Functional Democracy: Responding to Failures of Accountability

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Democracy and International Law

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Functional Democracy: Responding to Failures of Accountability

Molly Beutz

I. INTRODUCTION

Since the end of the Cold War, the language of democracy has played an increasingly prominent role on the international level. Democracy has been identified as critical to the promotion and protection of human rights, as an essential factor in maintaining peace and stability between states, and as an emerging individual right. The Vienna Declaration and Programme of Action, adopted at the conclusion of the 1993 World Conference on Human Rights, states that “[d]emocracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.” International legal theorists, as well, have maintained “that a commitment to the principles of choice, transparency and pluralism that mark political democracy is essential to securing an institutionalized protection of other human rights.” Others have observed a growing global commitment, in theory if not in practice, to liberal democratic forms of government, and have argued that democratic participation is “on the way to becoming a global entitlement.”

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Yet despite a growing consensus about the importance of democracy, the definition of democracy and, correspondingly, the proper response to failures of democracy, have been deeply contested. For instance, when democracy is defined as a purely procedural norm, a failure of democracy can only be understood as the absence of such procedures and the proper response to such a failure as the establishment of democratic institutions. As many have argued, while democratic institutions are not without value, this logic does not satisfactorily capture other important issues, such as structural inequality or citizen empowerment to participate in political life.5

As democracy will continue to play an increasingly significant role in interstate relations, whether normatively or rhetorically, articulating a definition of democracy that can be used to identify and guide responses to failures of democracy is more critical than ever. Without such a definition, responses to failures of democracy will be determined "piecemeal, ad hoc, unilaterally, [and] opportunistically." Such approaches risk undermining the legitimacy of the language of democracy, and thus its transformative power.

Part II of this Article seeks to articulate a definition of democracy that can guide such responses—a definition that neither reduces the concept to an institutional framework nor requires consensus about the particular ends to be achieved. Part II begins by discussing how the term "democracy" has been used on the international level and the connections that have been drawn between democratic forms of government and global peace and stability. It then examines a range of procedural and substantive approaches to democracy and the implications of these approaches for international responses to failures of democracy. This Part argues that the essential function of democracy is the creation and implementation of mechanisms that allow citizens to hold decision-makers accountable and thereby provide incentives for good governance and space for the resolution of disputes about power and resources. Building on this understanding of democracy, Part II concludes by outlining a functional vision of democracy as accountability that can help ensure that responses to failures of democracy promote good governance.

Part III of this Article uses the definition of democracy as accountability to articulate principles for identifying and responding to failures of democracy. Principally, responses can further accountability by strengthening domestic mechanisms where these are failing, or alternatively, by promoting institutional arrangements that vest citizens with effective sanctioning power.

5. See, e.g., Susan Marks, The Rule of All Constitutions: International Law, Democracy, and the Critique of Ideology 59 (2000); Marietta actualis, Who Commands, Which Democracy?, in Democratic Governance and International Law, supra note 2, at 436, 438; Fred R. Oak, Embodying Democratic Progress, in Democratic Governance and International Law, supra note 2, at 493, 502-03.

This Part argues that responses should be tailored to target the incentives of elites and that the manner of response—i.e., who responds and how—may matter as much as the choice of response. Finally, Part III concludes by emphasizing that responses should promote the rule of law and transparency, two preconditions for accountability.

II. DEMOCRACY AS ACCOUNTABILITY

A. The New Currency of Legitimacy

The nation-state system has long been the dominant lens available for understanding the international order. Within this system, control of people and territory is critical to the establishment and maintenance of internal stability, which, in turn, is the principal measurement of external legitimacy: "In the old order . . . the only test [of external legitimacy] was whether the authorities effectively controlled the state's population and territory and had the capacity to conduct foreign relations."8 Over the last fifty years, however, the measure of state legitimacy has changed. While internal control remains a critical element of external legitimacy, such legitimacy is increasingly measured with reference to international norms. As Thomas Franck explains, "We are witnessing a sea change in international law, as a result of which the legitimacy of each government someday will be measured definitively by international rules and processes."9 One of these norms is "that those who seek the validation of their empowerment parently govern with the consent of the governed."10 States are less willing to accept at face value a claim by an authoritarian or autocratic government that the legitimacy of its rule is based on "an unmanifested popular will or indigenous cultural norms . . . ."11 The perceived legitimacy of a regime now depends, at least in part, on its ability to demonstrate that it rules with the consent of the governed.


8. Glencross, supra note 5, at 71. See generally Sean D. Murphy, Democratic Legitimacy and the Recognition of States and Governments, in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW, supra note 2, at 123.

Control of territory and population is also central to internal legitimacy. The ability to control organized violence, to "monopolize order, to protect individuals in a physical sense, (and) to guarantee the operation of justice and the rule of law, are the primary functions of institutions which (must) derive legitimacy." Mary Kaldor, Governance, Legitimacy, and Security: Three Narratives for the Twenty-First Century, in PRINCIPLED WORLD POLITICS: THE CHALLENGE OF NORMATIVE INTERNATIONAL RELATIONS, 264, 285 (Owain Wynne & Lester Edwin J. Krule eds., 2000).


10. Id. at 465. See also, e.g., Glencross, supra note 4, at 713-15; Thomas M. Franck, Frontiers in the International Legal and Institutional System, 260 BACIEAU DES COURS D'ACADEMIE DES DROITS INTERNATIONALES 9, 102 (1993); Steven Bleach, Democracy in International Law: A European Persuasion, 51 INT'L & COMP. L.Q. 221, 236 (2002) ("Democratic legitimacy depends upon the will of the people to being governed by those in power."); cf. Western Sahara, Advisory Opinion, 1975 I.C.Y. 12 (Oct. 16) (discussing self-determination as "the right of the population of Western Sahara to determine their future political status by their own freely expressed will").

11. Koch, supra note 5, at 207.
tional validation of a state’s membership in the community of democratic states is increasingly “prized as evidence of a regime’s legitimacy.”

This change is in accord with human rights and other international instruments. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights, and the Banjul Charter on Human and People’s Rights discuss the right to participate in government. The U.N. Human Rights Committee explains that Article 25 of the ICCPR creates rights that “are held by individuals and can therefore give rise to individual complaints if abrogated.” Article 3 of Protocol 1 of the European Convention on Human Rights requires signatories to hold elections. Articles 2(b) and 3(d) of the Charter of the Organization of American States (OAS) affirm the OAS’s commitment to representative democracy.

These changes do not, however, suggest an abandonment of the importance of stability in interstate relations. The ability of a state to ensure stability in its territory continues to be the principal measure of state legitimacy. As Michael Ignatieff explains: “Western governments watching the slide of ... regions into endemic civil war are only too likely to conclude that restoring stability—even if it is authoritarian and undemocratic—matters more than either democracy or human rights.” What has changed, however, is the extent to which effective control, by itself, can ensure the kind of stability needed by the world community.

Prior to the Second World War, as long as a state was in effective control of its people and territory, what occurred within its borders was by and large shielded from scrutiny by the principle of state sovereignty. The develop-

12. Frank, supra note 4, at 29. See also Marks, supra note 5, at 110 (observing that democratic governance “should be, and is arguably becoming, a criterion of international legal legitimacy”).
19. Council of Europe, EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, art. 3, Nov. 4, 1950, ETS No. 5, 213 U.N.T.S. 221 (“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in their choice of the legislature.”).
22. See generally DRIAD, GOVERNMENTAL ILLEGITIMACY IN INTERNATIONAL LAW 136–59 (1999) (discussing the evolution of effective control as a criterion for recognition and describing instances
ment and strengthening of international human rights norms have placed some limits on this principle. These limits, however, are consistent with, and to some extent a consequence of, a recognition that effective control is an increasingly inadequate means of ensuring global stability.23 The articulation of the right to self-determination after the Second World War, for example, was not a radical norm shift, but rather was viewed as related to the prevention and reduction of conflict.24 For a world emerging from a war caused in part by one of the most devastating failures of democracy,25 the concepts of democracy, peace, and stability were vitally linked.

During the Cold War, the link between stability and democracy grew more attenuated because of the dominance of other stability-conferring mechanisms—namely, balance of power and deterrence. For example, no significant action was taken to denounce the abuses committed by the new regime in Chile after the coup in 1973 since "neither the Congress nor other international bodies seemed prepared to take measures that would have put genuine pressure on the Chilean regime."26 As Stephen Garrett explains:

[Whatever his other unpleasant characteristics, Augusto Pinochet had brought considerable "order" to a Latin American country that was an important regional actor and whose destabilizing influence on the region... had been a matter of great concern under the [Salvador] Allende regime... This acceptance of the Pinochet regime as a force for stability was accentuated by the first glimmerings of the so-called economic miracle that was to lead to very high growth rates for Chile in the latter 1970s... 27]

The lack of widespread response to the Chilean coup was directly connected to the prevailing understanding that internal control and balance of power, not democracy, were the keys to ensuring stability and order. The language of democracy used during the Cold War did not refer to the responsiveness

in which the internal character of a regime was relevant to its international status).

23. See Fox and Notte, supra note 16, at 740 (discussing the "role" of international human rights norms in this context).

24. See, e.g., ANTONIO CASAS, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 43 (1995) (explaining that the principle of self-determination, at the time of the creation of the U.N. Charte, "was considered to be a means of fostering the development of friendly relations among States: it would foster universal peace"); emphasis in original.


27. Id. at 102-06.
of a government or the political participation of its citizens, but rather served as a proxy for allegiance in ideological battles fought over spheres of influence. The balance of power that was based on these spheres of influence served, in turn, as the foundation of global political and economic stability.28

Balance of power, however, has been only one of many constructs that have supplemented effective control as a stability-conferring mechanism. The threat of destabilization after decolonization, for example, was the impetus behind the reliance on the principle of nti possidetis. This principle mandates that at decolonization, former colonial administrative boundaries become the international borders of the new state.29 The principle of nti possidetis was adopted, in part, out of a belief that it would provide a clear and predictable resolution for disputes about borders, thus reducing the likelihood that competing factions would resort to armed conflict for territorial gain.30 As the International Court of Justice has explained, the purpose of this principle is “to prevent the independence and stability of new States [from] being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power.”31 Although the extent to which application of this principle contributes to long-term peace and stability is debatable,32 its perceived stability-enhancing features led to its adoption in the context of decolonization.

With the end of the bipolar framework of the Cold War, balance of power, effective control, and the modern application of the principle of nti possidetis33 are increasingly unable to satisfy the global community’s need for stability. Increased transportation and communication across borders have undermined the ability of states to maintain effective control within their borders.34 Intrastate conflicts, which undermine the ability of states to control

28. Richard Falk, Re-forming the Legal Agenda of World Order in the Course of a Turbulent Century, 9 TRANSNAT’L L. & CONTEMP. PROBS. 451, 464 n.45 (1999) (“The Cold War era was premised on a return to the core ideas of relying upon countervailing power and the means to use it as the foundation of international stability.”).  
31. Case Concerning the Frontier Dispute, supra note 29, ¶ 20. See also Murphy, supra note 8, at 127 (pointing out that remaining administrative borders help promote “stability, by eliminating unpredictable and excessive fragmentation”).  
32. See, e.g., CLAESSEN, supra note 26, at 190–95; J. Klabbers & R. Lohber, nti Determinative and nti Possidetis, in PROBLEMS AND MINORITIES IN INTERNATIONAL LAW 37, 38 (Catherine Bellman et al., eds., 1995); Rasner, supra note 10, at 591. Rasner explains that the “extension of nti possidetis to modern borders leads to genuine injustices and instability by leaving significant populations both unsatisfied with their new status in new states and uncertain of political participation there.” Id.  
33. Murphy, supra note 8, at 153. The principle of nti possidetis, historically applied in the context of decolonization in Latin America and Africa, has been applied more recently, for example, in the breakup of the former Yugoslavia, whose former internal administrative boundaries became the international borders of newly created states. See Rasner, supra note 30, at 595–97, 613–14.  
34. Stephen D. Krueger, Perversities Not Perversions: State Sovereignty at the Global Norm, 30 CORNELL INT’L L.J. 651, 674 (1997) (explaining that “state sovereignty re-emerges redoubly as it is more difficult for states to exercise effective control within their own borders”).
their borders, have become a dominant form of conflict in the world. Further, market integration and weapons proliferation have made states more dependent on each other's stability: "[I]n the currently integrated international system, the travails of one society almost inevitably spill over into difficulties for others as well. . . . From this perspective, international instability is inherently infectious and is not likely to be as quarantined as in the past days." Today, the increased instability that accompanies a regime's choice to continue or reinstitute a form of unchecked governance affects the international community. Simple, physical control of territory is increasingly insufficient to ensure international political and economic stability.

In light of the growing ineffectiveness of these existing mechanisms, democratic accountability is increasingly viewed as a highly effective alternative. As U.S. National Security Advisor Anthony Lake explained in a 1993 address, "[t]he addition of new democracies makes us feel more secure because democracies tend not to wage war on each other and tend not to sponsor terrorism. They are more trustworthy in diplomacy and they do a better job of respecting the human rights of their people . . . ." States are often concerned about failures of democracy not because such failures deny citizens the right of political participation, but rather because the failure represents a threat to the global community.

U.N. Security Council resolutions also reflect the underscoring that failures of democracy, particularly failures represented by the overthrow of a legitimately elected government, can threaten the international community as a whole. The threat to international peace and security caused by the overthrow of the elected government in Haiti, for example, was the basis for U.N. Security Council Resolution 940, authorizing intervention in Haiti under Chapter VII of the U.N. Charter. Tom Farer notes that the U.N. Secu-

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35. See Susan Marks, International Law, Democracy and the End of History, in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW, supra note 2, at 352, 560.


