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From NPM reforms towards post-NPM shifts: Changing accountability regimes and privatized systems of public service provision

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** WORK IN PROGRESS – COMMENTS WELCOME **

Abstract

Privatization is a dominant trend of recent public service provision reforms; however, it is a contested one. We understand privatization as an administrative reform whereby private actors become involved in a domain that was previously public, which can range from full or partial divestiture, to various forms of outsourcing to the private sector. The privatization of public services very often leads to public protest and creates social conflicts. This paper studies the privatization of public service provision through the lens of accountability, enquiring how civil societal discontent with such NPM-driven reforms has led to altered accountability regimes. Alternative accountability means such as performance-based measures are often layered upon existing accountability means. As such, newer forms may compete with traditional democratic means of accountability. While performance accountability may lead to a weakening of mechanisms of parliamentarian control and administrative oversight recent civil societal discontent with various privatization reforms has led to the use of alternative means such as direct democratic tools. These mechanisms have been found to lead to post-NPM shifts in the means of service delivery such a change from privatized public service provision to a return to public control, i.e., remunicipalizaiton, in certain cases. The following questions thus arise: How and to what extent do different accountability types such as performance and direct democratic means become strengthened or weakened in the context of privatization and how does this affect the system of public service delivery? These questions are addressed by conducting a comparative case study analysis of such salient policy fields as water supply and public housing in two federal states in Germany: Berlin (water) and Dresden (public housing). Results show that direct democratic accountability, public scrutiny, media and social protest played a key role in both cases, which led to a restructuring of the systems of privatization. In Berlin this led to a remunicipalization and in Dresden to a new CEO and the acknowledgement that the company has the responsibility for ensuring that public goals are met. We find that the stronger direct democratic means in Berlin led to a more drastic outcome of remunicipalization in Berlin than in the case of Dresden where there was no fundamental change.

Key words: accountability, governance, privatization, public service provision, trade-offs

1. Introduction

The privatization of public service providers is a dominant trend of recent governance reforms. This development brings the issue of accountability center stage: By whom and for what are privatized organizations delivering public services held accountable? While privatization affects accountability arrangements based on democratic procedures quite considerably, this is not because the intensity of such mechanisms is decreasing. New market-based accountability mechanisms such as competition and price are often layered upon existing regulatory regimes, like organizational boards with elected representatives of the public (Lodge & Stirton, 2010). As a result, autonomous organizations delivering public services are exposed to enduring and potentially competing external demands. For example, public service delivery goal such as universal service provision are juxtaposed with profit-oriented goals (Pierre, 2009).

The paper draws on the accountability literature in the context of the regulatory and privatized state (Hodge & Coghill, 2007; Lodge & Stirton, 2010; Scott, 2009). We aim to contribute to this literature by providing both conceptual and empirical insight onto the conflicting principles of democratic and performance accountability by exploring a plurality of accountability regimes in the context of privatized public service providers: To what extent can differing accountability mechanisms ensure that universal accessibility to services, affordability and quality are achieved and why? From the perspective of the public interest the achievement of these goals is important as they demarcate common goods from private goods.

We conduct a comparative case study analysis of such salient policy fields as water supply and public housing in the federal state of Germany. As these policy fields involve critical infrastructures and services that are sensitive to public concerns, they serve as valuable cases for gaining insight about the challenges of competing demands such as universal service delivery and efficiency mandates when private actors become involved.

The next section first discusses different degrees of autonomous service delivery with respect to their link to political decision-making and also in relation to accountability. Then we develop expectations concerning the relationship between privatization and service delivery in terms of accessibility, affordability, and quality. The third section operationalizes the latter criteria and presents the sources of data used. Section 4 presents the results of our empirical studies and section 5 provides a comparative analysis. The conclusion then highlights trade-offs between different accountability means in relation to public service outcomes in the context of privatization.

