

In the United States, there is no city—or municipality on a hill—that is sovereign. Instead, since 1978, each municipality is a legal “person” for the purposes of § 1983 liability. Thus, following *Monell*, a Plaintiff could succeed in a municipal liability claim by proving that she was [1] deprived of a right, privilege or immunity secured by the Constitution and laws, [2] the municipality acted under color of state law, and [3] one of the four pattern set of circumstances for municipal liability was present. One notable difference between municipal and individual liability claims is that qualified immunity does not apply in the former, though the hurdles to suing such government-entities remain, arguably, more difficult than necessary. Not only is the narrowing of municipal liability claims inconsistent with the twin aims of § 1983, it also restricts an important tool that allows victims to hold the municipality-at-large accountable.

Section 1983 is a remedial statute. It is to be construed broadly and liberally to serve its purposes, the twin aims of which are the compensation of victims and the deterrence of future constitutional violations. However, one quirk of municipal liability concerns a final policymaker who never exercises his authority to review his subordinate’s decisions. Because the municipality is not liable unless the policymaker expressly ratifies or approves the conduct, the municipality would be more or less off the hook, even if the policymaker ultimately goes along with the non-policymaker’s decisions. Thus, an astute policymaker can insulate the municipality by delegating decisions to others. And while the Court in *Praprotnik*, acknowledged that persistent and widespread practices may establish municipal liability under the “custom” language of §1983, again, the municipality is in the clear every time the practice, even if acknowledged, is not considered widespread enough. In a close call, even a chance at compensation is denied. Next is the failure to [blank] claim, which apart from requiring a stringent standard of fault is only applicable in “limited circumstances.”

In dissent, Justice Souter was correct to point out the majority’s “deep skepticism” and “inhospitality” to municipal liability claims. Making municipality claims more difficult than necessary effectively places the municipality a little further from the court’s reach, as well as the reach of the laws. Money damages aside, municipal liability can have an important salutary effect on the community because the possible threat of municipal liability litigation will deter constitutional violations by encouraging new policies. If more often than not, municipalities can seek to blame a “rogue officer” then the municipality will have less of an incentive to change a policy or practice even if it played a role in the officer’s behavior. Finally, because the threat of municipal liability would not chill that conduct of any particular individual, it would be more consistent with the §1983’s twin aims to take down and not add to the “skeptical hurdles” in place.