38. See Stephen J. Schabas, The Santiago Commitment as a Call to Democracy: or the United States Endorsing the OAS Role in Haiti, Peru, and Guatemala, 23 U. MIAMI INT'L & COM. L. REV. 393, 317 (1994) ("[T]he government is more likely to feel threatened by and concerned about the possibility of disruption in the continuity of constitutional government than about disrespect for democracy and human rights per se.").


rity Council recognized the link between democracy and security as early as 1968, when it authorized economic sanctions against Rhodesia's white minority government pursuant to its Chapter VII powers.41

A number of scholars have argued that failures of democracy can in some contexts constitute such a threat to global stability as to justify military or other intervention. Under this view, intervention is necessary to restore the accountability mechanisms that are required for a stable world order. Gregory Fox and Georg Nolte argue, for example, that the international community may legitimately interfere with internal political processes because members of the community have a vested interest in and are affected by the outcomes of these processes.42 Others have framed this argument for intervention in terms of the right to democratic participation. Given an individual human right to democracy, "the international community has the right...to concern itself with efforts designed to remove obstacles to [a state's] democratization."43 According to this view, states that fail to ensure this right not only lose internal legitimacy, but external legitimacy as well.44

Regional organizations, as well, have identified threats to democracy, such as the overthrow of an elected government, as threats to regional peace and security, sufficient in some cases to justify intervention.45 Under the Charter of Paris, for example, members of the Organization for Security and Cooperation in Europe (OSCE) commit to "co-operate and support each other with the aim of making democratic gains irreversible."46 In the Moscow Document, the OSCE's commitment is even more explicit. Member states condemn "forces which seek to take power from a representative government of a participating State against the will of the people as expressed in free and fair elections" and agree, in the case of such overthrow, to support vigorously the legitimately elected government of that state.47 The OSCE's Copenhagen Document provides that member states

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41. See supra note 13, at 726.
42. Fox & Nolte, supra note 25, at 61. See also David Laban, Just War and Human Rights, 9 Penn. J. Int'l L. 150, 164 (1990) discussing the legacy of intervention and arguing that "the duty of non-intervention exists only so long as states are legitimate").
43. Buergenthal, supra note 4, at 713. See also, e.g., Fernando R. Teixeira, HUMANITARIAN INTERVENTION 15-16 (1983).
45. See, e.g., Buergenthal, supra note 4, at 727-39 (discussing actions undertaken by the OAS, particularly the OAS's response to the Somocu in Nicaragua); Marks, supra note 25, at 231-34 (discussing same at the European Community). In part, regional networks may place such an emphasis on democracy because the internal effects of failures of democracy will be felt most immediately by neighboring states. The fact that the external effects of external instability are felt first and most strongly within regional networks forms part of the rationale for response by local or regional organizations. See supra Part III.B.
recognize their responsibility to defend and protect... the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State.48

Resolution 1080 of the OAS reflects similar concerns about threats to democracy within the region. In that resolution, the member states of the OAS resolved to instruct the Secretary-General "to call for the immediate convocation of a meeting of the Permanent Council in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by a democratically elected government in any of the Organization's member states" so that appropriate action could be taken.49 The OAS subsequently enacted the Protocol of Washington, which amended the OAS Charter to allow it to suspend from the organization a member state "whose democratically constituted government has been overthrown by force."50

Moreover, democratic accountability is increasingly viewed as critical to global economic stability. The conditional lending policies of the World Bank, for example, reflect this understanding. While the World Bank uses primarily "economic considerations" to determine a borrower's loan eligibility, it defines "economic" broadly to include such issues as fear on the part of foreign investors that "political instability of a non-democratic government might obstruct foreign investment."51

Because it promotes both internal and external political and economic stability, democracy as accountability "address(es) not only the well-being of those living within democratic systems, but the interests of outsiders as well."52 As a result, the international community is, at the very least, "no longer indifferent to the internal character of regimes exercising effective control within


52. Fox & Roth, supra note 2, at 6.
"sovereign" States. 53 Although concern about the threat to international security posed by terrorism has led to a renewed emphasis on control of borders and populations, failure to ensure that such control is paired with a commitment to principles of democratic accountability may ultimately undermine prospects for sustainable international peace and stability. 54 As a means of ensuring peace and stability, democratic accountability must be understood as an emerging obligation erga omnes—a duty owed not only "by all governments to their peoples," but also "by each government to all members of the international community." 55

B. Approaches to Democracy

Although democracy has been identified as essential to both the protection of human rights and the furtherance of international peace and security, its definition is deeply contested. Current approaches to the definition of democracy often reference some procedural component or institutional political arrangement. 56 Yet theoretical approaches differ widely in the extent to which they articulate whether, and if so, what, substantive goals are or should be associated with those institutional arrangements. 57 At the same time, however, definitions that focus on institutional arrangements and those that focus on substantive concerns are not necessarily mutually exclusive. Rather, they embody a range of possibilities: "Substantive democracy is a maximal goal, relevant to normative evaluation of all regimes but susceptible only of incomplete realization in even the most highly developed polity. Popular sover-

53. Id. at 2.
54. See THOMAS L. FRIEDMAN, LONGITUDE & LATITUDE 244–45 (2002).
55. Fareed, supra note 3, at 38. Whereby also observes:

[While it might not yet be possible to identify a general obligation on states to introduce democratic governance, the evolving nature of the right of the people to self-determination, the increasing number of states party to universal and regional human rights instruments, and recognition that a democratic system of government may not be substituted by an authoritarian one, indicates [sic] a progressive and irreversible movement to a world community of democratic states.

Whereby, supra note 10, at 234.
56. Participatory approaches to democracy, in contrast, emphasize both political arrangements, but the experience and transformative power of participation and deliberation. See, e.g., BENJAMIN R. BARBER, Strong Democracy: Participatory Politics for a New Age (1984); DAVID HELD, Models of Democracy 264–73 (Cl ed., 1996) (discussing the work of Castells, Foucault and C.S. Macpherson). For discussions of the evolution and range of democratic theories and practices, see generally ROBERT A. DUNE, Democracy and Its Critics (1989); Held, supra.
57. Cf. Robert A. Dahl, Can International Organizations Be Democratic? A Skeptic's View, in DEMOCRACY'S REMOTE, supra note 7, at 19, 25 (describing a similar analysis with reference to political arrangements generally). Dahl notes that any distinction between substance and procedure is, to some extent, illusory: "Because substantive solutions are not self-defining, they require procedures for determining the substantive best outcomes; and because procedures, including democratic procedures, are means to ends, not ends in themselves, their justification depends on more than purely procedural values." Id. See also Kahlbom, supra note 5, at 453 (arguing that even those who post an essentially procedural model of democracy "are automatically compelled to perceive an external ideal, or a principle, of the good life by reference to which their understanding of democracy may seem justified").
eignty is a minimal goal, requisite to the bare recognition of a government's legitimacy against the claims of rival contestants."

Understood as a purely procedural norm, democratic institutions simply provide rules of decision for determining who is to govern. According to this view, as articulated by Joseph Schumpeter, democracy "is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote." As James Allan explains, the essential distinction between this purely procedural model and more substantive visions of democracy "revolves around whether democracy involves or entails certain outcomes—certain right and just outcomes—or whether democracy is purely procedural—the procedure being that the views of the majority prevail." This purely procedural view of democracy, i.e., the understanding of democracy as an "organizational form or checklist of procedures," has informed most democracy-promoting initiatives on the international level. Because of the emphasis on institutional arrangements that generate political competition, democracy-promoting initiatives have focused almost exclusively on elections and other mechanisms that can foster such competition, such as multiparty systems and universal enfranchisement.

A number of scholars, among them most recently Susan Marks, Martti Koskenniemi, and Bud Roth, have criticized exclusive reliance on democratic institutions, and in particular electoral processes, as inadequately attentive to issues such as structural inequality, human rights, and social justice. Roth explains that universal franchise merely allows all sectors of the society to select once every four years from among pre-packaged candidates that are, in the main, controlled by social elites (or worse, by neo-colonial interests). Such participation scarcely implies the rudiments of accountability, let alone popular empowerment. Popular prerogative to reject one given set of administrators of the social order in favor of another, while not a trivial devel-

58. Roth, supra note 5, at 512.
59. JOSEPH SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 269 (1942). See also Held, supra note 56, at 177–98 (describing Schumpeter's theory of democracy). Generally, pluralist theories also focus primarily on institutional arrangements. Central to the "classic version" of pluralism is the non-hierarchical, non-competitive arrangement of power. Decisions are made by assembly achieved through a process of bargaining between a variety of interest groups. Id. at 201–02.
61. Marks, supra note 5, at 57.
62. Id. at 52. For an overview and analysis of the United States' democracy-promoting initiatives, see generally Thomas Carothers, America's Democracy Abroad: Ten Lessons From Crisis (1999). Carothers explains that the United States' "core strategy" in promoting democratization is what he calls the United States' "democracy template"—is focused on elections, some institutions, and civil society. Id. at 96. The U.S. democracy assistance programs not only focus on those three institutional components, but also promote a model of democratization comprised of a "natural sequence" of specific steps. Id. at 97.
opment, is very far from the power to make government responsive to popular initiatives, input, or needs.64

Drawing on scholarship that characterizes such systems as "low-intensity democracies,"65 Marks argues that the focus on a purely procedural model of democracy "concentrate[s] attention on forms and events, and correspondingly . . . shift[s] the emphasis away from relationships and processes."66 This preoccupation, Marks explains, obscures "more far-reaching objectives, such as enhancing respect for human rights, social justice, and civilian control of the military."67 Koskenniemi similarly emphasizes that both procedural and participatory theories of democracy "leave aside powerful aspirations that are neither about procedural correctness nor about political participation, but that stress the primacy of spiritual and economic well-being to political rights and the quality of communal life to individual life-choices."68 Henry Steiner, as well, has emphasized how focusing on electoral procedures can undermine citizen empowerment.69 Although social and material inequalities affect the ability of individuals to exercise political power, the exclusive emphasis on procedures makes "the extent to which social and material conditions affect the opportunities for political participation . . . appear irrelevant."70 This, in turn, further entrenches the status quo and undermines the chances for "transformative social and political change."71 In essence, the minimalist definition of democracy becomes self-fulfilling by preempting inquiry into structural inequality and prospects for societal transformation.72

64. BOTTE, supra note 22, at 106. As Diamond explains, this is the "fallacy of electoralism"—the error of "neglecting the degree to which multiparty elections may exclude significant sections of the population from the contest for power, allow for extensive human rights violations, or leave significant areas of state authority dominated by the military or other unaccounted figures." Larry Diamond, Consolidating Democracy in the Americas, 150 ANNALS AM. ACAD. POL. & SOC. SCI. 12, 13 (1997).
65. "Low-intensity democracies" are those in which democratic institutions have been reinforced by elections . . . understanding and highly formal conceptions of democracy, in which the holding of periodic multiparty elections is taken largely for granted, and more far-reaching institutional changes are held to be optional extras. . . . [L]ow-intensity democracy is largely a "cosmetic" model. It provides some of the forms associated with modern democracy, but leaves established centers of power basically intact.

67. Id. at 53. See also, e.g., Propo supra note 13, at 1746; Koskenniemi, supra note 5, at 430; Marks, supra note 65, at 464-65; Botte, supra note 3, at 502-4; Garry J. Simpson, Imagined Commum: Democratic Liberty in International Legal Theory, 15 AM. Y.B. INT’L L. 103 (1994); David Wippman, Defending Democracy Through Foreign Intervention, 19 HARV. J. INT’L L. 639, 667 (1997).
68. Koskenniemi, supra note 5, at 438.
69. Henry Steiner, Political Participation as a Human Right, 1 HUM. RTS. Y.B. 77 (1998), reprinted in INTERNATIONAL HUMAN RIGHTS IN CONTEXT 850, 854 (Henry J. Steiner & Philip Alston eds., 2000) ("A solely exclusive reliance on elections heightens the sense of powerlessness of the many to act other than passively by reacting to choices formulated by others.").
70. Marks, supra note 3, at 61.
71. Id. at 74.
72. Id.
An exclusive focus on procedural democracy also renders international responses to failures of democracy vulnerable to manipulation. Such a focus allows governments to achieve international validation by implementing procedures, such as elections, while remaining unaccountable to their citizens. Although some procedures may be preferable to no procedures at all, Franck's observation remains apt:

Increasingly, ... governments whose legitimacy is questioned are turning to the international system for that validation which their national polis is as yet unable to give. They do so to avoid the alternative—persistent challenge to authority by coups, counter coups, instability and anarchy—and to enable themselves to govern with essential societal acquiescence. What they seek is legitimation by a global standard monitored by processes of the international system.73

Haitian President Jean-Bertrand Aristide himself observed that "the forces of order wanted us to vote so that it would appear to the outside world that we were a happy, peaceful democracy, and then the exploitation and corruption could go on just as before."74 Although democratic procedures are ostensibly intended to ensure legitimate authority, such procedures now themselves confer and measure legitimacy.

Finally, a purely procedural model of democracy provides no criteria for making normative assessments of the outcomes of the procedures because it merely "lists the institutional requisites without revealing the underlying logic of ends that generates the list."75 Without such criteria, it is difficult to evaluate the usefulness of the institutions and procedures in different contexts. Working from such a model, responding actors may not be able to tailor their responses to the needs of a particular situation or adapt to changing circumstances.