2. Theoretical and analytical framing

2.1 Autonomy from the state

Autonomy involves the detachment of a public service provider from the state, i.e., from political decision-making (Thom & Ritz, 2006). Defining the degree of structural separation from the state is indeed a

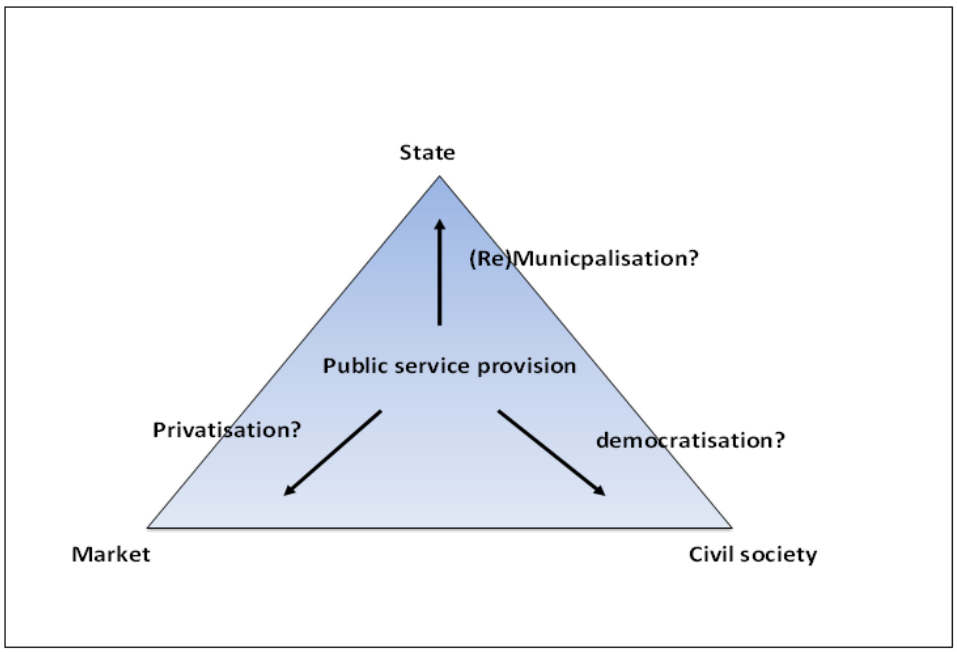
fuzzy terrain (Talbot, 2004). Autonomy could be granted to varying degrees, i.e., in terms of the extent that the state has control over the service provider with respect to operational and financial decision-making and asset ownership.

As shown in figure 1, one means of autonomy or rather lack thereof would be service provision provided by the *state*. A non-autonomous organizational form such as a public bureau, typically at the municipal level, would provide services (Pollitt & Bouckaert, 2004). A second form of high autonomy is related to the *market* (cf. figure 1). Service provision would be provided by private actors, with a transfer of asset ownership (von Weizsacker, Young, Finger, & Beisheim, 2005). This can either be done partly by establishing a public-private (Thom & Ritz, 2006), or fully by a 100 per cent transfer of the equity to private owners..

In the context of privatization, shifts from the state to the market are predominant. However, another dimension of autonomy exists, i.e., *civil society* (cf. figure 1). Here a shift from state to societal service provision occurs (Thom & Ritz, 2006) by involving service users in the management of public services. Hybrid constellations are also conceivable where shifts towards a more market-like organization come along with increased participation rights for consumers, prescribing the private company to set up a consumer board.

Our focus is on the market dimension, where we assess shifting accountability mechanisms due to different types of privatization. However, we keep an eye on the role civil society plays in the new accountability regimes, assessing whether or not alternative forums for democratic accountability have been established.

Figure 1: Dimensions of public service governance



Source: Own representation

2.2 Accountability implications

The issue of how to hold service providers accountable for their actions is a central concept in the governance literature that is affected by privatization in the public service sector (Papadopoulos, 2003). Specifically, our focus is on accountability as a mechanism whereby actors are held to account to a forum, rather than as a virtue or normative good (cf.: Bovens, 2010).

