Citizen Accountability in a Democracy  
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DRAFT – this is a very preliminary effort and all comments are welcomed. Please send to jfanders@csusb.edu

Accountability has been a buzz word in public administration for years. We make normative claims for accountability of public managers and strive to find mechanisms to guarantee that policy makers and implementers are accountable to citizens. What has rarely been explored is the nature of citizen accountability.

Are citizens of a democracy accountable for government policies? Democratic theory says government should be “rule by the people.” What does that mean? Citizens elect representatives who initiate public policies which are carried out by public managers. Is that it? Representatives and public managers act as agents of citizens. We constantly look for ways to involve citizens and promote citizen participation while we bemoan the lack of citizen engagement.

Under democratic or principal agent theory, are citizens accountable for the actions of their representatives? Are citizens accountable for the authorized actions of public managers? Are they accountable for the results of public policies? When governmental policies result in negative consequences, are citizens innocent of responsibility for those consequences?

During military activities we talk of “innocent civilians.” Killing of civilians is identified as a “war crime” because they are “innocent” Innocent of what? Are they innocent of the actions of their agents? Are citizens in a democracy automatically “innocent” of the policies and actions of their government? If citizens authorize military action are they “innocent” of the consequences?

In this paper I explore the borders of blame and innocence of citizens in a democratic society and address the issues of citizen responsibility, obligation and accountability in a democratic society.

Before taking this further, let me acknowledge that the concept of citizen accountability is a normative social construction. My argument is that articulation of whether citizens are responsible for the actions of their government has functional impacts on citizen behavior and on the effort to create real democratic governance.

Most doctrines and theories of governance absolve citizens from responsibility for the actions of the state. In the following pages I review the various contexts of innocence and collective or corporate responsibility and discuss how such concepts limit overall accountability for government actions and increase the unchecked autonomy of state
officials. I discuss how responsibility and accountability ensure engagement and attention while the lack of such accounting creates emotional distance and general apathy. Ultimately, I argue that an increased consciousness of citizen accountability will increase citizen engagement and the effectiveness of democratic governance.

Innocence
To begin an exploration into concepts of citizen accountability I first briefly summarize legal concepts of guilt and innocence and liability. Our concept of accountability is framed by these social norms. While the concept of innocence may be nebulous, essentially it comes down to not being “guilty” or responsible or the cause of some injury or damage – to be blameless. The concept of guilt is somewhat different than that of accountability or responsibility – but they are similar. There is some link between an action and a person – whether legal, social or economic. Somehow a person caused or allowed something to happen and is understood to be blamable for the result.

Criminal Guilt
Criminal guilt in the United States can be divided along several lines. First, whether the act was intentional or unintentional, with unintentional understood to be the lesser guilt. Second, whether one’s actions directly caused the negative result or whether one was a helper, or accessory or enabler. US Criminal law finds accessories almost as accountable for the crime as the one who undertook the direct criminal act.

An accessory to a crime is any individual who knowingly and voluntarily participates in the commission of a crime. An accessory is not typically present at the scene of the crime, but contributes to the success of the crime before or after the fact. A person charged as an accessory to a crime before the fact is one who incites, abets, or aids a person in the commission of a criminal act. An individual who is an accessory after the fact shelters, comforts, relieves, or assists a felon after the crime has been committed. A person can be an accessory if they provide any support or assistance, whether financial, emotional, or material.

By law, an accessory can be held as liable as the principal actor who carried out the criminal act. If a person is an accessory to a felony crime, they too can be charged with committing a felony offense and subject to penalties accordingly.”