Majoritarian democratic procedures, for example, may not adequately ensure the rights of minorities. The ideal of majoritarianism presupposes a "certain uniformity in basic political and social values such that no particular subset of the population is categorically relegated to minority status, and all members of the polity are able to participate in and influence the out-

73. Franck, supra note 3, at 30-31. As Franck explains, "the bare monitoring of the act of voting may place observers in the position of seeming to legitimize an electoral victory that was not fairly achieved." Id at 76.
74. Schabas, supra note 38, at 525 (quoting Jean-Bertrand Aristide, In the Parish of the Poor: Writings from Haiti 9-11 (Amy Wilson, ed., 1990)).
75. Roth, supra note 3, at 495. As Roth explains further, this understanding of democracy fails to provide criteria for evaluating outcomes in part precisely because it is a procedural norm. "What counts as democratic development ... cannot be resolved by deduction from a procedural model, because whatever is deduced is ambiguous or incomplete without reference to the substantive social purposes for which one values the procedures." Id at 496. See also David Freiman, Democracy and Human Rights 3 (1999) (emphasizing that associating "democracy with [particular institutions] is to elevate a means to an end, [and] to confuse an instrument with its purpose") (footnote omitted); C. Donald Linder, Radical Democracy 111 (1996) ("It is an error to refer to institutions as if they were synonymous with the conditions they are intended to promote.").
come of political decisions." In reality, few states, if any, possess this level of homogeneity, and "majorities often willingly vote to maintain, reinforce, or even restore socioeconomic stratification." Yet if the definition of democracy is purely procedural, majoritarian rule is no more or less appropriate than any other institutional arrangement, even when it results in the marginalization of one or more subsets of the population. If, on the other hand, the working definition of democracy includes some reference to ends—such as social and material equality—pure majoritarian rule may be less desirable. In other words, determining whether particular procedures are appropriate requires an analysis of the purposes those institutions are intended to promote.

In referencing the ends served by institutional arrangements, substantive visions of democracy avoid many of the problems posed by purely procedural definitions. Some substantive approaches emphasize the extent to which democracy ensures the rights necessary for equal participation in communal life, while others discuss democratic procedures as expressions or means of realizing other values, such as political equality and popular sovereignty. Marx, for example, explains that democracy "must be understood as an ongoing process of enhancing the possibilities of self-rule and the prospects for political equality, against a background of changing historical circumstance." Representative democracy, as well, has often been understood as a more substantive form of procedural democracy. The "key characteristic" of representa-

76. Chaim Weitz, NATIONAL DETERMINATION: THE LEGACY OF THE FRENCH REVOLUTION, COLIUS. INT’L L. AFF. ONL., V. 97 (Dec. 2000), http://www.columbia.edu/itn/ocw/97/9700.html. See also WILL. KANTZER, MULTICULTURAL CITIZENSHIP 32 (1999) (explaining that Mill’s understanding of democracy as government by the people ‘is only possible if the people’ are ‘a people’ —-salon’). 77. Koch, supra note 3, at 709. Koch explains that “[o]ur democratic process, in which social hierarchy is locked in, such as in polyarchy or obsessed democracies, the democratic perspective would not seem to favor legitimizing the status quo and casting as equal opposition into a kind of utopian externality.” Id. at 710. 78. See, e.g., Allan, supra note 60, at 166 (explaining that Dworkin reconciled substantive and procedural democracy by equating democracy with rights outcomes (about equality and respect) which then allowed him to justify the choice to “abandon majoritarian ascensions when they do not respect these conditions (or, rather, to opt for procedures—like strong judicial review—that protect them itself”). 79. See, e.g., Diamond, supra note 64, at 13 (discussing Dahl’s argument that “to be meaningful, competition and participation also require extensive civil liberties and free political pluralism and freedom”) (quoting ROBERT DAIN, POLYARCHY: PARTICIPATION AND OPPOSITION 3 (1971); Susan Marks, THE END OF HISTORY? REFLECTIONS ON SOME INTERNATIONAL LEGAL THEORY, 8 BUL. INT’L L. 449, 471 (1997) (discussing substantive theories of democracy)). 80. See, e.g., John Morison, From Legal Transplants to Transformation: Human Rights and the Promise of Transnational Civil Security, 14 AM. U. INT’L L. REV. 1333, 1339 (1999) (explaining that democracy must “license transparent and participatory decision-making and a government that is in constant dialogue with its citizens to shape and direct fundamental policies” and that “[It is] phrasmatic decision-making that is at the heart of democracy”) (quoting Eric Danielsson, Democracy as Development: Toward a Legal Framework for the American, 11 INT’L J. 1, 3 (1997)); Wheeler, supra note 10, at 230 (defining democracy as a system of government “at which the principles of popular sovereignty and political equality find expression in free and fair elections and popular participation in the political process”). 81. Marks, supra note 3, at 79. See also Gregory H. Fox & George Nolte, Illusory Democracies, in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW, supra note 2, at 389, 401 ("Democratic procedures are not an end in itself but a means of creating a society in which citizens enjoy certain essential rights, primary among them the right to vote for their leaders.").
Representative democracy is the attempt to construct a government "that is supposed to operate automatically to produce the result approximating what it would be if the people had political virtue, thereby making political virtue itself superfluous."\(^{82}\)

Although the more substantive visions articulated by Mark, Koskenniemi, and Roth avoid the reductionist approach of purely procedural democracy, they, too, may be difficult to translate into principles for responding to failures of democracy. While guidelines are necessary to ensure consistent responses and avoid potentially "heavy-handed (and predatory) interventionism,"\(^{83}\) substantive definitions of democracy may fail to yield such guidance because they are often "over- and under-inclusive at the same time, too general to provide political guidance and always suspect as a neocolonialist strategy."\(^{84}\)

Substantive definitions of democracy are under-inclusive in that they often tend to presuppose a consensus on what constitutes just or fair outcomes and, thus, to impose particular substantive visions where they are neither appropriate nor useful. At the same time, however, the attempt to avoid this under-inclusiveness by describing the substance of democracy at a more general level presents the problem of over-inclusiveness. While true material and social equality among citizens is a worthy goal, it can be difficult to determine whether any particular response will ultimately further or undermine this goal. As Roth explains, in discussing the right to democratic governance, "[s]uch a 'right' either is indeterminate or entails the imposition of a specific liberal-democratic worldview that has yet to find general acceptance."\(^{85}\)

Thus, despite the importance of more substantive visions of democracy as a counterweight to the purely procedural approach, substantive definitions are not easily put into practice. A vision of democracy that attends to questions of social and material equality and structural change may, however, be operationalized through a focus on the function of democracy: ensuring the accountability of decision-makers by providing those affected by the decisions with the power to sanction their leaders.

C. The Function of Democracy

A definition of democracy as accountability attends to substantive goals not by articulating the ends to be achieved, but by allocating power over deci-

\(^{82}\). Lehman, supra note 75, at 58. See also James S. Fishkin, Democracy and Deliberation: New Directions for Democratic Reform 44 (1991) (explaining that Madison's theory of government emphasized design of a system that would guide in the election of governors who would speak with a "public voice" consonant with the greater public good, though not necessarily "what the people happen to think given their passions and lack of information"). See generally Darrow, supra notes 56, at 28-30; Held, supra note 7, at 84, 89.

\(^{83}\). Roth, supra notes 22, at 149. See also Crawford, supra note 13, at 127 ("The 'majorities of the world will not accept international' rules that yield a different answer to the question of whether an action is legal depending on the identity of the actors.") (quoting D.W. Brewster, International Incidents: New Genres or New Delusions, 12 Yale J. Int'l L. 586, 588 (1987)).

\(^{84}\). Koskenniemi, supra note 5, at 439–40.

\(^{85}\). Roth, supra note 22, at 424.
sion-making to those who are affected by the decisions. Allocating power in this way fosters decision-making that is more responsive to the needs (i.e., the substantive goals) articulated by the populace because it requires leaders to bear the consequences of their decisions and provides space for dialogue within a society.

First, democratic structures prevent leaders from externalizing the costs of their bad decisions. As explained by the Chicago School approach to public choice theory, leaders will be responsive to the needs and desires of the populace primarily when self-interest forces them to respond. Correspondingly, authoritarian regimes are unresponsive to citizens' needs because leaders of these regimes can insulate themselves from the consequences of their decisions. As Susan Gibson explains,

> without a voting public to tip the scales, the public choice concerns of a totalitarian leader are considerably different than those of a democratic leader... [T]he public choice doctrine "operates off-the-scale within totalitarian and non-democratic regimes to produce what might be characterized as massive government failure in those systems." 87

Accountability mechanisms, on the other hand, not only require leaders to face the consequences of their decisions, but place the power to sanction those leaders in the hands of those most affected by the decisions—the citizens. The ability of those affected by decisions to sanction the decision-makers functions as a powerful incentive for responsible and, more importantly, responsive decision-making. As Amartya Sen argues, "[g]overnmental response to the acute suffering of people often depends on the pressure that is put on the government, and this is where the exercise of political rights (voting, criticizing, protesting and so on) can make a real difference." 88 Accountability mechanisms are instrumental because of the incentive structures they impose on the decision-makers. Decision-makers have an incentive to respond effectively to the needs of the populace if they know they can be criticized and sanctioned by citizens. 89

The clearest application of this understanding of democracy as accountability is represented by Immanuel Kant's theory of the "democratic peace." 90 According to this theory, democracies do not go to war with each other in

89. See id. at 132. See also Moore, supra note 37, at 891 (“The sense of distance between the ruler and the ruled—between 'we' and 'them'—is a crucial feature of fascism.”).
90. Immanuel Kant, Permanent Peace (Lewis White Beck ed., Liberal Arts Pr 1957) (1795). See also, e.g., Ehrlich, supra note 4, at 317; John M. Owen IV, International Law and the "Liberal Peace," in Democratic Governance and International Law, supra note 2, at 143; Scharlemann, supra note 18, at 764.
part because citizens would sanction a leader who decided to go to war despite popular opposition. Former U.N. Secretary-General Boutros Boutros-Ghali has explained that “accountability and transparency of democratic Governments to their own citizens, who understandably may be highly cautious about war, as it is they who will have to bear its risks and burdens, may help to restrain recourse to military conflict with other states.” Faced emphasizes, as well, that recent studies have tended to confirm the OAS founders’ intuition “that the mutual possession of authentically democratic political orders vastly reduces the security dilemmas of states and correspondingly enhances their capacity for cooperation.” Although many have questioned whether democracies are inherently peaceful, democratic peace theory does illustrate at least the potential stability-promoting aspects of systems that ensure accountability.

Second, accountability mechanisms can serve as a means by which various groups in a society can resolve disagreements about the proper allocation of resources and access to political power, which could otherwise be significant sources of societal conflict. The accountability of the state to civil society, for example, helps ensure that “public power does not tread on private right, and... that no faction of civil society can capture enough of State power to disproportionately advantage itself at the expense of other interests.” Accountability mechanisms accomplish this principally by providing the power to sanction citizens in all segments of the population. Ideally, providing sanctioning power to citizens can help ensure that they are consulted about their needs. Social programs, such as poverty alleviation, or shelter and food relief

91. Owen, supra note 90, at 347 (quoting The Secretary-General, Statement to the General Assembly ¶ 18; U.N. Doc. A/51/161 (Dec. 20, 1996)). See also id., supra note 37, at 624. Likewise, Boutros-Ghali emphasized that “(d)individual involvement in the political process enhances the accountability and responsiveness of governments. Governments which are expensive and accountable are likely to be stable and to promote peace.” Fein & Nolte, supra note 23, at 6 (quoting Boutros Boutros-Ghali, Maintaining International Peace and Security: The United Nations at Forum and Field Point, 16 Loy. L.A. Int’l & Comp. L. Rev. 1, 2 (1996)).

92. Faced, supra note 13, at 724.

93. See e.g., Mears, supra note 5, at 47 (“While liberal states are believed likely to avoid war with other liberal states, these states are not held to adopt an especially peaceful posture towards non-liberal states.”); Kastenmiller, supra note 3, at 439 (“We have not been absent but have been externalized—was by peace. If so, then the causal link is not between democracy and peace but between imperialism, development, and peace—with the implication of underdevelopment and war as ends.”); Peter Zalkous, The Rise of Liberal Democracy, FOREIGN AFFS., Nov.-Dec. 1997, at 22, 26 (noting that in reality, democracies are “more warlike, going to war more often and with greater intensity than most states,” and that “life is only with other democracies that the peace holds”).

94. As Whedon explains, “the collapse of authoritarian governments, and the evident failures of socialistic central planning, have resulted in a general recognition that democracy provides the best-known process through which the realization of conflicts between different interest groups may be achieved.” Whedon, supra note 10, at 225 (emphasis omitted).

95. Both, supra note 5, at 499-500. Sociology similarly emphasizes that “to satisfy democratic values, the level of material satisfaction must be determined through a free process of deliberation among the people.” Irwin F. Seidman, Establishing Deliberative Democracy: Moving from Misery to Poverty with Dignity, 21 U. ARK. LITTLE ROCK L. REV. 79, 94 (1999). As discussed in Part III.C, supra, depending on the context, preventing any one faction from disproportionately advantaging itself at the expense of another may require unequal allocations of sanctioning power.
programs, will often be most effective when the communities that need them are involved in their selection, design, management, and delivery. Accountability mechanisms may thus contribute to the reduction of systemic inequalities—and, correspondingly, interstate conflict—because they ensure the participation of different groups in resolving conflicts about the allocation of resources. Clearly, as Marks emphasizes, this function is not generally well-served in low-intensity democracies. The prevalence of economic inequality in low-intensity democracies does not, however, indicate that accountability mechanisms do not contribute to the equitable distribution of resources; rather, it shows that low-intensity democracies may not be highly accountable.