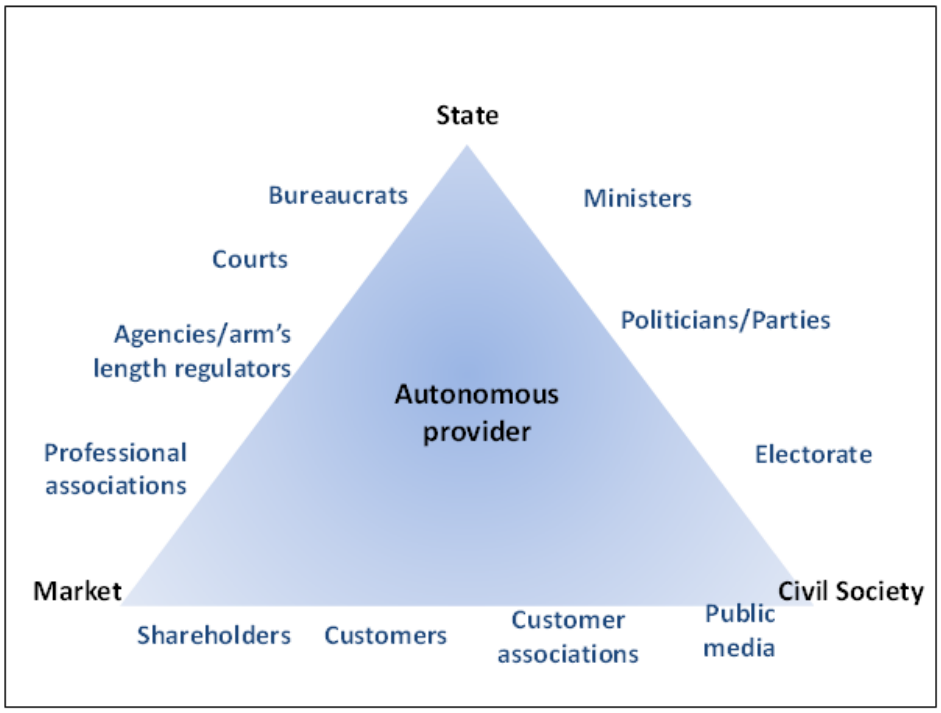
In western democracies, accountability is closely linked to democratic legitimacy of governance (Black, 2008). In modern societies power is dispersed across multiple actors (Scott, 2000). In order to ensure democratic accountability, western societies have found mechanisms - voting, representation and delegation – to render collectively binding decisions legitimate. Accountability makes it clearly attributable who is responsible for what, to whom and why (Scharpf, 1999). Typically, this entails some form of a checks and balance, where certain actors hold others to account through democratic procedures. In the context of increasing autonomy of service providers from the state, implementation structures no longer follow bureaucratic procedures with clear hierarchies and downward chains of delegation, but rather market logics of contracting-out. Hence, traditional democratic accountability becomes "almost untenable" (Pierre, 2009, 327). Specifically, as the line of delegation is interrupted, the control is no longer direct, because there is now an additional agreement or contract that "will stand in the way of more traditional accountability mechanisms associated with the hierarchical state" (Greve, 2008, 144). Instead, increasing reliance is placed on alternative forms often based on performance accountability (Pierre, 2009).

The question then arises: what type(s) of accountability are viable in the context of privatization to ensure that service delivery goals are met? This query is our point of departure for our empirical analysis. However, before presenting the empirical results we introduce our analytical framework which allows us to map and assess changing accountability relations vis-à-vis service delivery goals and their outcomes.

2.3 Mapping accountability in public service provision

Contemporary public service providers operate in a hybrid governance environment where the realms of the state, the market, and the civil society have collided (cf. figure 2). As a result, they face numerous forums of accountability. Layered upon already existing forums such as the electorate, politicians, parties as well as bureaucrats, there might be new forums such as audit agencies and their performance requests, arms-length regulators or financial investors (shareholders). Moreover, citizens can demand accountability either as customers via exit and choice as well as through their representation in customer associations, or by using (tools of direct democracy such as referenda or initiatives. Furthermore, public media scrutinizing public service providers can play an important role, challenging the reputation of service providers.

