But, that is not a
capacious demand. It requires the development of well regulated representative institutions and
permits the extensive delegations of authority to executive officials and even to unelected and
unaccountable judges. And, it insists on an element of arbitrary and unjustified choice at the
base of everything.

IV. The Administrative State

11I need not go into the issues of social choice that lay concealed in this expression. Part of determining what a best
policy is must involve negotiating the political tensions involved in formulating any definite conception of the
public interest.
The rise of massive public bureaucracies was a wrenching phenomenon for folk democrats. The very reason for the creation of these new agencies was that popular processes could not effectively produce legislation capable of dealing with the issues of the large industrial state. In effect, the people and their immediate agents were forced down the delegation tradeoff outlined above. And, as I suggested, what they expected in return for this delegation was, in part, reasons for action. Public agencies were created and empowered in between the legislature and the courts and they expected to provide reasoned justifications for the policies they chose: justifications that could be contested and, in principle, overridden in democratic processes. The struggles that followed, both political and legal, suggests just how imperfect, incomplete and contested this process was... and still is.

At the same time as this extensive delegation was taking place, there were increasing demands for more and better regulated democracy. This was reflected in lots of ways: the creation of direct institutions of democracy, more control of elected officials through the use or threat of recall and direct primary, reform of apportionment, legal attacks on machines, etc. So, the development of the large industrial state changed and amplified folk democratic theory by permitting more channels of political accountability: but the “acceptable” tradeoffs were along the lines I have already laid out: roughly speaking, reason was increasingly substituted for will.

But this trade is never really acceptable from the perspective of folk democracy precisely because the nature of accountability changes fundamentally. As I have represented it, folk democracy is essentially nondeliberative in the sense that each person’s right to making political judgments is unconditional and she is free to make them in any way she chooses. One is reminded of the story of the Athenian, Aristides the Just, who came across a poor farmer trying to write a name on an ostraca. The man asked him how to spell “Aristides” and Aristides wrote it on the shard for him, but he asked what he had against this Aristides. The man replied "I'm sick and tired of hearing him being called 'the Just' all the time."

V. The Global Setting
What marks the global setting is the absence of fairly conducted elections as a general means of articulating of popular judgments. Instead, at the base of global institutions are a myriad of fairly opaque unevenly regulated and conducted processes of public choice. What this means within the present framework is that the option of actual political accountability is much less attractive than it is within (certain) domestic contexts. There is no compelling folk democratic option at the global level. For that reason global institutions forced to rely on the model of legal accountability.

The model of legal accountability is one based on giving reasons, downwardly directed reasons, which are aimed to persuade people to accept and comply with decisions made by global institutions. The form of these reasons has to be general or universal – representing them as expressing normative requirements that follow from accepted agreements and from norms that anyone who accepts the basic principles underlying global society ought reasonably to accept. Rawls called this discourse “public reason.”

But what about circumstances where the best policy to pursue depends on what it is that the people, or at least most people, actually want? Domestically such policies are usually directed through political processes, at least indirectly. And, where a public agency is charged with their pursuit it is advised or required to conduct proxy political processes in order to ascertain what people think about alternative policies or what they would plausibly think if they were to contemplate the matter. In the US context, notice and comment rulemaking, subject to appeals to courts, has this motivation and maybe it works reasonably well in simulating popular judgments some circumstances. But, in domestic settings, such practices take place against the background of real or “threatened” political processes which, in principle anyway, operate as a kind of discipline. While legal accountability – accountability regulated by a system of courts -- remains fundamentally different from political accountability, there is a sense in which the political mode has the last word.

Globally, the background political processes are much more uneven, and often unattractive. There simply less to be said for political accountability as anything other than a mere
fact that global institutions need to take account of but which may deserve little respect. Therefore legal accountability at that level must float in a kind of political vacuum. This implies that global law cannot rely on folk democratic pressures to supply either constraints on or support for global its practices. The only option at the global level is more or less purely deliberative: to make decisions that interpret and extend legal norms and to aim at policies which track (some attractive conception of) common interests. Doing this requires relying on other means, judicial and administrative processes on the one hand but also on deliberation and critique within civil society to assure that information and justification travel freely and reach points of decision and compliance.

VI. Conclusion

What is lost at the global level however is vital to the rich kind of democracy we seek domestically: the possibility that public officials may suddenly be removed from office for no reason other than, like the poor farmer felt about Aristides, the people simply became weary of them. Whatever the reason for such occurrences within the domestic context, the effect is to break up ingrown sets of officials, to ventilate the chambers of government with different ideas, possibly no better than the others, and reaffirm an openness to popular sentiment.

Democracy embodies conflicting norms: on one side it demands deference to popular will or at least accountability to popular electoral judgments. On the other, democracy requires policies that actually are responsive to people’s genuine interests. The tensions between these two principles is deep and practically unbridgeable – at least until that time is reached where the people themselves engage in cool and contemplative reason and where their laws and polices reflect their common interests. In the domestic realm many of the advanced democracies have, since World War II, achieved a more or less tolerable compromise between these values by embodying them in different institutions (legislatures and insulated courts and public agencies) and working out the substantive compromise in institutional conflictg. Achieving the same kind of compromise in a global setting seems likely to be more difficult and uneven, since one half of compromise that is sought (the popular half) is largely absent.