In addition, constituencies defined by ethnic, religious, or other identities may come to agreements about power allocation through accountability mechanisms. For example, in Bosnia, the "fundamental source of dysfunction is the absence of a formula for governance acceptable to each of its ethnic constituencies." Without structures that can be used to reach agreements about power, "contending interests are likely to seek to settle their differences through conflict rather than through accommodation." Where, however, institutional arrangements give citizens the power to hold their leaders accountable and determine how and when that power may be exercised, the predictable governance created by such a system reduces the need for factions to resort to conflict to resolve disputes.

96. See, e.g., BERNSTEIN, supra note 75, at 107; LARRY DIAMOND, DEVELOPING DEMOCRACY: TOWARD CONSOLIDATION 83 (1999). See also SEN, supra note 88, at 152 (arguing that no failure of subnational proportions "has ever occurred in any independent country with a democratic form of government and a relatively free press"). But cf. Michael Manners, Does Democracy Mean Peace?, N.Y. TIMES, Mar. 1, 2000, at 87 (discussing Sen's acknowledgment of the distinction between the "role of democracy in preventing famine and the compensatory ineffectiveness of democracy in preventing regular undernourishment").

97. C.f. Russell Flavin, Democracy and Collective Rights, in DEMOCRACY'S EDGES, supra note 7, at 65, 65. Although democracies may be better at reducing the possibility that factions within a society will resort to conflict about disputes over resources, Hardin argues that they do not resolve distributional issues particularly well. Id.

98. MARKS, supra note 5, at 58.


100. Fox & Roch, supra note 2, at 7-8 (quoting Report of the Secretary-General: Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa, ¶ 77 (1998)). Zahrin articulates the correlation between democracy and the reduction in ethnic conflict as a distinction between liberal and illiberal democracies. "Many liberal democracies can usually accommodate ethnic divisions without violence or tension and live in peace with other liberal democracies. But without a background in constitutional liberalism, the introduction of democracy in divided societies has usually fostered nationalism, ethnic conflict, and even war." Zahrin, supra note 99, at 55.

101. See, e.g., Ibram R. Rhode, The Illusory of "Pro-Democratic" Insurgent Fact, in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW, supra note 2, at 328, 333 ("Electoral process reflect, not independent principles of natural law, but historically contingent agreements among diverse political actors about how power may legitimately be exercised."). See also Satterthwaite, supra note 18, at 764 n.187 ("Democracy and development are linked . . . because democracy provides the only long-term basis for managing competing ethnic, religious, and cultural interests in a way that minimizes the risk of violent internal conflict."). But cf. Amy Chua, Markets, Democracy, and Ethnocide: Toward a New Paradigm for Law and Dem-
Finally, accountability mechanisms contribute to the resolution of intra-state conflicts by creating a space for public dialogue. The European Court of Human Rights, for example, has emphasized that "one of the principle characteristics of democracy is the possibility it offers of resolving a country's problems through dialogue, without recourse to violence." 102 Under this view, democracy is not complete unless it provides the space necessary to resolve disputes and come to agreements about the allocation of power and resources. Steven Ratner, for example, has described civil conflict as an indication of "the incompleteness of democracy in that people are not settling their disputes through democratic processes." 103 Accountability mechanisms create opportunities for public dialogue and engagement by providing formal rules and processes for the exercise of power. Where these mechanisms vest citizens with the power to influence decision-making, citizens will be more likely to seek such opportunities than resolve their disputes by other means. 104

D. Defining Democracy

Focusing on accountability provides the basis for a functional vision of democracy that both attends to questions of social and material equality and structural change and can be applied in a variety of contexts. A vision of democracy as accountability is more robust than a purely procedural definition because it attends to important substantive goals. 105 At the same time, however, it avoids the necessity of a priori agreement on the substantive ends to be achieved by leaving those decisions in the hands of those who are in the best position to make them. 106

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102. See Fisk, supra note 2, at 60, 62 (quoting United Communist Party of Turkey V. Turkey, 26 E.C.R. 286, H.R. 121, 153 (1990)).
103. Steven R. Ratner, Democracy and Accountability: The Gini-Covariant Pads of True Emerging Nations, in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW, supra note 2, at 449, 460. Cf. Bartelsman, supra note 18, at 764 n.187 (emphasizing that democracy and development are linked "because people's participation in the decision-making processes which affect their lives in a basic sense determines the development process").
104. See Whalen, supra note 10, at 725 (noting that former U.N. Secretary-General Boutros Boutros-Ghali has emphasized that democratic processes minimize the risk of armed conflict "because they channel competing interests into areas of discourse and provide means of compromise which can be respected by all participants in dispute").
105. Schumpeter argued that the "notion of the common good is an unacceptably elastic element of democratic theory" and thus excluded substantive ends from his definition of democracy. Hein, supra note 56, at 186 (citing SCHUMPETER, supra note 59, at 252). A definition of democracy as accountability, however, anticipates a role for the common good, but avoids defining its content.
106. Defining democracy as accountability does not necessarily mean that democracy and accountability are congruent. A system labeled as "democratic" under this approach would be accountable; uncontrollable "democratic" systems are the low-inertia democracies described and rejected by Martin and others. It is certainly possible, however, to imagine accountable systems that would be difficult to deem democratic; there are likely many values that are adequately expressed within an understanding of democracy as accountability. The distance argument is not, however, an attempt to redefine the nature of democracy; instead, accountability has been an important feature of many definitions of democracy. See id. at 3 (discussing a variety of possible interpretations of "rule by the people," a number of which can-
A focus on the ability of citizens to sanction leaders thus avoids the problems of both over- and under-inclusiveness that are often associated with substantive visions of democracy. Democracy as accountability is specific enough to provide concrete political guidance; at the same time, however, it may be less "suspect as a neocolonialist strategy" because it does not require agreement about the substantive ends to be achieved. Nor does democracy "entail[] the imposition of a specific liberal-democratic worldview that has yet to find general acceptance." To the extent that such a worldview is defined by its emphasis on tolerance, it is possible to imagine—at least, for example, in a state with a homogeneous citizenry—a government that is both accountable and intolerant.

Whether democracy as accountability necessarily requires the array of individual rights and freedoms often associated with liberal democracies is a more difficult question. As Marks explains, "the liberal preoccupation with rights and freedom from government control, and the democratic preoccupation with equal participation in, and accountability of, public power, may point in different directions." Clearly, democratic accountability may require certain individual freedoms, such as freedom of expression, to function properly. As opposed to other substantive visions of democracy, democracy as accountability emphasizes the allocation of decision-making power instead of the decisions that are ultimately made. Thus, it may be compatible with a wider range of choices made by citizens about the array of rights they desire. At the very least, defining democracy as accountability may allow the international community to identify situations in which a response is required and to respond in appropriate ways without necessarily making assumptions about the choices that citizens would make with regard to any particular issue.

Accountability can be understood as an institutional arrangement in which individuals affected by decisions have the power to hold the decision-makers responsible for their actions. As John Dunn elaborates,
the relation of accountability holds fully where persons exercising public powers are (1) liable for their actions in exercising those powers, (2) predictably identifiable as agents in the exercise of these powers to those to whom they are liable (in the democratic case, ultimately to the demos distributively), (3) effectively sanctionable for those acts once performed, and (4) knowably so sanctionable for them in advance. 114

A political system that ensures accountability requires its leaders not only to face the consequences of their decisions, but also, more importantly, vests the power to sanction the leaders in those most affected by the decisions—the citizens. 115 Vesting citizens with effective power to sanction decision-makers is the most critical aspect of this approach. As Marks explains, "However effectively citizens may be able to hold their own governments accountable in connection with transgovernmental activities, democratic legitimacy depends on accountability to those affected by such activities." 116 In other words, democracy as accountability is premised on the assumption that "the people, with (or despite) their mix of abilities, education, and experience, will more often decide what is best for them than will aristocrats, autocrats, soi-disant philosopher kings, and sundry experts." 117

Although citizens will often be in the best position to decide what course of action will be in their best interests, they may not always have the information necessary to make such decisions, either because this information is too costly for them to obtain or because only the government possesses it. 118

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116. Because political systems operate within fixed geographical areas, even accountability within a system will not prevent leaders from externalizing the costs of their bad decisions on those outside state borders. See Helg, supra note 56, at 538 ("Territorial boundaries specify the limits of which individuals are included and excluded from participation in decisions affecting their lives (however limited the participation might be), but the outcomes of these decisions, and of the decisions of those in other political communities and agencies, often stretch beyond national frontiers."); see also Marks, supra note 3, at 90.

117. Cf. Jan舍rn, Group Aspirations and Democratic Politics, in DEMOCRACY'S RIGORS, supra note 7, at 210, 211 ("When there must be mechanisms through which those who are disadvantaged with a particular outcome can seek to produce change in the future, so long as they limit their opposition to producing a different decision rather than destroying the democratic order.").

118. Mattes et al., supra note 106, at 10-11. Cf. Danto, supra note 56, at 377-80 (discussing objections to a guardianship approach to governance, under which decisions would be made by well-informed policy editors). For a discussion of some of the limits of accountability in a representative governance, see generally Bernard Mattes et al., Rights and Representation, in DEMOCRACY, ACCOUNTABILITY, AND REP-
In these situations, leaders might follow courses of action that are in the citizens' best interests, even when the citizens oppose such action. Accountability mechanisms, however, promote information sharing and can therefore reduce the risk that conflicts will arise because of information asymmetries. By virtue of their power to sanction, citizens can demand access to the information necessary to evaluate their leaders' decisions. Further, the transparency necessary for the proper functioning of accountability mechanisms increases the likelihood that citizens will have access to such information and that information temporarily withheld will eventually be disclosed.

As others have noted in the context of efforts to increase the accountability of international institutions such as the World Trade Organization (WTO), applying a concept such as accountability is fraught with complications, starting with the politically and technically contested issue of assessing performance. Even if the measurement problem were solved, the factors explaining the process have received remarkably little research attention. . . . [P]olitical science . . . has not produced empirically grounded conceptual frameworks that can explain how public accountability is constructed across diverse institutions.

Despite these measurement difficulties, it is important to discuss some of the indicators that may be relevant to an assessment of the accountability of a particular system. At the very least, such indicators may be a starting point for future evaluations; without indicators, however, there would be no basis for determining what constitutes a failure of accountability, and international responses would remain inconsistent and vulnerable to manipulation.

Although indicators may be relevant to assessing the degree of a regime's accountability, there is no clearly delineated line between "accountable" and "unaccountable" systems. Rather, accountability should be viewed as a continuum, with highly accountable systems on one end and highly unaccountable systems on the other. In addition, any list of indicators must be understood as non-exhaustive and context-specific. Such a list should not be allowed to obscure the logic behind its creation; the presence or absence of

120. Post & Brown, supra note 113, at 12.
121. See, e.g., BURDHAM, supra note 75, at 4 ("Judgements about whether given arrangements are democratic are typically judgements of degree, more or less, rather than absolutes."); MAURER, supra note 5, at 72 (arguing against an either-or definition of democracy and emphasizing the importance of evaluating the progress of both low-intensity and consolidated democracies); WUTHNOW, supra note 10, at 235 (questioning against the adoption of any one definition of democracy).
122. Dahl, however, emphasizes the dangers that an absence of a clear delineation between "democratic" and "undemocratic" might pose. He argues that if any kind of responsiveness to the opinions and needs of the governed were sufficient to make a political system "democratic" then it is not clear how any political system could ever be non-democratic. Dahl, supra note 27, at 34.
an indicator is relevant to determining the extent to which a system is accountable and should not be interpreted formulaically.

Direct indicators of accountability include the institutional ability of citizens to sanction leaders, the de facto capacity of citizens to sanction leaders, and the government's responsiveness to the expressed will of the citizens. First, an analysis of institutional arrangements should include an evaluation of whether citizens can, in fact, sanction their leaders. This analysis asks such questions as: Do the citizens have the power to sanction their governors? Can that power be frustrated by other actors within the political system? Are decision-makers who cannot be sanctioned by the citizens accountable to others who are? Is the sanction severe enough to provide a deterrent effect? Are citizens given the power to sanction but punished for its use? Are they encouraged or even allowed to disagree with the government?

A second indicator of accountability, the capacity of individual citizens to sanction leaders, requires an analysis of citizens' actual ability and willingness to sanction. Are citizens informed about the government's decisions? Are they interested or otherwise engaged in the decisions of the government? Does each citizen hold sufficient sanctioning power to ensure that his or her voice is heard? Do they have the economic ability to exercise this sanctioning power? How many citizens exercise sanctioning power, and how often? How do they exercise this power (e.g., individually, in groups, etc.)? Is there a belief that government policies can, and if so should, be changed?

A third significant indicator is the extent to which the government is responsive, i.e., the extent to which it 'adopts policies that are signaled as preferred by citizens.' This indicator demonstrates whether the sanctioning power of the citizens has been internalized by decision-makers. If citizens are able to sanction leaders for bad decisions, leaders will eventually act in accordance with expressions of popular political will instead of waiting for sanctions.