Civil Liability
Civil cases change the dynamics a bit by talking about liability rather than criminality. In criminal cases the accused may be judged guilty of a crime if there is evidence beyond a reasonable doubt. Criminality is about whether a violation of the law has been committed, while liability is a subjective judgment about whether a person is somehow responsible for the negative consequences incurred by another. In civil court cases, the requirement for assigning liability is a preponderance of evidence (a lesser evidential requirement than criminal guilt), which means that the defendant is more than 50% likely to be liable for whatever transpired. If you are civilly liable you may be responsible for paying damages for a negative result, but you are not subject to imprisonment
unless you have also broken a law. But the point is that societal rules say a person who is responsible for negative consequences for another is liable for penalties. The functional result of this set of rules is to incentivize people and organizations to consider the consequences of their actions and take care to prevent injuries (torts), both physical and financial. Damage awards sometimes include punitive as well as actual damages. Additional accountability and penalties are assessed to incentivize behavioral change by individuals and organizations.

Civil liability often distinguishes between Strict Liability and Negligence, although damages can be assessed for either. Harm results to one party either from an intentional action or through lack of action that a court judges a reasonable person should have taken. Negligence may sometimes be the lesser of the liabilities, but the negligent person is still held to be accountable.

There is a strong tradition in US civil law of liability of organizational supervisors, through negligence such as: Negligent hiring, Negligent supervision, Negligent retention, Failure to train, Negligent assignment, Failure to direct, Failure to discipline, Failure to investigate, Failure to protect, and Failure to treat.

In these situations it is assumed that a reasonable person would have carried out managerial duties in a certain fashion so as to protect employees and those with whom they interact. Both supervisor and organization can be accountable or liable for injuries that could have been prevented if the supervisor had been reasonably responsible. Negligent supervision happens when supervisors and organizations knew or “should have known” about the harmful activities of their employees. An accumulation of such negligence in US civil law is designated to be “Deliberate Indifference,” and may be subject to a higher penalty.

**Liability, Responsibility and Accountability**

While civil and criminal law is different, the social function of both kinds of judgments is to keep society safe and to penalize behavior that injures others. The existence of the laws and penalties are there to influence general behaviors. To be effective as an inhibitor of negative actions, accountability, as I have outlined in another place (Anderson) requires consequences for the behavior. The consequences of civil and criminal penalties are intended to be increased care on the part of people to make sure they do not injure others.

Concern over the potential for civil liability has grown into a new category of public administration known as Risk Management. Risk managers recommend organizational actions to reduce the risk of being held liable, encouraging responsible behavior. Employee training and organizational policies occur because of the potential for civil liability, although some believe those policies inhibit the efficiency and effectiveness of the pursuit of organizational goals.

There is a general acceptance in both criminal and civil law that those who do not directly participate in an activity may still be partially responsible for the results if they
have assisted the perpetrator in some way or if they have not restrained them in some way that is generally expected (negligence). A person may not be guilty of a violation of the law, but still be held responsible and penalized in some way for a negative action.

So we have a legal framework in the United States where those who cause harm to others are accountable for those actions and penalized. Our concern when dealing with citizen liability follows concepts of being an accessory, of facilitating or of being negligent of one's responsibilities as a citizen. Without negative consequences there occurs a "moral hazard" where citizens are less interested in carrying out their governance role and less motivated to prevent damage.

We often say public managers are agents of citizens. In the next sections I will outline the theoretical concepts of principal agent theory and how they have been expressed in law.

**Principal/ agent**

Principal/Agent concepts are framed around a situation where one person is acting on behalf of one or more individuals or an organization. Actions an agent may take on behalf of a principal may be either the result of direct instructions or general expectations of action taken favoring the principal. Indirect responsibility for actions is an element of principle/agent theory. Essentially, if I employ you to do some general activity or make you responsible for my possessions – I may be responsible for the specific things you do on my behalf- even though I did not expressly instruct you to do them.

**Principal Liability for Agent Actions**

The principal is liable for the actions of the agent which are committed within the scope of the authority given to that agent. When an agent does an act for the principal, the principal is theoretically present doing it and is responsible as an accessory to that action. The principal and agent are in law, one. If the action is taken within the scope of the authority given to the agent (they were essentially doing what they were told to do), the principal can be held liable. This concept of imposing liability for the fault of another is known as vicarious liability. The logic is that this liability encourages a principal to be careful when choosing their agents.


