Participants in this meeting have been asked to identify a global regime or institution, indicate the norms suited to that regime or institution, and/or describe the accountability mechanisms that might work to ensure that the regime or institution remains in compliance with the norm.

Rejecting conventional realism—with its skepticism about the importance of global regimes, institutions, and norms—as well as a hypertrophic statist view that global norms call for the creation of a global state, we are asked to assume instead a world of differentiated regulatory domains, addressed to distinct problems (trade, security, climate, health, banking, product standards), with each domain to be associated with its own norms and accountability mechanisms—in the Teubnerian limit, its own constitutional frame—and neither state nor reason as encompassing superintendent.

Our reflections in this memo are designed to raise questions about that framing. In raising these questions, we are not carrying water for some encompassing superintendent. Instead, we are provoked by unease—both practical and normative—about an exaggerated idea of regulatory differentiation. So we explore that unease by reflecting on the consequences of subjecting differentiated regulatory domains to requirements of basic accountability. We suggest that that subjection links distinct domains in the first instance through requirements of reason giving. At the same time, those requirements of reason-giving help to join the separate publics that crystallize around their distinct rule-making activities. These links—of both reason-giving and publics—in turn suggest an idea of global democracy.

We begin from the premise (which we assume to be widely shared in this meeting) that something new is happening politically beyond the borders of individual states and irreducible to their voluntary interactions; call it “global politics.” With no pretence to completeness or precision, the elements of global politics include:

1. Increasing economic integration, which makes the global economy a substantial presence in the economic lives of virtually all states.

2. Persistent diversity. Cultures, economic circumstances, and political institutions and traditions vary widely, and much more widely between states than within them. In response to increased interconnection under conditions of persistent diversity there is

3. Increasing global rule making. While states remain essential players, to a considerable and growing extent, rule making, as well as rule elaboration and application—especially in the arena of economic regulation, but also in areas of security, labor standards, environment, rights, food safety standards, product standards among others—is taking place in global settings that, even if established by states (and many regulatory functions are provided by private or public-private bodies), conduct their activities of making, elaborating, and applying rules with some de facto decision-making independence from their creators.

4. These global rules are increasingly consequential for the conduct and welfare of individuals, firms, and states, in part because they provide standards for coordinated action and
in part because national rule-making itself proceeds subject to rules, standards, and principles established beyond the national level.

(5) The global rule-making bodies, whatever the origins, are expected to continue to exist and to make consequential decisions, so that agents (including states, firms, and non-governmental organizations) and movements need to take them into account in making decisions and pursuing goals.

(6) These rule-making and applying bodies have the capacity to guide conduct by providing incentives and permitting the imposition of sanctions, even when they lack independent coercive powers. Moreover, withdrawing from them may be costly to members (if only because of the sometimes-considerable loss of benefits).

(7) A transnational politics of movements and organizations now routinely contests and aims to reshape the activities of supra-national rule-making bodies, in part through protest, in part by representing interests to those bodies, and in part by advancing norms, values, and standards of reasonableness.

All vague, but not hopelessly so. The thrust is clear: To a substantial and growing extent rule making directly affecting the freedom of action of individuals, firms, and nation states (and the making of rules to regulate this rule making) is taking place, undemocratically but not entirely unaccountably, in global settings created by states but no longer under their effective control. Call this the global-administration-in-the-making claim.

Suppose we accept that there is an emerging global administrative space and assume, too, that it is subject to normative demands, minimally a demand not to act arbitrarily: without reason. How, then, might the new rule-making institutions be made accountable for reasonableness when there is no state, no central authority or principal giving directives to formally subordinate agents, and no clearly defined public in whose name the authority is exercised?

To see a general answer to this question consider what happens to accountability when, as in the case under consideration, there is no principal and no antecedent well-defined standards: when goals can only be specified very imprecisely in advance, for instance because aims are only clarified as they are pursued: suppose, that is, that actors have to learn what problem they are solving, and what solution they are seeking, through the very process of problem solving. Accountable behavior in this setting no longer is a matter of compliance with a rule set down by the principal, as if the principal knew what needed to be done, but rather provision of good reasons—offered by “agents”, to each other—for choosing, in the light of fresh knowledge, one way of advancing a common, albeit somewhat indeterminate project. At the limit, then, principal-agent accountability gives way to peer review, in which decision makers learn from and correct each other even as they set goals and establish provisional rules for the organization. Peer review becomes in turn dynamic accountability—accountability that anticipates the transformation of rules in use.