123. Beetham has developed indices for democracy that focus on elections, the continuous accountability of the government to the people and their representatives, guaranteed civil and political liberties, and civil society. Beetham, supra note 75, at 155-56.
124. Marks, for example, has criticized the use of the term "democracy" to characterize low-intensity democracies because such systems are "compatible with the maintenance, in practice, of a veto on the part of the military over legislative action." Marks, supra note 3, at 53.
125. The second indicator—the capacity of citizens to sanction leaders—is informed by Held's critiques of Schumpeter's theory as neglecting the fact that there may be many different reasons "for accepting or complying, consenting or agreeing to" political decisions or arrangements. Held, supra note 56, at 195, 249. These reasons might include following orders or coercion, tradition, spathy, pragmatic acquiescence, instrumental acceptance of conditional agreements, normative agreements, and ideal normative agreements. Id.
126. Accountability requires equality of voice, even if that equality of voice is expressed through means other than elections. "Where citizens are deprived of an equal voice in the government of a state, the chances are quite high that [their] interests will not be given the same attention as those who do have a voice." Winchell, supra note 10, at 343 (citing Robert Dahl, On Democracy 76 (1998)). As will be discussed later, supra Part III.C, equality of voice does not necessarily mean an equal allocation of sanctioning power.
Although the objectives often embodied in substantive visions of democracy, such as respect for human rights or political, material, and social equality, do not necessarily provide sufficient guidance in identifying failures of democracy or determining appropriate responses, they remain extremely relevant considerations. While these objectives should not be regarded as litmus tests for accountability, they may serve as indirect indicators of government accountability and can inform an analysis of both the responsiveness of a regime and the success of the international response.

Whereas other substantive theories of democracy demand agreement on outcomes that may not be suitable in all contexts, an understanding of democracy as accountability allows the citizens themselves to determine the content of their democracy. At the same time, such an approach ensures that the goals of democracy—that the governors are held accountable to the governed—will not be circumvented by an exclusive focus on democratic procedures. Accountability thus balances the demand that democracy be more than a procedural formality, without dictating the political objectives that a given population should seek to achieve. A proper focus on accountability therefore allows for more flexible and appropriate responses where democracies have failed.

III. RESPONSES TO FAILURES OF DEMOCRACY

The functional definition of democracy as accountability can guide international responses to failures of democracy by enabling states and international organizations to evaluate the success of a response without requiring a consensus on the substantive ends of democracy. As a result, this definition gives responding actors the flexibility to tailor their responses to a variety of situation- and context-specific needs.

A discussion of the principles that should guide responses to failures of accountability makes three crucial assumptions. First, it presupposes the appropriateness of distinguishing between states based on their internal composition—in particular, those that seek to distinguish between liberal and illiberal states—are in tension with the liberal principles embodied in the U.N. Charter. For example, these theories conflict with the principles that all states should be treated equally and guaranteed "the same rights afforded to individuals in a liberal society (i.e., domestic jurisdiction, equality, non-intervention)" and that the "diversity produced by these means" should be at least tolerated, if not celebrated. Simpson, supra note 109, at 541. Indeed, in contrast, argues that "a government that engages in substantial violations of human rights begets the very purpose for which it exists and so forfeits not only its domestic legitimacy, but its international legitimacy as well." Tichy, supra note 43, at 15-16. According to Simpson, because Pensa's theory of the democratic entitlement "can be used to judge states," it also contradicts liberal principles of state equality. Simpson, supra note 109, at 561.

128. Compare, e.g., Simpson, supra note 109, at 541, with Tichy, supra note 43, at 15-16, and Pranck, supra note 3, at 50. Simpson argues that theories that distinguish between states based on their internal composition—in particular, those that seek to distinguish between liberal and illiberal states—are in tension with the liberal principles embodied in the U.N. Charter. For example, these theories conflict with the principles that all states should be treated equally and guaranteed "the same rights afforded to individuals in a liberal society (i.e., domestic jurisdiction, equality, non-intervention)" and that the "diversity produced by these means" should be at least tolerated, if not celebrated. Simpson, supra note 109, at 541. Indeed, in contrast, argues that "a government that engages in substantial violations of human rights begets the very purpose for which it exists and so forfeits not only its domestic legitimacy, but its international legitimacy as well." Tichy, supra note 43, at 15-16. According to Simpson, because Pensa's theory of the democratic entitlement "can be used to judge states," it also contradicts liberal principles of state equality. Simpson, supra note 109, at 561.

129. To some extent, even evaluating the extent of a democratic failure can be intriguing: "(Judging
cussing the conditions under which such responses would be lawful or justified. The legality and justification of pro-democratic intervention and intervention to enforce human rights is highly controversial. Third, it assumes that international actors ideally would respond to all “failures” of accountability. In reality, however, the decision to respond will be dictated largely by the severity of the failure, as well as political considerations beyond the scope of this Article. Those situations that present the most significant threats to global security and involve the greatest violations of human rights will likely, and rightly so, be the primary focus of external responses.

Assuming the full range of possible responses, and without addressing the choice of when to respond, this Article will address only the question of what kinds of responses might best promote accountability at different levels of political control—local, national, and international. First, such responses should strengthen existing domestic accountability mechanisms when they are failing. Second, responses must work to foster accountability at the local level. Third, efforts to establish accountability mechanisms should replicate local structures and tailor them to the context and history of the community in question. Fourth, international responses must target the incentive structures of domestic elites at the national level. Fifth, the responding actors must operate within incentive structures that promote good governance and reduce possibilities for opportunism. Sixth, responses must also focus on the rule of law and transparency, the two elements without which accountability mechanisms cannot function.

whether an interruption of constitutional democracy has occurred requires far more detailed and potentially intrusive international interpretation of a country’s constitution than one might expect.” (Continued from previous page)


31 See e.g., W. Michael Reisman, Sovereignty and Human Rights in Contemporary International Law, 94 AM. J. INT’L L. 666, 675 (1990) (“Because rights without remedies are not rights at all, prohibiting the unilateral vindication of clear violations of rights when multilateral possibilities do not obtain is virtually to truncated those rights.”); and Antonio Cassese, The International Legalization of Forceable Humanitarian Interventions Taking Shape in the World Community, in INTERNATIONAL LAW AND HUMAN RIGHTS IN CONTEMPORARY INTERNATIONAL LAW, supra note 79, at 660, 670–71, with Michael Wolske, The Moral Bauding of States, in INTERNATIONAL RELATIONS 217, 234 (Charles Beitz ed., 1989) (“Rights are only enforceable within political communities where they have been collectively recognized, and the process by which they come to be recognized is a political process which requires a political arena. The globe is nor, or not yet, such an arena.”).
A. Strengthen Existing Mechanisms of Accountability

International responses should seek to strengthen internal accountability mechanisms when these are failing. Responses must therefore begin with an analysis of existing political arrangements—i.e., an evaluation of how power is exercised on the ground and whether this exercise of power corresponds to formal institutional structures, how these arrangements foster internal accountability, and whether and how accountability is frustrated. International actors must be aware that "a society is never left with a vacuum of political concepts, and is therefore not an uneducated mass without ideas about who should be their leaders and why."¹³² Without such information, responses will be ineffective, or worse, may undermine accountability structures already in place.¹³³

Where local mechanisms provide a foundation for accountability, the international community should tailor its response to address only those aspects of the mechanisms that are failing. If, for example, the democratic failure is a result of weak sanctioning powers—that is, if accountability mechanisms are in place but the governed have no realistic way to sanction the governor—the international response will be most effective when it works to provide those citizens with such power. Thus, if a population has expressed its will by voting a governor out of office but the military intervenes to keep that governor in power, the international response should put pressure on the government to comply with the expressed will of the people. Similarly, if local mechanisms exist but the procedures are faulty, the international response should address only those particular defects. For example, where there are procedures in place to remove a governor, but the law allows the governor to circumvent these procedures, the intervening actor could pressure the government to ensure that these procedures are followed. Alternatively, domestic mechanisms may have failed because of an information problem, in which case the international response could facilitate the flow of information to citizens.¹³⁴

International responses will be more effective when they identify respect, and work within aspects of the existing system that already provide for the legitimate and accountable exercise of power. For example, strong kinship networks may ensure that leaders suffer the consequences of decisions that negatively affect the community, even in the absence of democratic proce-

¹³². Hobbs, supra note 63, at 94.
¹³³. Cf. Thomas Hammamat & Patrick Gavigan, Human Rights and Post-Conflict Institution Building, in HUMAN RIGHTS FROM PEACE TO JUSTICE 167, 188 (Alice H. Hitchen ed., 1998) ("Perhaps the most important operational lesson from the field mission experience is the essential complementarity between human rights monitoring and institution building. Monitoring gave missions the ability to identify the sources and scope of human rights problems throughout the country. This information could then be used to design effective measures and training programs.").
¹³⁴. See James D. Fearon, Electoral Accountability and the Control of Politicians: Selecting Good Type Versus Sustaining Poor Performance, in DEMOCRACY, ACCOUNTABILITY, AND REPRESENTATION, supra note 106, at 55, 68–70 (discussing why elections may not be adequate accountability mechanisms).
dures. As Steven Wheatley explains, "it is possible to conceive, certainly in states with small populations, systems of government, other than democracy, in which people may freely determine their political status and freely pursue their economic, social and cultural development in compliance with the right to self-determination." 135 In addition, there may be indigenous mechanisms that provide for ways of selecting leaders; international responses should strengthen, support, and work within these paradigms, rather than impose an unfamiliar set of procedures. 136 In such cases, it can be useful to translate "modern terminology . . . into local languages and contexts" to ensure that democratic concepts are understood and implemented in ways consistent with local beliefs and practices. 137

Tanja Hohe, for example, emphasizes the tension between the Western-style elections held in East Timor and traditional Timorese governance structures. She explains that "[w]hat appeared superficially as a non-political environment was in fact highly politically charged in another way." 138 The local elections were not viewed by most Timorese as a way of choosing between different political agendas; rather, the elections were seen as an opportunity to replace illegitimate leaders with new local chiefs. 139 While the elections were based on a concept of competitive opposition, "[d]ecisions about political leadership in Timorese societies are "taken through consensus among certain power holders." 140 Rather than imposing a set of procedures inconsistent with local practices and beliefs, these existing governance structures might have been viewed as a foundation for legitimate decision-making. Yet when international actors focus exclusively on Western-style liberal-democratic procedures, "such a controversy cannot even be engaged." 141

Finally, focusing on existing mechanisms will help prevent displacement of pre-existing political arrangements that further accountability. Roth, for example, has noted that democratization in Eastern Europe "has so far sought to reverse those few features that, from the standpoint of substantive democracy, are favorable: relative social equality and the concentration of economic resources in the hands of a public sector that might potentially be held accountable to collective decision-making." 142 The internal and external emphasis on early privatization of the markets in Eastern Europe served to dis-

135. Wheatley, supra note 10, at 233.
136. See Hohe, supra note 65, at 81-83 (describing the inconsistency between the international response and local practices in East Timor); see also International Crisis Group, Elusive Security Nirvana: Toward Democracy?, ICCS Bulletin Report No. 97, July 7, 2000, at 22 (arguing that holding municipal elections before Kosovo-wide elections was contrary to the way in which power was traditionally exercised in the region).
137. See Hohe, supra note 65, at 78. Hohe explains that "[i]f people can act from the perspective of their paradigm (which can nevertheless develop into a democracy), can they be genuinely empowered." Id. at 84.
138. Id. at 74.
139. Id.
140. Id. at 83.
141. Roth, supra note 5, at 496.
142. Id. at 504.
place a domestic arrangement—namely, the concentration of resources in the public sector—that could have provided a foundation for an accountability mechanism that may have better resolved disputes over resources.  

B. Support Mechanisms at the Local Level

Democracy is a means of ensuring participation and accountability, thereby guaranteeing that people have both "a voice and a stake in the functioning of their society." 146 Having a voice and a stake in governance fosters the sense of ownership that is critical to democratic consolidation, i.e., commitment to and internalization of democratic norms. 147 Democratic consolidation is, in turn, necessary to sustain any democratic transition. Unless democratic norms are internalized on a broad, grassroots level, newly implemented or reinstalled accountability mechanisms will remain vulnerable to anti-democratic forces. 148

Consolidation of the norm of accountability is intimately tied to the perceived legitimacy of the governance structures. A commitment to the rules and practices that define legitimate exercises of power enables accountability mechanisms to function properly; a shared and credible threat to sanction leaders for bad decisions is necessary to establish incentives for good governance. The credibility of the threat, in turn, helps governors internalize the belief that they will be sanctioned. As Diamond explains, "[o]nly when this commitment to the policing of state behavior is powerfully credible, because it is broadly shared by key alternative power groups, does a ruling party, president, or sovereign develop a clear self-interest in adhering to the rules of the game, which then makes those constitutional rules self-enforcing." 149 The

143. Displacing local with international mechanisms also carries with it the danger that governments will attempt to use international mechanisms to avoid local accountability—i.e., that they will "manipulate the internationally recognized symbols of legitimacy, so as to discredit militarist (often armed) opposition and deflect international criticism that has impeded the flow of foreign (often military) aid." Id. at 308.

144. See, e.g., Smith, supra note 18, at 711.

145. Democratic consolidation can be defined as the process of achieving broad and deep legitimation, such that all significant political actors, at both the elite and mass levels, believes that the democratic regime is the most right and appropriate for their society, better than any other realistic alternative they can imagine .... IT's legitimacy must be more than a commitment to democracy in the abstract; it must also involve a shared normative and behavioral commitment to the specific rules and practices of the country's constitutional system ....

Diamond, supra note 64, at 14. Consolidation thus involves "not just agreement on the rules for competing for power but fundamental and self-enforcing norms on the exercise of power," regardless of who may be in power at any given time. Id. at 15. See also Mermel, supra note 60, at 1365 (discussing the fact that promotion of human rights norms, especially a norm like democratic participation, is only possible of internalized, and not forced according to pre-selected results); Rock, supra note 5, at 513 (describing a "constitutional order" as one in which governors acknowledge that decisions may be rendered only within the limits of their power and the governed "recognizes that they must obey the final decision of those official holders duly authorized to render it").