Figure 2: Autonomous providers and their accountability forums



Source: Own representation

Following the literature on accountability and autonomy (Hodge & Coghill, 2007; Scott, 2000) we argue that privatized providers of public services are enmeshed in complex accountability chains. Fragmentation of responsibility for provision and oversight of public services can be regarded as one of the most obvious and fundamental features of regulatory state governance (Scott, 2000, p. 44). Hence, the number of accountability forums is not decreasing, but rather multiplying (Lodge & Stirton, 2010). Drawing on the above forums of accountability, table 1 below displays the accountability relations (semi) autonomous providers can be faced with.

Table 1: Accountability types

Accountability Type	To whom?	For what?	Via what mechanisms?
Electoral (representative)	Electorate	Electing decision-makers (or voting them out of office)	Public voting, representation
Electoral (direct democratic)	Electorate	Proposing alternative measures/actions	Popular initiatives, referenda
Political	Politicians /Parliament and ministers	Financial decisions such as investment as well as operations	Board participation, Direct, informal intervention on everyday management Answering to parliamentary questions
Administrative	Public servants (bureaucrats)	Compliance with administrative procedures and ultimately the law	Input control (budget, number of staff), administrative mandates, sanctions
Judicial and quasi-judicial review	Courts	Pacta sunt servanda	Review of privatization contracts Lawsuits
Agency	Agencies, audit institutions; arm's length regulators	e.g. third-party accreditation of internal audit safety standards	Prescribed self-evaluation specified performance measures/performance contracts, audits, benchmarking/ comparative competition based on rate of return, price capping
Professional	Professional associations	Professional norms, best practices,	Peer review
Public scrutiny	Public media	Reputation	Reports in the public media, naming and shaming, making information about an organization available on the internet
Customer/individual user	consumer associations/councils, Ombudsmen	Individual grievance	Public reporting, public hearings and meetings,
Market based	Shareholders/investors "sovereign" consumer	Return of investment Price Quality and quantity of service	Competition Exit and choice

Source: Own representation based on Hodge & Coghill 2007

The simple question of how and to what extent accountability occurs when the autonomy of service providers is increased requires consideration of all the above accountability types (Hodge & Coghill, 2007, p. 678). Moreover, there is a complex interplay between the different types of accountability. For instance, public media can publish poor performance results, thereby fuelling public protest resulting in citizen initiatives. Market-based accountability may occur side-by-side with agency accountability, as semi-independent regulators may be in place to drive comparative competition and ensure compliance with

performance contracts. This again leads us to the questions of to what extent differing accountability mechanisms can ensure that common good goals are achieved.

2.4 Assessing accountability mechanisms

Going beyond mapping accountability relations, we are interested in assessing accountability mechanisms in relation to the service delivery goals and their outcomes. The political science literature has typically focused on the 'perceived' outcome rather than on actual problem-solving (Benz & Papadopoulus, 2006; Scharpf, 1999). In contrast, our focus is on the actual service delivery outcomes in terms of the achievement of such goals as service delivery accessibility, affordability and quality, as they are fixed in (partial) privatization agreements and public laws. Making the link to accountability, the question is how diverse accountability means intervene in actors' actions so as to safeguard that the public service delivery goals are achieved. Scholars have proposed differing arguments about how the diverse types of accountability relate to policy outcomes. For example, some argue that market mechanisms improve the quality of the services provided (Hodge & Coghill, 2007). Others have argued that electoral and political accountability should lead to improved service delivery, as the representatives should be held accountable to those they are representing. For example, citizens hold their political representatives to account via voting power. This assumes that the citizens push for public service delivery goals (Pierre, 2009).