The rule of law imposing vicarious liability upon an "innocent" employer for the wrong of an employee is also known as the doctrine of *respondeat superior*, “let the master answer” or the Master-Servant Rule. In other words, the employer or principal may not have actually ordered the action, but if the employee took the action within the general scope of their job, the employer may be liable.

In the majority of cases, it is impossible for agents to seek specific authority from the principal for every action taken. Agents are recognized to have some discretion to carry out their work. But, for the purposes of ascribing legal responsibility to the Principal, when the Agent acts with actual or apparent authority, the principal will be held to have
the same knowledge and responsibility as the Agent.

http://en.wikipedia.org/wiki/Principal_%28commercial_law%29

"Even if the principal did not authorize, ratify, participate in, or know of the misconduct, he/she may be held for an agent’s tort committed in the course and scope of the agent’s employment. A master or other principal who is under a duty to provide protection is subject to liability to such others for harm caused to them by the failure of such agent to perform the duty."


An argument can be made that principal agent theory should be applied to citizen accountability in order to stimulate more responsible behavior of citizens – to balance the moral hazard of no consequences for one’s negligence. While society often holds people responsible for actions of their agents and holds organizations and individuals responsible for their supervision, this accountability framework does not carry through to our concepts of collective responsibility.

**Corporate liability**
The legal structure of incorporation was, in fact, created to insulate individuals from liability of an organization. A proprietor incorporates his company, in part, to protect his personal assets from the liabilities of the business and the negative consequences of its actions. Board members are understood to normally not be personally responsible for the actions of the organization- although there are exceptions.


So while many parts of U.S. law incentivize personal responsibility, the “corporate veil” is one that insulates individuals from responsibility. It is here the law interrupts accountability of the individual, while at the same time limiting the accountability of the collective. For corporations, accountability and liability can never be more than financial. A corporation cannot be held on criminal charges or incarcerated.

In the next few sections I explore our laws and social norms regarding collective responsibility for corporate actions and then the various creations of immunity that further limit those who carry out corporate actions.

**Shareholder and Corporate Officer Immunity**
Shareholders of a corporation are sometimes compared to citizens of a country. The shareholders own a piece of the corporation and normally their liability is limited to their shares of ownership. Occasionally protection from personal liability can be set aside by the courts when there is a judgment that the stockholder and corporation are tied close enough to be seen as “alter egos.” Under the doctrine of alter ego, the courts "pierce the corporate veil" and expose shareholders to personal liability for corporate debt.

However, shareholder liability for more than their stock investment is an exception. In distributing corporate responsibility courts have also distinguished between passive and active shareholders. An active shareholder is personally involved in the operations of a corporation while passive stockholders are designated as simply investors and thus held less responsible for corporate actions.
While corporate officers are not normally liable for corporate debt, they may be liable for torts (damaging others) of the corporation when the officer actively participates in the action, shows negligence, fraud, or willfully induces a breach of contract. An officer, director, or shareholder can be held personally accountable for a criminal offense carried out in the name or on behalf of a corporation. Corporate officers may be held personally liable for corporate taxes if they have willfully acted to avoid payment. [http://www.dcbabrief.org/vol210109art1.html](http://www.dcbabrief.org/vol210109art1.html). Under California and other state’s laws “A corporate officer or director is, in general, personally liable for all torts which he authorizes or directs or in which he participates, notwithstanding that he acted as an agent of the corporation and not on his own behalf.” Officers, directors and shareholders need not even directly participate in the tort—they may be found liable even if they only demonstrate an awareness and approval of the tortious conduct. [http://www.centurycitybar.com/newslettertemplate/April11/article3.htm](http://www.centurycitybar.com/newslettertemplate/April11/article3.htm)

There has been considerable debate over the liability of CEOs for the actions of corporate employees, particularly in the wake of corporate scandals like Enron. The 2002 Sarbanes Oxley bill added a number of notification requirements essentially striving to ensure that CEOs and Boards were aware of the financial situation of their company, and thus would have a degree of responsibility.