146. See ibid., supra note 4, at 523. See also Patrick Thomee, The Democratic or Internal Aspect of Self-Determination with Some Remarks on Federalism, in MODERN LAW ON SELF-DETERMINATION 101, 120–21 (Christian Dzemski ed., 1993).

147. Diamond, supra note 64, at 15.
legitimacy of these rules and practices is in turn further enhanced as accountability mechanisms successfully produce responsive governance.

One of the most effective ways to consolidate democracy is to implement accountability mechanisms on the local level.\textsuperscript{148} Efforts at the local level can further consolidation in three ways. First, local political arrangements offer citizens more opportunities to participate in political affairs and greater control over the decision-making process.\textsuperscript{149} Second, local government is often more flexible and responsive to the needs of a local community; if a government is more responsive, its decisions will be perceived with greater legitimacy.\textsuperscript{150} Third, competing claims to resources—such as land or social benefits—are often resolved at the local level.\textsuperscript{151} Consequently, more effective responses will be those that are "initiated, implemented, and conceptualized as a means toward the larger goal of creating vital, grassroots democracy, civil society, and accountable government."\textsuperscript{152}

At the same time, however, efforts to increase local control may not always be appropriate. Direct control over the affairs of a national government can be difficult to achieve, particularly in a country without a tradition of democratic accountability or with a history of centralized control over decision-making. The mission in Kosovo, for example, made strengthening municipal government a top priority.\textsuperscript{153} After decades of centralized decision-making, however, the emphasis on local control mechanisms was foreign and often counter-productive to the goal of consolidating accountability norms.\textsuperscript{154}

\textsuperscript{148} See Breck, supra note 3, at 73 (emphasizing that the responses to the mission in Haiti "imply") the need for a longer-term international effort to create the gains more elements of democratic political institutions and processes—a particularly challenging form of technical assistance—in nations without that tradition.

\textsuperscript{149} See also Diamond, supra note 64, at 33 ("Democratization government reduces the scale of democracy as it is experienced by citizens in their daily lives. This means devolution of power: federation and regional autonomy where the scale of the bureaucracy calls for it and the culture and politics permit it; and, everywhere, elected local governments with meaningful autonomy and capacity to mobilize and spend resources."); Gen Hilleard Thame, Laws and Challenges, in SOCIETIES IN CONFLICT: THE CONTRIBUTION OF LAW AND DEMOCRACY TO CONFLICT RESOLUTION 197, 207 (European Commission for Democracy Through Law, 2000) (stating that the conference participants emphasized that international organizations must avoid "top-down" approaches that lack "sufficient knowledge and respect for the underlying historical, cultural and ethnic factors" and emphasizing the importance of local initiatives).

\textsuperscript{150} See Diamond, supra note 96, at 123–24. Local arrangements also offer citizens "a direct say in the development of democracy programs for their country." Carothers, supra note 62, at 265. Carothers also emphasizes the importance of the role of women in democratization. See id. at 143.

\textsuperscript{151} See, e.g., Bruce Pehrson, supra note 76, at 695 (1990) (noting that the advantage of devolution of governmental tasks to lower levels of government is that the decisions are "likely to impose the minimum of coercion and potential loss on its citizens").

\textsuperscript{152} See, e.g., Diamon, supra note 96, at 123.

\textsuperscript{153} Sutter, supra note 1, at 879.

\textsuperscript{154} At the International Crisis Group has argued, holding municipal elections before Kosovo-wide elections as "counter to the political traditions of Kosovo and the Balkans as a whole, where power in modern times has flowed from the center to the regions or localities." International Crisis Group, supra note 136, at 22. The group warned that "ignoring this aspect of the local political culture" could be divisive. Id. Other negative consequences of decentralisation are discussed in Diamond, supra note 96, at 152–38.
C. Tailor Mechanisms to Community Needs

When reliance on local mechanisms is not feasible, either because existing arrangements are highly unaccountable or simply not viable, the international community should support mechanisms that vest citizens with the effective power to sanction leaders and are tailored to the needs of the community. In determining what mechanisms might be best in any given historical and cultural context, it is important to "emphasize social realities over formal structures." In doing so, the appropriateness of each mechanism will depend on the incentives created and the functions served. Finally, whatever strategies are chosen, international actors should be able to modify them when necessary.

Although elections and other mechanisms for political competition are incomplete by themselves and, when viewed in isolation, serve as poor organizing principles for international responses, they may be useful strategies in certain situations. In the absence of viable local mechanisms for ensuring accountability or measuring political will, such mechanisms—when tailored to the needs of the particular situation and located within a comprehensive strategy for furthering accountability—may be an important part of the response.

For example, the ability to render decision-makers accountable to those affected by their decisions presupposes a way to measure political will, and elections are often the only way to do so: "In the absence of more reliable means of recording choice in complex societies, . . . it has become difficult to speak convincingly of democracy without reference to elections." This inability to measure political will invites inappropriate responses:

In decentralized systems whose members themselves perform make the decisions, the more the number of constitutive appraisal norms, the more the number of cross-border appraisals and the greater the possibility of cross-border meddling by various actors. The problem is contained, to an extent, when internationally supervised "free and fair"

155. Roth, supra note 5, at 496.

156. Elections "may assist in the formation of a government responsive to the popular will, but they do not guarantee such a government. In many countries, systemic problems outweigh the positive effects of free elections." Wippman, supra note 87, at 659. See also Gibson, supra note 97, at 213 (criticizing the administration as "too often . . . focused on the importance of elections, without the necessary attention to the characteristics of true liberal democracy").

157. As Posner and Notte explain, while "incomplete definitions of democracy are substantially broader than the mere holding of elections," that fact "does not render a focus on elections inappropriate." Posner & Notte, supra note 81, at 596. Posner and Notte explain further that "[w]hile the principle of popular sovereignty embodied in elections is analytically distinct from the notion of personal dignity and moral autonomy underlying the protection of individual rights, in practice (according to this view) an elected regime has substantially greater incentives to respect the rights of citizen voters than a regime that need not seek a popular mandate." Id. at 597. If the international response includes elections, the responding actors must focus on the specific objectives to be achieved and guard against the tendency to square elections with democracy.

elections credibly and unequivocally indicate the wishes of a majority of the people.\textsuperscript{159} Thus, mechanisms like elections or referenda may be necessary to provide both the state and the international community with a quantifiable means of assessing local political will.

If electoral procedures are to play a role in the response, they must be tailored to the specific social realities of the situation. Pure majoritarian elections can be highly divisive, particularly where the polity is deeply divided along lines of ethnicity or other allegiance. For example, post-colonial Africa's "wholesale adoption of liberal democratic systems," without the inclusion of proportional representation, "accentuated the diversity inherent in the arbitrary colonial boundaries of Africa."\textsuperscript{160} Majoritarian procedures may also be inappropriate in societies characterized by vast disparities in the distribution of resources, since such procedures often tolerate great inequality "in the ability of social groups to marshal the resources necessary to affect political decisions."\textsuperscript{161}

Electoral systems can address these concerns by, for example, providing incentives for political leaders to consider the needs of multiple groups. Such tailoring may be particularly critical if there is a danger that leaders will draw on or foster ethnic divisions to gain power.\textsuperscript{162} Ian Shapiro explains that in divided societies, well-tailored electoral processes can give leaders incentives to listen and attend to the needs of different communities; such incentives can be created by "requir[ing] politicians to compete for votes among ethnic groups other than their own."\textsuperscript{163} Forms of proportional representation, as well, may help ensure that all segments of society are able to effectively exercise sanctioning power.\textsuperscript{164} Thus, tailoring new procedures to the exigencies of the situation can help ensure that one segment of the community does not seek disproportionate political advantage to another's detriment.

\textsuperscript{159} W. Michael Reisman, Sovereignty and Human Rights in Contemporary International Law, 84 AM. J. INT'L L. 856, 875 (1990).
\textsuperscript{160} Buress, supra note 4, at 303.
\textsuperscript{161} Rich, supra note 5, at 497.
\textsuperscript{162} Shapiro, supra note 116, at 128.
\textsuperscript{163} Id. See also Donald L. Horowitz, Constitutional Design: An Odyssey?, in DESIGNING DEMOCRATIC INSTITUTIONS 253, 269 (Ian Shapiro & Stephen Macedo eds., 2000) (discussing alternative voting, in which political groups are required to demonstrate a certain level of support from voters from other groups, as a system with "considerable power to foster intergroup accommodation").
\textsuperscript{164} Kymlicka notes that in designing a proportional representational system, "the number of seats necessary for effective representation of [minorities'] views . . . may exceed the number of seats required for proportional electoral representation." Kymlicka, supra note 76, at 147. The timing of elections might also be tailored to the community's needs. As Murphy emphasizes, "the willingness to recognize a non-democratic government is not necessarily detrimental to the best interests of its people; respectable arguments are made . . . that a democratic form of government is not the best form for some States depending on their stage of economic and political development." Murphy, supra note 8, at 145. See also Chester A. Crochet, The Variation of International: Constitutions for States, in MANAGING GLOBAL CRISIS: SOURCES OF AND RESPONSES TO INTERNATIONAL CONFLICT, 183, 186 (Chester A. Crochet et al. eds., 1996).
Political competition, more generally, can also be an important, though not necessarily sufficient, accountability mechanism. The very existence of opposition parties, in fact, may ensure some measure of accountability. In discussing opposition movements in pre-democratic South Korea and Pinochet’s Chile, Sen notes that “[a]ny of the social programs that served these countries well were at least partly aimed at reducing the appeal of the opposition, and in this way, the opposition had some effectiveness even before coming to office.”

Yet a multiparty system is not the only means of ensuring political competition. Emphasizing “social realities over formal structures” might allow “a comparatively favorable view of a one-party State that does not allow organized opposition, but that is widely popular, incorporates public input in decision-making, and responds effectively to the needs of the vast majority.”

Given the existence of other means of ensuring responsiveness, deciding not to create a multiparty system could be a legitimate choice. As originally drafted, even Article 25 of the ICCPR “did not prohibit one-party States per se.” Due mainly to efforts by the Chilean delegate during the drafting of Article 25, “[a] single-party elections would run foul [of Article 25] only if (1) public opinion in a State were actually divided on important political issues, and (2) if a single party did not permit candidates representing each faction to stand for election.”

Although domestic prosecutions and truth commissions are likely to be employed on a case-by-case basis, they can be effective ways to promote accountability of governors for past abuses and enhance the perception that the government is and can be held accountable. While other considerations—such as the potential effect on the country’s prospects for transition—may counsel against the initiation of such proceedings, the prospect of prosecution or disclosure of past abuses can have a deterrent effect on leaders and thereby foster consolidation of accountability norms.

An evaluation of potential responses must include not only an assessment of the incentive structures created by each response, but also the immediate needs of the populace. Unsuitable accountability mechanisms may undermine stability and order, thereby damaging the credibility of the response and increasing the appeal of non-democratic alternatives. As Roth notes, “(d)ictatorships have frequently in human history been seen by their subjects to secure very real benefits . . . that might be irretrievably lost by toler-
ating organized opposition.\textsuperscript{171} Significant internal disorder or instability may similarly increase the appeal of non-democratic alternatives that appear to offer stability and an end to violence. Both Charles Taylor in Liberia and Alberto Fujimori in Peru were elected by overwhelming majorities, primarily because they were the only candidates who seemed able to achieve stability and peace. For example, Taylor seemed to be the "one person" in Liberia "willing to use all 'necessary' measures to ensure stability at long last for the beleaguered country."\textsuperscript{172} Similarly, in Peru, business leaders and the population as a whole supported Fujimori because he was willing to implement the kind of measures needed to control the country's high levels of crime, terrorism, and corruption.\textsuperscript{173}

Although order and accountability are not necessarily competing priorities, a minimum level of internal order must be established for accountability mechanisms to work and develop properly since weak or failing governments are as likely as authoritarian ones to be unaccountable to their citizens.\textsuperscript{174} As a result, there may be many cases in which "strengthening the State to help create effective government is the necessary first step toward creating accountable government."\textsuperscript{175} As James Fishkin explains, democratization itself can entail significant instability: "T[he very notion of bringing 'power to the people'] can imply a lack of checks and balances, separation of powers, and the rule of law, all of which can be important for stability.\textsuperscript{176} Indeed, the process of democratization can be particularly difficult when paired with a transition from a command to a market economy, primarily "because the economic dislocations for which the political system will be held accountable" during the economic transition will be severe.\textsuperscript{177} In some circumstances, working sequentially toward the goals of economic reform and democratization might help ensure that political and economic transitions do not undermine each other.