Following this literature, we posit that the differing accountability mechanisms outlined above can affect the achievement of service delivery goals in the context of privatization accordingly:

1) If we find only traditional democratic accountability means (e.g., administrative, political, representative) without re-regulation in the form of semi-independent arms-length regulators in the context of privatization, then we posit a decrease in the achievement of public service delivery goals in terms of universal access, affordability, and quality (Prosser, 2005; Menard & Ghertman, 2009). Drawing on the work of Romzek (2014) we assume that governance reforms where the service providers have increasing autonomy require a structural adaption of accountability means, i.e., have a more diversified palette with autonomous organizations. Our focus here is specifically on alternative procedural means such as agency (in terms of semi-independent regulator) accountability, as it has been found to play a strong role in the context of privatization (Prosser, 2005; Menard & Ghertman, 2009).

2) If we find a lack of traditional democratic accountability means, then we posit that there will be a negative effect on the achievement of public service delivery goals. Although there is a need for alternative accountability forms in the context of privatization, following the work of Pierre (2009), we expect that if traditional democratic anchoring (through representative, administrative or political accountability) is lacking, then of public service delivery goals may suffer.

3) Alternative accountability mechanisms such as "new" direct democratic means (e.g., citizen initiatives), scrutiny via public media, consumer choice, ombudsmen etc. can foster democratic accountability by providing transparency, information, etc. However, they may not be sufficient to ensure the achievement of public service delivery goals. This remains an empirical question.

3. Case selection and methods

To assess our above expectations about accountability and public service delivery, we employ a comparative case study design. We have selected two cases in differing public sectors in the federal state of Germany: The water sector in Berlin and the public housing sector in Dresden (Saxony). These are two cases of public service provision where the organizations have experienced privatization processes. The case selection is theoretical to fit with our aim to assess diverging cases within the market mode (cf. figure 1). We have explicitly selected different types of privatization – Dresden where the private service provider enjoys a very high degree of autonomy, and Berlin where the autonomy of the privatized service provider is more restricted – to enquire whether varying degrees of autonomy make a difference for accountability.

Beyond their varying degrees of autonomy, our cases also differ in terms of their sectors, which has implications for the public service delivery outcomes. Public housing policies have lost a great deal of importance on the German political agenda in recent years. The heyday of housing policy was in the 1950s and 1960s when public housing programs were considered to be necessary to overcome war damage. While in East Germany public housing continued to be considered a core state responsibility, public subsidies for rented housing have declined considerably from the 1970s onwards in West Germany; although the demand has increased, particularly in the big cities. After reunification, public housing programs in the 'new' Eastern states have come under both legitimacy and economic pressure. Privatized social housing provision has become increasingly accepted. In contrast to public housing, water is still considered a core state task, as every individual needs water services to survive. Moreover, the water sector has a *universal service provision mandate*, which relates to "the guarantee of access to each inhabitant of essential rights and services" (Lupton & Bauby, 2007, 179) of the same high quality that should be equally accessible and affordable to all citizens. In contrast, public housing is less vital for survival and quality does not play as vital a role as it does in the water sector. However, public housing includes a universal element in the sense that everybody has the right to access housing at affordable prices.

3.1 The cases of the Berlin Waterworks and the Gagfah Group in Dresden

In 1999, the bankrupt city-state of Berlin entered a twenty-nine year contractual agreement with the private investors Veolia and RWE[i] (Beveridge, 2010). The State sold 49.9% of the Waterworks' assets to the private actors. A Holding company - created at the onset of the partial privatization – was the institutional owner of the Waterworks and responsible for the operational management, enabling the private actors to become responsible for the Waterworks' corporate management; the private shareholders have a majority of seats in the corporate management board (Ochman, 2005). Through this Holding, private actors – as 'silent partners' – could own and make capital investments in the Waterworks and conversely, could receive profits. In addition, extra-legal contracts between the Senate and the private shareholders shifted the power relations by weakening the Senate's ability to influence decision-making: All decision-making about the Waterworks required the approval of all shareholders. As such, the Senate could not make decisions without the approval of the private actors (Beveridge, 2010).