The United States has struggled to conceptualize what kinds of responsibility or accountability it will impose on its citizens. Accountability is advocated, and yet structures of corporation are created to insulate against accountability. There are also several constructs of immunity that frame our legal system. Immunity does not mean innocence. In fact it means that there was guilt, there was damage, but for some reason we will not hold the actors accountable.

**Sovereign Immunity**
Under Sovereign Immunity it is generally accepted that a government may not be sued for damages without its permission. Permission is sometimes included in legislation, but often is not. The doctrine of sovereign immunity also stands for the principle that a nation is immune from suit in the courts of another country.

**Governmental Tort Immunity**
Sovereign immunity may also apply to federal, state, and local governments within the United States, protecting these governments from being sued without their consent. The idea behind domestic sovereign immunity—also called governmental tort immunity—is to prevent money judgments against governments, that would have to be paid with taxpayers' dollars.

**Legislative**
Members of Congress and state legislators are absolutely immune from civil lawsuits that claim damages as a result of legislative actions. The U.S. Supreme Court, in 1998 extended this immunity to local legislators (e.g., city council members, and county commissioners) when they act in their legislative, rather than administrative, capacities. [http://legal-dictionary.thefreedictionary.com/Governmental+Tort+Immunity](http://legal-dictionary.thefreedictionary.com/Governmental+Tort+Immunity)
**Qualified or limited immunity**

The accountability of the public manager is framed by the concept of qualified immunity. The public manager is seen as the agent of a legitimate authority and as long as a public manager is obeying legal orders and not violating constitutional rights, they are not personally liable for the results of their actions.

The concept of immunity for organizational actors is shaped by the idea that if an organizational actor is obeying legal orders - they will not be liable for the damages their actions may cause. It is argued that government could not be effective if it was always concerned about the damages its actions might cause. This framework relies on the law to limit damages rather than individual behaviors. The individual need not concern themselves with the consequences if they are following legal orders and not violating constitutional principles. Once again we are in a somewhat self contradictory framework. We call for more individual responsibility, but when it happens in organizational settings we absolve the individual actor.

**International**

The international environment is often vague and influenced by political considerations. Heads of state are normally understood to be immune from prosecution under the guise of sovereign immunity, but there are limits. In situations that the world community recognizes to be egregiously harmful, the International Court of Justice may try former heads of state for their actions while a head of state. The Nuremberg trials after World War II also recognized that some actions of a state could be so offensive to the world community that no claim of sovereign immunity could protect.

**Military**

The concept of citizen innocence is most highlighted in the area of war. We constantly hear stories of injuries and death to “innocent civilians.” Soldiers can kill other soldiers—even unarmed non-combatant soldiers- and fall within a certain level of moral protection. Under this created concept of different rules for war – combatant are not subject to moral judgment when they kill other soldiers. The concept of civilians vs. uniformed or professional soldiers is a historical artifact that absolves citizens of responsibility for the actions of their government. With innocence comes lack of accountability. We have a social acceptance that activities undertaken by public managers who wear uniforms and whose job it is to use force to accomplish public policies are of a different moral category than other public policies. They are state actors and state actors may legitimately use force. Not only may authorized military public managers undertake violence to carry out their mission, but we create the fiction that anyone who opposes those policies and fights back may only resist the uniformed public managers. If they resist/fight/attack non military citizens they are attacking innocents, are terrorists and are guilty of a moral crime.

Mind experiment—what is the nature of the crime and/or moral guilt?

- Taliban kills a soldier in Afghanistan
- Taliban kills an unarmed uniformed military clerk in Afghanistan
Taliban kills a civilian armed "security contactor" in Afghanistan
Taliban kills a soldier not in uniform in Afghanistan
Taliban kills a civilian construction contractor in Afghanistan
Taliban kills a political leader in Afghanistan
Taliban comes to the US and kills a soldier in a military installation.
Taliban comes to the US and kills a soldier in their home.
Taliban comes to the US and kills a political leader.
Taliban comes to the US and kills a construction employee repairing the Pentagon.
Taliban comes to the US and kills a U.S. citizen at work.