\textbf{D. Target Responses to Incentives of Elites}

Although holding leaders accountable to the international community is a poor substitute for accountability to citizens, international responses can supplement local accountability mechanisms in a number of ways. Critical to the choice of response, however, is the extent to which the contemplated

\textsuperscript{171} Bend E. Roth, Democratic Instability: Observations on Fears and Nuts, in \textit{Democratic Governance and International Law}, supra note 2, at 441, 443.
\textsuperscript{172} \textit{Garrity}, supra note 26, at 157.
\textsuperscript{174} Anne-Marie Shughart, Governance Networks: The Heart of the Liberal Democratic Order, in \textit{Democratic Governance and International Law}, supra note 2, at 159, 233 ("Lack of accountability is as likely to flow from a weak or failing government as an excessively strong one; liberal democracy is as threatened by anarchy as by autocracy.").
\textsuperscript{175} Id.
\textsuperscript{176} \textit{Fishkin}, supra note 82, at 76.
\textsuperscript{177} Id.
response targets the incentives of the country’s elites and holds them accountable to citizens.\textsuperscript{178} Conditional lending, sanctions, international prosecutions, truth commissions, and conditional recognition, for example, all accomplish this to different degrees and in different ways.\textsuperscript{179}

Conditional lending and sanctions, for example, can be tailored to target the incentives of elites where the political system holds them at least minimally accountable. Critics argue that conditional lending policies punish citizens, not elites, and do not increase the accountability of these elites to the citizens: “When development is linked to austerity policies imposed by the International Monetary Fund and major donor countries, its effects can devastate the poor and the prospects for democracy.”\textsuperscript{180} Sanctions have also been criticized as punishing the wrong actors\textsuperscript{181} and potentially undermining the long-term prospects for democratic consolidation.\textsuperscript{182} Even “smart sanctions”\textsuperscript{183} will be ineffective where the governments can insulate themselves from the consequences of their decisions and externalize the costs of the sanctions onto...
the population. The inaccuracy of conditional lending and sanctions does not, however, necessarily mean that these approaches are always inappropriate; rather, the fact that they require a minimum level of accountability to affect the incentives of elites should inform the decision about when and where to use them.

Conditioning state recognition on democratic accountability is another potential response. As James Crawford emphasizes, democratic government is "one—not necessarily privileged—indicator of the existence of an established government in an existing State." Such a response finds limited support in the precedents of Haiti and the former Yugoslavia. At the same time, however, conditioning recognition on the internal character of a regime is far from established practice. Further, a refusal to recognize an effective but unaccountable regime may insulate decision-makers from responsibility for their actions. Despite these limitations, the threat of non-recognition can nonetheless put additional pressure on elites to institute reforms and increase their accountability to citizens.

Another approach that may increase pressure on elites is to modify the rule that a state's commercial commitments and legal obligations bind successor governments, even if the prior regime was illegitimate. Crawford explains:

One possibility . . . might be to develop a system under which third parties dealing with a grossly unrepresentative regime would be re-

184. See Eric S. O'Malley, Destabilization Policy: Lessons from Reagan on International Law, Revolution and Dealing with Parish Nations, 43 Va. J. Int'l L. 319, 341 (2003) ("[E]ven smart sanctions can be harmful and ineffective if they are not employed as part of a more comprehensive strategy, because governments frequently confuse the aid and either sell it for profit or take credit for its distribution.").

185. James Crawford, Democracy and the Body of International Law, in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW, supra note 2, at 91, 118.


187. See ROSS, supra note 22, at 318-19 (explaining that the principles of effective control and non-intervention are generally subject to only limited qualification); Weller, supra note 186, at 588 (noting that in imposing such as "extensive catalog of criteria, far in excess of traditional standards for recognition of statehood," the European Community "was not applying general international law in the determination of its position"); Wheatley, supra note 10, at 225 ("[N]e evidence exists of the democratic credentials of a regime being relevant either in the recognition of states, or in the international communities (sic) dealings with non-democratic governments") (footnote omitted).

188. Crawford argues that refusing to recognize "an effective but undemocratic government . . . avoids holding those who have made the decisions responsible for their acts. Where there is power there should be responsibility, including legal responsibility." Crawford, supra note 185, at 109.

quired to take the risk of doing so. This would apply both to States and to private parties, including corporations. It would put them on notice that if they wish to deal with a regime lacking in any legitimacy or popular support, they would take the risk of the review of the transaction by a subsequent representative government.\(^{190}\)

Although this approach could undermine global economic stability, this would be due largely to the absence of standards for evaluating when a regime is grossly unrepresentative. Political risk assessment is a critical part of any investment decision.\(^{191}\) Implementation of Crawford’s policy would increase the risk that a contract would be voided by a subsequent regime and thus deter investment. This use of the term risk, however, relates to the increase or decrease in the probability that a particular outcome will occur.\(^{192}\) To the extent that Crawford’s policy did increase the probability that a subsequent regime would void a prior contract, it would accomplish its objective. Unaccountable governments would present a higher risk to investors, and thus would be pressured to reduce this risk by instituting reforms. Although citizens of the regime may also be hurt by policies that deter foreign investment, elites would likely experience the most substantial effects of reduced foreign investment.

A potentially more important question, however, is the extent to which Crawford’s policy would increase uncertainty. In contrast to risk, ‘quantification of uncertainty’ is far more difficult; indeed, the more heterogeneous the events, the less we know about the distribution of possible outcomes.”\(^{193}\) In the absence of rules—e.g., rules regarding when, how, and with what criteria a subsequent government could review a transaction—that would allow investors to more accurately predict outcomes, implementation of Crawford’s policy could increase uncertainty and unnecessarily chill foreign investment. Such a chilling effect, however, would principally serve to increase pressure on unaccountable elites to adequately assure investors of the security of their transactions; in addition, the uncertainty that could be associated with this approach might be reduced through agreement on common standards.

\(^{190}\) Crawford, supra note 15, at 129. See also Perez, supra note 13, at 737 (arguing that the United States could have hemmed the transition in Chile “by threatening to cut off access to the US market for Chilean producers (a principal concern of Pinera) and to collaborate with allies in blocking Chilean access to the facilities of international financial institutions”).

\(^{191}\) P. Kenneth Keating, The Institutional and Structural Model for Successful Human Integration in Developing Countries, 29 Tex. Int’l L.J. 59, 33 (1994) (noting that “international financial institutions dealing with poverty reduce foreign risk into the cost of borrowing” and discussing “political instability, racial and religious disputes, and extreme economic hardships, which foreign investors fear may result in nationalization and expropriation” as forms of political risk) (footnotes omitted).

\(^{192}\) Accurate risk assessment thus requires homogeneity of events and knowledge of possible outcomes. Claire A. Hill, New Investor Rests to Political Risk, 8 Octave J. Consul. L. 283, 287 (1990) (citing Frank H. Knight, Risk, Uncertainty and Profit (1921)). Hill argues that political risk is extremely difficult to estimate, mainly because of the level of heterogeneity and uncertainty associated with political events. Id. at 299.

\(^{193}\) Id. at 287–88.
Finally, international prosecutions and truth commissions have also been suggested as methods for holding leaders accountable.\textsuperscript{194} Although prosecutions target elites, they have been criticized as insufficiently immediate to have a substantial deterrent effect.\textsuperscript{195} While the extent to which the threat of prosecution actually affects the incentives of decision-makers is unclear, such proceedings may promote accountability in other ways. By subjecting leaders to a legal process and imposing sanctions for past abuses, prosecutions can strengthen the expectation that leaders can and should be held accountable for their decisions.\textsuperscript{196} Truth commissions can foster transparency and accountability by exposing the decision-making process and bringing to light information that had been withheld from the public. In certain situations, retrospective accountability may even be an essential part of a transition to democracy.\textsuperscript{197} Thus, by example and prescription, these processes can deepen popular commitment to the norm of accountability and promote democratic consolidation.

\textbf{E. Ensure Accountability of the Responding Actor}

The principle of democracy as accountability, founded on the premise that accountability mechanisms help ensure more responsive decision-making over time, should guide not only the choice of response, but also the manner of responding. Responding actors themselves must operate within incentive structures that promote good governance and long-term commitment to the stability of the region. To the extent that these responding actors influence the allocation of decision-making power, they must make sure that those holding power remain accountable to citizens. Ensuring that decision-making power is paired with accountability will foster both responsive governance and the consolidation of accountability norms.

International responses to failures of accountability must be undertaken by those actors who have most at stake in the success or failure of the response and who would benefit most from strengthening good governance and stability in the region. When the responding state is insulated from the

\textsuperscript{195} See generally Britton, supra note 103.
\textsuperscript{196} Schabath examines the ways in which the OAS's response to coups could be improved both to "post the immensity of the coup as quickly as possible" and to "ensure that the actions taken toward that end be done in such a way as to bolster the long-term prospects for democracy and human rights ... ." Schabath, supra note 38, at 546. Toward this second goal, Schabath suggests that the OAS "give serious consideration to institutionalizing some form of a requirement that leaders of coups be brought to justice for the coup itself and for human rights violations committed during the period when constitutional government has been interrupted." Id. at 547.
\textsuperscript{197} See Ken B. Rattray, New Democracies, Old Authoritarian: An Inquiry in International Law, 87 Geo. L.J. 707, 736-37 (1999) (arguing that while accountability, when pursued without regard to the rights of the accused, can also undermine democratic prospects, prosecutions may well be necessary when "abusers are so thoroughly subverting democracy that only trial and punishment will remove them from power and bring an end to this behavior").
consequences of bad governance within the transition state, the interests of the responding state and the state in transition (and its citizens) may differ. The response must be designed to further the common interest of the responding state and the state in transition in strengthening mechanisms of accountability.

Responses by regional actors may enjoy greater legitimacy and confidence because these actors are more likely to be affected by the instability associated with failures of accountability and thus have a significant stake in the establishment and maintenance of good governance. Consequently, such actors may often be in a better position to take the lead in responding to failures of democracy than a state insulated from both the effects of such failures and the consequences of the response. In addition, it may be easier for actors who are geographically, politically, and culturally closer to the government in question to exercise influence over that government’s policies.

In addition, a multilateral response will generally be preferable, in large part because multilateral frameworks can help prevent responding actors from pursuing interests unrelated to accountable governance. In numerous cases, individual states have undertaken intervention “for ostensibly humanitarian reasons, but [their] real, less elevated motivations have not been hard to discern.” Farooq Hassan, for example, criticizes Tanzania’s humanitarian justification for invading Uganda in 1979 as “simply a cloak of legality for the use of brute force by a powerful state against a weaker one, and experience has shown how readily more powerful states have used the pretext of a higher good to impose their own will and values on weaker

198. See Ruth Wedgwood, Regional and Subregional Organizations in International Conflict Management, in MANAGING GLOBAL CHAOS: SOURCES OF AND RESPONSES TO INTERNATIONAL CONFLICT, supra note 164, at 275, 276–77. Wedgwood describes a number of other benefits generated by reliance on regional structures, including the fact that regional structures offer a “local voice,” “permit a multilateral voice when the Security Council is hijacked by superpower conflict,” hold out the “promise of economy and rapid response,” allow compartmentalization of the process of intervention, and “reduce[] the visibility of the debate.” Id.

199. See L. David Brewis & Jonathan A. Fox, Accountability Within Transnational Coalitions, in THE STRUGGLE FOR ACCOUNTABILITY: THE WORLD BANK, NGOs, AND GRASSROOTS MOVEMENTS, supra note 113, at 439, 469 (“Accountability is most difficult when the actors are separated by wide gobs of physical, cultural, and political differences . . .”).

200. In some circumstances, a single actor with a substantial stake in the long-term outcome of the response (and thus incentives to promote accountable governance) may be more effective than a coalition of actors, each of whom would be relatively unaffected by the consequences of their decisions. See, e.g., Jane Chapman, The UN’s Kingdom of East Timor, SURVIVAL, Autumn 2000, at 35 (“As with the use of force, perhaps coalition missions led by single counsels may be more effective for temporary governments.”); Criddle, supra note 164, at 190 (noting that to be successful, a mission may require an incumbent with “the capacity for effective and prompt decision making”). Yet while many states may be “increased,” few will have significant incentives to promote good governance; in addition, even states that had both such incentives and the political will to respond may not be sufficiently committed to promoting “the kind of long-term structural reforms that would create more propitious conditions for democracy.” Schmalius, supra note 59, at 555.

states."202 Others have raised similar criticisms of the United States' intervention in the Dominican Republic, Grenada, and Panama.203 Garrett explains that the "evident hypocrisy found in these cases provides grist for the mill of those who question whether any intervention in the internal affairs of a state can ever be taken at face value, at least in terms of its supposed service to a basic moral purpose."204

Using a multilateral framework to respond to failures of democracy reduces the danger of opportunism by providing checks on decision-making. When the OAS rejected collective action against Manuel Noriega in Panama, for example, it also "lost the opportunity to dictate the timing, the dimensions and the goals of the intervention and to more deeply enmesh the United States in collective decision-making."205 Because it incorporates a greater number of voices, collective decision-making tends to be more transparent than unilateral decision-making, frequently requires compromise, and often forces decision-makers to engage in debates with each other and with constituents about the proper course of action.206

Further, a multilateral response carries significant symbolic legitimacy and moral authority; it acknowledges that a failure of accountability anywhere is a threat everywhere.207 A multilateral response based on the recognition of the threat posed by the failure of accountability avoids the appearance of self-interest and thus increases the likelihood of both international support and cooperation of the state and its citizens.208 In particular, multilateral responses may be significantly more likely to foster the kind of long-term commitment necessary for an effective response.209 Efforts to promote


204. Garrett, supra note 20, at 16 (emphasis in original). See also Schachter, supra note 44, at 650 ("In the absence of an effective international mechanism to constrain force, individual governments would have wide latitude to decide on the 'value' of democracy and self-determination in various countries.").

205. Pane, supra note 13, at 734 (footnote omitted).

206. See, e.g., Fielding, supra note 130, at 374 (arguing in favor of a multilateral response, preferably through the U.N. Security Council or a regional organization, "because of the potential for abuse by individual states seeking political and territorial gain in the guise of assistance"); Ruth Wedgwood, The Use of Force in Civil Disputes, 26 Int'l Y.B. Hum. Rts. 239, 241 (1996) (arguing that in the context of the war in the former Yugoslavia, "without public commitment to multilateral action, the demand for humanitarian intervention and unilateral rescue of humanitarian people might have been hard to resist in the democratic politics of one or more countries").