Elsewhere we have referred to a form of accountable governance that embodies this ideal of dynamic accountability as “deliberative polyarchy,” and have argued that much that happens in EU administration can be understood as an embodiment of the deliberative polyarchy. A brief
sketch of the deliberative-polyarchic architecture will situate and extend the discussion of accountability and suggest how requirements of reason giving, and the publics to which these give rise, link the differentiated domains of global rule making in ways that can invite democratization.

Deliberative polyarchy is shaped by mutually re-enforcing moral and practical concerns. Its appeal within global politics (and national politics as well) is precisely to create the prospect of an accountable and inclusive form of problem solving when interconnectedness creates many problems to solve but conditions of extreme diversity seem to preclude solutions that are either broadly effective or generally legitimate.

As deliberative polyarchy is first and foremost deliberative, decision-making works through mutual reason-giving. Questions are decided by argument about best ways to address problems, not simply exertions of power, or expressions of interest, or bargaining from power positions on the basis of interests. More particularly, the aim is to find solutions that others can reasonably be expected to support as well—or at least to acknowledge the relevance and importance of the supporting reasons, even if they disagree about the precise content and best balancing of those reasons.

In deliberative polyarchy, deliberation is situated: the actors are presumed to know a good deal about their current dilemmas, but relatively little about the implications, for themselves or others, of the options from which they choosing. Aware of these bounds on their knowledge, they aim to find measures that address their immediate problems while suggesting next steps and allowing evaluation of choices so far. Their uncertainty, moreover, and the consequent need for mutual learning, makes it costly to game the information they provide; and limits on the strategic use of information make it more difficult to pursue self-serving solutions. Because of this prudent forbearance deliberation’s normative requirement—of finding solutions that others can reasonably be expected to embrace as well—is easier to meet. The normative and the practical may be happily congruent.

Though the choices in this situated deliberation are informed by the facts as known and addressed to solving specific problems step by step, deliberative polyarchy is not technocracy. Instead, situated deliberation acknowledges, indeed underscores, that all complex practical problems—from trade and security to organizing schools and transportation, providing clean water and public safety, allocating health care and ensuring fair compensation—are political in the sense that they implicate a range of distinct values, that reasonable people disagree about the precise content of and weights to be assigned to those values, that some form of collective decision is needed despite these disagreements, and that a normatively desirable way to make such collective decisions is by a process in which participants offer reasons that others can be expected to acknowledge, even as they disagree about the content of the reasons and how the variety of relevant reasons add up.

What makes deliberative polyarchy polyarchic is its use of situated deliberation within decision-making units and deliberative comparisons across those units to enable them to engage in a mutually disciplined and responsive exploration of their particular variant of common the problems. It resembles federalism insofar as it authorizes yet limits diversity, and anarchy insofar as it assumes no ultimately authoritative center; but it is a novel form of each precisely because
of its resemblance to the other. Polyarchy addresses a dual problem: i) comparable problems, arising in different settings, need solutions appropriately tailored to those settings, and; (ii) solutions in each setting need to be subjected to the pressure of deliberative comparison with solutions adopted in the others so that all reflect understanding of what was done elsewhere, and why. Thus the basic architecture of deliberative polyarchy is to have situated deliberation within and among distinct decision-making units.

For the individual decision-making units, diversity implies that decision-making in each needs to be friendly to local experimentation in the policy area in question, drawing on local knowledge and values. As each unit is distinct, none does best by simply copying solutions adopted by others, though they may do well to treat those solutions as baselines from which to move, or at least as providing some information about possibilities. Deliberative participation helps because it encourages the expression of differences in outlook, and the provision of information more generally.

But the same concern for a form of decision-making that is attentive to unexplored possibilities and unintended consequences requires institutionalization of links among local units—in particular, the institutionalization of links that require separate deliberative units to consider their own proposals against alternatives provided by other units. A natural place to look for promising alternatives—including alternatives previously unimagined in the local setting—is in the experience of units facing analogous problems. So we need deliberative coordination: deliberation among units of decision-making directed both to learning jointly from their several experiences, and improving the institutional possibilities for such learning—a system with continuous discussion across separate units about current best practice and better ways of ascertaining it. Peer review and the dynamic accountability it affords is a modality of deliberative coordination. The idea of deliberative polyarchy is thus to have a mix of flexibility for adjustment to distinct conditions along with a discipline of comparison/learning that respects a norm of accountability.