In each case a member of the Taliban kills someone—but our internal construction of guilt varies depending on our conception of who is “innocent” and who is accountable. You decide some actions are bad—but are “acts of war” and somehow understandable. You view others as murder – and still others as terrorism.

Do the same mind exercise but replace Taliban with US soldier – and replace comes to the US with goes to another country. What are your feelings of guilt and innocence? The point here is not to make a normative claim of what is right and what is wrong – but to simply be aware of how our personal sensemaking determines our constructions of guilt and innocence.

**Administrative Evil**
The issue of Administrative Evil has been much discussed since Adams and Balfour’s book of the same name. There is disagreement over what administrative evil means or whether it exists at all. But at least one concept is that administrative evil occurs when the actions of an organization result in bad consequences for individuals and the actors in the organization are either unaware, disconnected or uncaring of those consequences. In part, that detachment and lack of caring results from the lack of consequences for individuals when they are protected by the corporate veil or qualified immunity of the system. Lack of consequences makes it possible for apathy and detachment from organizational consequences.

Moral hazard arises because an individual or institution does not take the full consequences and responsibilities for its actions, and therefore has a tendency to act less carefully than it otherwise would. The true moral hazard is the accountability insulation created by corporate structure. It is not legal personhood that is the important issue, but rather lack of accountability that makes up this personhood.

**Citizen Accountability**
The concept of Administrative Evil results from lack of individual responsibility. There is a disconnection, a disassociation between action and result. It is this same disassociation that allows citizens to be less concerned with the actions of their government, since they bear no personal responsibility or accountability. Many public administration theorists call for greater citizen participation in government. They call for greater efforts on behalf of public managers to reach out to citizens. They fail, however,
to really grapple with the fact that most citizens evidently do not care and by free choice do not participate. More than half are not even motivated to vote.

Another theme public administration talks about is Public Service motivation, but we undertake that discussion only for public managers. We fail to address the woefully inadequate public service motivation of the bulk of the citizenry. What is the motivation for participation? It is when there are direct consequences for that participation – both good and bad. My argument is that democracy and citizen engagement will only really work if citizens have a more direct connection to the results of government action. I do not pretend to know what kind of structure would accomplish this. I only know that as long as we depend solely on personal moral commitment, rather than upon the incentives of accountability, participation and engagement will be limited. The ultimate success of democracy depends on citizens asserting control over their government. This is unlikely to happen as long as they feel themselves “innocent” of governmental actions.

Citizens and their Government
Citizens have not been held as responsible for the actions of their government—which is why they are called “innocent.” My argument is that this lack of accountability or culpability for their appointed agents has consequences. Commercial law was established so agents would take more care for what their principals did- so they would pay more attention. This is not a requirement for citizens, and without some kind of liability there is a perverse incentive to ignore most of what government does.

Rather than being informed and active citizens, voters find it rational to be ignorant about the political issues around them and the impact policies might have. Even a civic-minded person may not find it worthwhile to become an informed voter when the chance of personally influencing outcomes at the ballot box is infinitesimal.

Studies in the United States and Europe confirm the existence of massive voter ignorance, irrespective of educational achievements and social class. In the United States as many as 70 percent of voters can't name either of their state's senators, and the vast majority cannot estimate rates of inflation or unemployment within 5 percent of actual levels. It is this rational ignorance of public policy that enables politicians to maintain policies that injure voters' interests. Politicians instead act rationally to (opportunistically) either to their own benefit or those of organized and monied interests. http://www.cato.org/pubs/policy_report/v33n5/cprv33n5-1.html

This ignorance and detachment is the result of the fact that citizens are “innocent” of blame for their government’s actions. The lack of personal responsibility in corporate/organizational constructs hides/avoids personal responsibility- of agents, of principals, of stockholders and citizens. As long as we are innocent, why should we care?