The Waterworks was a public law institution with its own legal personality. It was operated based on the Berlin Enterprise and Partial Privatization Laws as well as according to 'extra-legal' contracts signed between the Senate (representing the city-state of Berlin) and the private shareholders RWE and Veolia.[ii] The Senate and the private shareholders signed an extra-legal contract – the consortium contract, which included a 'profit guarantee' clause (§23.7) obligating the Senate to compensate the private shareholders for any economic shortcomings that might arise if the Partial Privatization Law would be partially or fully declared as unconstitutional. Hence, the State bore all *commercial risk* (EUWID, 2011c). Due to the above mentioned 'profit guarantee' and the new profit mandate specified in the Partial Privatization Law, the tariff also had a cost-plus component, which generated a rate of return on capital for the shareholders, through an interest-rate, to compensate them for their investment and risk.

The Dresden involves a complete divestiture on the high end of the autonomy scale towards market based governance. In 2005 a majority in the City Council decided not only to privatize the *whole* public housing stock in Dresden, but also the *whole* municipal company, i.e. all shares, to a private investor to overcome the heavy deficit in the local budget and to avoid further expenses for maintenance operations. After a bidding process, the municipal company was sold to the Gagfah group, which is mostly owned by the US private equity fund Fortress. The Gagfah group is a stock company under Luxembourg law. The management of the Gagfah group enjoys a high degree of autonomy: "The Board of Directors is vested with the broadest powers to manage the business of the Company and to authorize and/or perform all acts of disposal and administration falling within the purposes of the Company" (Gagfah, 2013). Even though the Gagfah is a stock company it does not follow the typical the two-tier system for stock corporations with an Executive Board and a Supervisory Board, but the one-tier system with a Board of Directors, which is allowed by the Luxembourg law. This means that the management is not obliged to justify its decisions before the supervisory board. Private investors decide only via stock purchase and sale and via participation in the annual meeting whether or not the management has met the financial goals of the company sufficiently.

The Gagfah Group is organized as a holding, with the acquired Housing Cooperative (hereafter referred to as WOBA Dresden), a public limited company, taking the role of a subsidiary company. Albeit the WOBA Dresden is independent by law, it operates exclusively under the Gagfah label. The financial administration and public relations are steered centrally at the holding level. Moreover, the CEOs of the Gagfah group and of the subsidiary WOBA are the same persons. Different to the holding, the subsidiary WOBA Dresden has a supervisory board. However, this is only facultative board without clear sanctioning competences.

The timeframe of analysis for the water case is during the partial privatization of the Berlin Waterworks, from 1999 up until 2012. The remunicipalization process and the transfer back to 100% public ownership in 2013 is not assessed. The timeframe for the social housing study is 2005-2012, beginning with the decision to fully privatize the local housing company and ending with major conflicts between the

company, the city council Dresden and civil society organizations about the outcomes of the services provided by the private investor several years after the transactions had taken place.

3.2 Operationalizing the public service delivery outcome criteria

Table 2 defines how we will empirically measure the public service delivery outcomes in the two cases. The specific indicators for the three criteria vary, as they are sector-specific.

Table 2: Operationalization of public service delivery outcomes

	Accessibility	Affordability	Quality
Water sector	Percentage of connected households to the water supply network.	Perceived affordability can be related to either a reduction/increase in water prices. Existence of social tariffs or state subsidies for poor and vulnerable groups – if such groups exist.	Physical drinking water quality – in compliance with legally mandated parameters – as well as based on public health incidences related to public service provision, which relate to waterborne diseases.
Social housing sector	Number of social housing compared to the number of needy persons.	Upper limits for rents, upper limits for rent increases, protection against eviction.	Maintenance and modernization quality measures. Employment of social workers to provide advisory services such as debt counseling, support for migrants, old people, or single parents.