At the global level the deliberative coordination intrinsic to deliberative polyarchy creates requirements of reason giving that link distinct domains of governance. Consider by way of illustration the international trade system, housed in the World Trade Organization (WTO). Architecturally the WTO resembles in the EU in that both anticipate that the freedom of (regional or international) trade they seek to foment will frequently conflict with, and need to be modified to accommodate a wide range of normative concerns embodied in the domestic laws and regulations of member states trading in the relevant markets. Both, furthermore, permit members states to make domestic rules that inhibit trade on condition that the inhibiting rules adequately reflect the relevant regional or international standards. Thus the WTO Agreement on Sanitary and Phytosanitary Measures (SPS)—which applies to agricultural, health and safety regulation—and the WTO Technical Barriers to Trade (TBT) Agreement—which has been interpreted to apply to a broad range of domestic regulation not covered by the SPS—require that the trade-inhibiting rules, animated for example by a concern to protect public health or ensure product safety, have a “basis” in international standards. To show that a basis exists, in the relevant, sense, states must either use those standards or show through an acceptable rule-making process that the domestic rules are a reasonable departure from those standards, motivated, for
example, by an assessment of health risks. Put another way, membership in the WTO and the EU is not equivalent to an agreement to substitute distinct, well-bounded bodies of national rules of commerce with a single, universal, but equally well-defined and bounded body of trade law. Rather, in joining these regimes, member states are agreeing to remake their rules, in domain after domain, in light of the reasons given by all the others to reconcile their distinctive regulations with general standards in whose determination they participate and that are assumed to be attentive to the interests of others elsewhere. Thus, while trade and public health and safety are surely differentiated from each other in global regimes, accountable rule-making in these domains requires taking account of rule-shaping reasons arising in the other.

This reason-giving is not disembodied. It arises from and gives rise to distinct but communicating publics—associated in the first instance with distinct regulatory domains, and making demands on those domains (see point 7 in our earlier description of global politics). This reason-giving might also be said to be generally normative in the sense that debates about this or that rule naturally raise questions of principle about what kinds of reasons are acceptable and—more substantively—how to ensure that the interests of affected parties are included, that is, given due consideration. Linked publics will debate the emergent norms in applying them within and across domains, reshaping both the content of the norms and the identity of the publics. To be sure, with many such processes of accountable rule-making in different arenas of rule-making, and—without the state’s encompassing shadow or an embrace from the law’s long arm—there would arguably be many global public spheres, loosely linked by elements of global public reason and global politics more generally. Still, with the linkages among the rule-making activities (trade and environment, environment and security, labor and health, health and trade), and common strands in the reasons offered in support of rule-making in different arenas, would undercut any sharp distinctions among the publics.

Could this two-fold movement—at the level of accountable reason-giving and formation of a public—produce in time a form of global governance that makes rules, vindicates rights, and has—and is experienced as having—significant impact on the fate of individuals without recourse to the hierarchical apparatus of the classic nation-state? Suppose in particular a deepening of global administration in a wide range of areas of human concern, including security, health, education, environment, and conditions of work and compensation. Suppose, too, that such global rule-making is increasingly accountable: defended by reference to what are commonly cognized as reasons in an emerging public reason of global political society. And suppose that accountable administration, in its deliberative polyarchic form, has a substantial, constructive impact of human well-being. Suppose that its rule-making activities reduce the current global dispersion in living standards by leveling up, not down, or at least that these activities help to reduce, and are understood as helping to reduce, current levels of human destitution. Suppose, finally, that this impact is widely perceived, and the perception leads to support for continuation of those arrangements—more participation, because the stakes are clear, and greater willingness to comply, because the results are decent.

If all of this were true, isn’t it plausible that dispersed peoples might come to share a new identity as common members of an organized global populace: our fates as human beings would be deeply and self-consciously shaped by mutually accountable rule-making that depends on
local debate, is informed by global comparisons, and works in a space of public reasons. We would not belong to a single central state, with uniform rules and rights for all, and global politics thus could not be defined around a competitive process for control of that authoritative center. But accountable global administrative processes would play a significant role in shaping our lives.

And if such common identity were to emerge—not as offspring of a conventional political authority and a contest for control of it, or as an outgrowth of a prior and exclusive solidarity, whether ethno-national or constitutional—then we would have a global demos: an unusual demos, to be sure, an imagined community requiring newly capacious acts of imagination, including a re-imagination of the separate communities whose imaginary ineluctability now obstructs the political fantasy from which any kind of demos is created. But however unusual or anomalous, this demos would have sufficiently many of the indicia of a people—subject and dispersed sovereign in a world of global rule-making—to make sense of talk of a global democracy without a global state.

A powerful reason to exclude that possibility would of course be a compelling argument that accountable rule making can only take place within the confines of the administrative state as we know it. But the new reality of global rule making and the global politics that surrounds it casts doubt on that argument and forces us to see that we may well be making something new in the history of political inclusion—something for whose accountability and democratic vocation we all in the end will be accountable.