207. Held makes a related point when he calls for the internationalisation of democratic law. Held maintains that "the implementation of . . . cosmopolitan democratic law and the establishment of a community of democratic communities—a cosmopolitan community—must become an obligation for democracies; no obligation to build a transnational, common structure of political action which alone, ultimately, can support the politics of self-determination." Held, supra note 7, at 106.

208. See Fracis, supra note 3, at 83 (arguing that a multilateral response would be viewed as more legitimate by small states).

209. Johnson, in particular, argues that the response must not only be multilateral, but framed within the United Nations. He explains that a survey of the United Nations' experiences with interven-
accountability will have minimal chance of success unless they are supported by a sustained, long-term commitment on the part of the international community. Grounding the response in a multilateral framework, particularly one established under the auspices of an international institution such as the United Nations, can more effectively ensure international commitment and thus the continuity and longevity of the response.

Not only should the appropriateness of the responding actor be determined with reference to its stake in the outcome, but the responding actor itself must be accountable to the citizens of the failing democracy. The accountability of the responding actor to the policy is especially important when the response is highly coercive and involves the assumption of domestic administrative tasks. Interim administrations in peacekeeping missions, in particular, create problematic incentive structures by placing decision-making power in the hands of those outside accountability mechanisms. To some extent, it may be necessary for the international mission to be the ultimate authority, particularly when a local administration is absent. Yet the international mission should, over time, attempt to revise power structures so that those who make decisions are evaluated and subject to sanctions by citizens.

In Kosovo, for example, the Kosovo Transition Council (KTC)—composed of political parties, religious leaders, and representatives from ethnic minorities—"largely function[ed] as a soapbox, allowing the international mission to hear the opinions of the Albanian representatives who dominate the KTC numerically but without giving them any real role in decision-making." Similarly, despite its goal of strengthening local governance structures in Kosovo, the U.N. mission retained authority over the local police. As interim measures, these arrangements may have been necessary; however, long-term efforts to enhance accountability should also foster increased citizen control over municipal institutions and authorities. Local police might be brought under the decision-making power of local administration, and local administration can be made accountable to the citizens (through, for example, procedures that allow for removal of administrators by citizens or citizen participation in the selection of officials).

Similar arguments about the importance of ensuring that those affected by decisions have the right to hold the decision-makers accountable have been advanced in connection with the activities of non-governmental and international institutions, such as the World Bank and the World Trade Oxxon...
ganization. Critics claim that these institutions are not adequately responsive to the needs of those whom their decisions affect. Many proposed solutions have sought increased accountability, i.e., the establishment of mechanisms by which the institutions would be subject to a sanctioning power held by those affected by the decisions. 215 These calls for increased accountability led the World Bank to, among other things, create an independent appeals panel that would allow individuals adversely affected by a World Bank project to file a claim based on the World Bank's internal policies and procedures. 214

Failure to ensure the accountability of responding actors not only alienates members of the local community, but also undermines the possibility of democratic consolidation. Jane Chropak emphasizes that whether or not complete "governorship" assumed by the United Nations is a legitimate response, governorship requires "a judicious determination as to which parties are legitimate, and a concerted effort to prepare them, by example as well as by prescription, for sound representational government." 215 Democratic culture requires a commitment by both elites and the populace to the rules and procedures of democracy, but not necessarily to any particular outcome. 216 Over time, as individuals rely on their ability to hold leaders accountable, their commitment to the structures that empower them will increase. 217 Implementing mechanisms to ensure the accountability of international actors to the local population contributes to this process by strengthening the expectation of accountability.

Ensuring responsiveness might be accomplished, at least in part, through a sub-contracting model. An ideal transitional administration is one that could provide a "broad brokerage framework in which each ministry, department or office providing basic services is subcontracted to whatever international, national, non-governmental or private agency has the expertise and capacity to perform the function." 218 As long as contractors are accountable to the citizens, subcontracting allows for the efficient provision of services while ensuring that the decision-making capability rests with those affected by the decisions.

213. See generally de Wilde, supra note 210, at 31 (calling for increased accountability of NGOs that distribute foreign aid); Fox & Wissen, supra note 113, at 13-17 (describing efforts to increase the accountability of international institutions); ibid., supra note 179, at 3 (noting that "unlike self-appointed NGOs, international institutions tend to be highly responsive to national governments and can thus claim some real, if indirect, democratic legitimacy").


215. Chropak, supra note 200, at 36 (discussing the deficits of the mission in East Timor).

216. See DiPasquale, supra note 64, at 15. See also Johnsson, supra note 162, at 212.

217. Id at 227. See generally Bastani, supra note 103.

218. Chropak, supra note 200, at 36.
F. Promote Transparency and Rule of Law

While a number of conditions aid the proper functioning of democracy, transparency and rule of law are preconditions of accountability. Together, transparency and the rule of law ensure that citizens' participation will be backed up by real authority and that efforts to hold leaders accountable will be effective.

Transparency and access to information facilitate accountability because citizens need information to know when to hold which leaders accountable for what decisions. Access to information also implies some measure of freedom of expression; if critics of the government may not be heard, the information relevant to decision-making is limited. In addition, in order to hold their governors accountable, people need to be free to engage in dialogue. Particularly when access to information is made more difficult by poverty and illiteracy, the cost of ensuring such access and transparency may be significant; nonetheless, these conditions are critical to the effective functioning of democratic accountability. If a lack of information effectively precludes individuals from participating in government and exercising sanctioning power, the government will not be responsive to their needs.

The rule of law is a necessary precondition for the proper functioning of accountability along four dimensions. First, it ensures that the power to sanction is enforceable. As Barnes notes, "[T]he fight against corruption is a constant challenge in democratic societies. Without institutions to enforce the rule of law, political actors will ignore the public interest in favor of their private goals." Corruption, whether related to manipulation of elections or bribery of officials charged with enforcing the law against the governors, allows the governors to externalize the costs of their decisions by circumventing the

219. Scholars of democratic theory have identified a number of elements as instrumental to the proper functioning of democracy, including respect for human rights, free political association and expression, periodic participatory elections, universal and equal suffrage, competition among political parties, an independent judiciary, rule of law, transparency and access to information, separation of powers, and an effective civil society. See, e.g., Diamond, supra note 64, at 13; Bown, supra note 4, at 515-16; Fainch, supra note 3, at 61, 63; Satterthwaite, supra note 18, at 791.

220. Fox and Roth call transparency and access to information "conditions of choice." The requirement of collective choice, they note, include that the choice is "generously known (based on good information), willing (not merely a choice among options imposed by the will of others or by circumstance), and intelligent (taken in circumstances that allow for proper reflection, including widely available education, a robust public sphere, a marketplace of ideas, and the absence of discriminatory economic pressures)." Fox & Roth, supra note 2, at 14. They acknowledge that to some extent, true transparency and access to information "requires the very institutional transformation—perhaps an ineradicable one—about which the populace was supposed to be empowered to choose." Id.

221. See supra, supra note 85, at 159 ("We cannot, in general, take preferences as given independently of public discussion, that is, irrespective of whether open debates and interchanges are genuine or not."). See also Philippe Sands, Territorial Disputes: The Transformation of International Law, 33 W.U. J. Int'l L. & Pol'y 527, 540 (2001).

222. Barnes, supra note 110, at 92. See also Fox & Roth, supra note 2, at 11 (explaining that the democratic dilemma requires not only the "existence of appropriate participatory mechanisms, but also a determinate relationship between the mandated participatory mechanisms and the actual exercise of political power").
mechanisms by which they would be held accountable. Alternately, there may simply be such chaos or failures of the rule of law as to make implementation of accountability mechanisms impossible. In Kosovo, for example, one of the first tasks of the mission was to restore order, after which the civil administration would begin other tasks designed to foster greater accountability, such as training local civil administrators and raising awareness about possibilities for citizen involvement in political affairs.\footnote{223}

Second, the rule of law is relevant to the continuity of accountability. Latin American electoral systems, in particular, have historically been vulnerable to "delegative democracy," the approach of "whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, subject only by (sic) the hard facts of existing power relations and by a constitutionally limited term of office."\footnote{224} Horizontal accountability, like vertical accountability, can be achieved in a variety of ways—through checks and balances, separation of powers, or a strong judiciary. In some cases, even the "hard facts of existing power relations" will be enough to check the executive; in others, additional procedures will be required to assure horizontal accountability.

Third, rules provide the basis for determining when leaders are to be sanctioned and predictable methods for doing so. As Neil Kritz explains, as well,\footnote{225}

the rule of law does not simply provide yet one more vehicle by which government can wield and abuse its awesome power; to the contrary, it establishes principles that constrain the power of the government, obliges it to conduct itself according to a series of prescribed and publicly known rules, and, in the postconflict setting, enable wary former adversaries all to play a vital role in keeping the new order honest and trustworthy.\footnote{226}

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Without rules, there would be no basis for determining whether the governors were being honest and trustworthy. Further, rules that define the legitimate exercise of government power not only provide predictable governance but may also be necessary "to protect those not in the majority."\footnote{227}
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\footnotesize{223. See S.C. Res. 1244, ¶ 96-97, U.N. SCR., 4011th sess., U.N. Doc. S/RES/1244 (1999). See also Report of the Secretary-General on the United Nations Interim Administration in Kosovo, ¶ 119, U.N. Doc. S/1999/799 (1999) (delivering to the Security Council not only that the interim administration will "endeavour to ensure conditions of normalcy in Kosovo under which all peoples can enjoy the benefits of democracy and self-government"). Subsequent tasks included establishing the rule of law, training local civil administrators, and facilitating both the "awareness and involvement of citizens in social and political change" and "conditions that support pluralistic political party structures, political diversity and a healthy democratic political climate." See id. ¶¶ 80, 119, 121.}

\footnotesize{224. Schabas, supra note 129, at 165 (quoting Guillermo O'Donnell, Delegación Dura, 3 J. Dem. 55, 59 (1999)). The problem of delegative democracy is compounded when "popular enthusiasm that leads to the election of such charismatic leaders is tempered by subsequent disillusion." Claudio Grossman, Freedom of Expression in the Inter-American System for the Protection of Human Rights, 7 ILSA J. INT'L & COMP. L. 619, 620 (2001).}

\footnotesize{225. Neill J. Kritz, The Rule of Law in the Postconflict Phase: Building a Stable Peace, in MANAGING GLOBAL CRISIS, supra note 164, at 288.}

\footnotesize{226. Kritz, supra note 197, at 707.}
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Fourth, rules are also partly the result of accountability mechanisms properly functioning over time. Roth distinguishes between "three normatively significant ends to which the establishment of competitive electoral mechanisms may to a greater or lesser extent be relevant."\textsuperscript{227} These include:

(1) the furtherance of broad popular empowerment with respect to the full range of social decisions that condition life in the society ("substantive democracy"); (2) the establishment of a government to which the populace may in some manner have been said to have manifested consent ("popular sovereignty"); and (3) the establishment of a broadly recognized basis for, and thereby limitation on, the legitimate exercise of power ("constitutionalism").\textsuperscript{228}

The first two of these normatively significant ends—substantive democracy and popular sovereignty—describe the function of accountability. Citizens are empowered with respect to the decisions that shape their daily lives—such as decisions about the allocation and use of material resources\textsuperscript{229}—because they can hold leaders accountable for those decisions. Correspondingly, the existence of accountability mechanisms implies to some extent that the populace consents to the government, because a lack of consent would ideally result in sanctions against the leaders.

Constitutionalism, however, adds an important element that is not fully articulated within a theory of accountability alone. According to Roth, democratic procedures can create a basis for the legitimate exercise of power, and thereby limit the exercise of that power. While accountability mechanisms themselves do not limit the exercise of power, they provide a vehicle for the creation of rules that do so and the establishment of a legitimate basis of power over time. Although a written constitution may represent rules that a society agrees will govern the legitimate exercise of power, the outer edges and nuances of these rules are developed through citizen responses to the exercise of power that are made possible through accountability mechanisms.

IV. CONCLUSION

Ultimately, democracy is about "creating the opportunity for all persons to assume responsibility for shaping the kind of civil society in which they live and work."\textsuperscript{229} The international community increasingly recognizes that the purposes served by democracy are critical to internal stability as well as global and economic security. Yet the rhetoric of democracy has been used variously to signify procedures for electing leaders, to describe ideal deci-

\textsuperscript{227} Roth, supra note 5, at 494.
\textsuperscript{228} Id. Schmitt also emphasizes the importance of "constitutional design," which he defines as the "set of institutional specifications that assure that the State is accountable and governed by the rule of law." Schmitt, supra note 120, at 166.
\textsuperscript{229} Roth, supra note 3, at 501.
\textsuperscript{230} Fraveck, supra note 3, at 79.
sion-making structures, and to connote particular ideological positions. For the term "democracy" to provide any meaningful criteria for guiding responses to failures of democracy, however, its content must be clear. The purpose of democracy is to ensure that those who are affected by decisions possess the power to sanction or reward decision-makers and to provide a framework for resolving disputes over resources and power.

Understanding democracy as accountability provides a framework for responses to failures of democracy that are appropriate to the given cultural and historical context and responsive to the needs of citizens. This conception of democracy directs a responding actor to strengthen domestic mechanisms, promote institutional arrangements that vest citizens with effective sanctioning power, and work toward consolidation of accountability norms. On the international level, the principle of accountability requires not only that responses target the incentives of elites and hold them accountable for their decisions, but also that the responding actors themselves operate within a structure that provides necessary checks and balances and appropriate incentives for good governance. Finally, this principle has at its foundation the rule of law and transparency, which are essential to the proper functioning of democracy. Using this understanding of democracy as accountability to guide international responses will not only foster long-term global peace and stability, but will also help ensure that all individuals are guaranteed the opportunity to shape the world in which they live.