Source: Own representation based on text above

3.3 Data sources

The data for the indicators stem from both qualitative and quantitative sources. For the water case we employ data from the Berlin-Brandenburg Statistics Bureau as well as from the Berlin Senate Department for Health, Environment and Consumer Protection. In addition, we analyzed policy documents, including, laws, administrative reports as well as formal documents like contracts, statutes and corporate communication. We also draw on previous research studies on the topic (cf. Beveridge, 2010, Hüesker, 2011; Lieberherr 2012; Lieberherr, Klinke & Finger, 2012; Ochman, 2005).

For the housing case we draw on data provided by the Federal Statistics Office Germany. In addition, we conducted an extensive document analyses. Policy documents as well as documents of corporate communication have been collected. These include official documents of the Dresden City Council as well as documents from parties in the opposition to examine the enquiries and the judgment of the public forums. The data set has been amended by statements from affected actors such as tenant or patient associations, trade unions and worker councils, physicians etc. The private providers' reactions to calls for public accountability have been reconstructed using corporate narrative documents as empirical resource. Here, the data set includes annual and Corporate Social Responsibility reports, statements from the management during press releases, and interviews with the public media.

4. Accountability and service delivery outcomes

We now trace the differing accountability types and then the public service delivery outcomes in terms of the accessibility, the affordability, and quality of the services provided in these two cases.

4.1 Accountability

Berlin Waterworks case

Administrative accountability remained in Berlin, as the prime means of oversight occurred via the senate departments, which monitored the compliance with the Berlin Enterprise law, Water Laws etc. The Senate, through its departments and role in the supervisory board, was the main economic regulator and simultaneously the majority shareholder of the Waterworks. Moreover, through an extra-legal contract the Holding had the right to influence the composition of the supervisory boards, which weakened the Senate's clout over the private actors (Ochman, 2005). Hence, the Senate's viability as an accountability forum became questioned, as the Senate was viewed as having a dual mandate of a profit-motive and safeguarding water provision (Lieberherr et al, 2012).

The challenge thus became not only how to hold the private actors to account, but also how to put a check on the public actors (the Senate). However, no explicit restructuring of alternative procedural means such as *agency accountability* in the form of a semi-independent sector-specific regulator became implemented in the context of partial privatization. There was neither formal comparative competitive regulation nor a new forum that held the Waterworks' to account for these activities. At the federal level, the Cartel Authority could serve as an additional check. Due to increasing water prices the Cartel Authority was called in to investigate the tariff structure in 2010 (Bünder, 2011). Albeit the Cartel Authority has served as an extra check, its role in the water sectors remains contested as it is not an institutionalized entity (Lieberherr, 2012).[iii]

Instead of agency accountability, we found *judicial accountability* via the Constitutional Court to become relied on as a source of 'checks and balances'. For example, the Parliament called in the Constitutional Court in 1999, which declared part of the privatization contract with its fixed profit guarantee as unconstitutional. However, while the Constitutional Court made rulings against initial tariff calculation means, the Senate and the private shareholders found ways to circumvent this, which led to a fixed rate of return as high as the one initially set in the privatization contract (Lieberherr et al.,2012). Hence, the court ruling did not have the intended results *de facto* as were decided upon *de jure*.

Similarly, *political accountability* via the Parliament also become relied upon, but without much clout. The Parliament passed additional legislation to foster resource protection, e.g., the 2005 Water Law and the Groundwater Ordinance. In addition, the Parliament held the Waterworks' corporate management to account as the management had to give an account about its annual operations and management directly to the Parliament through the cooperation committee. However, these proceedings were not public and there was no public protocol. While the Parliament scrutinized the PPP contracts, it was criticized that the

Parliamentarians were not given a sufficient amount of time to read these complex legal documents and could hence not make informed decisions (EUWID , 2012a). Like the Court, the Parliament lacked clout, as they do not have direct control over the Waterworks.

In contrast, *market-based* accountability played a central role, with a high degree of clout: The Waterworks' tariff structure was regulated contractually in terms of the rate of return and the Waterworks engaged in benchmarking at both the national and international levels (EUWID, 2011f). Due to the extra-legal contracts with private investors, the de-facto result was a fixed rate of return favoring the private sector interests, but was rejected by the constitutional court (cf. Lieberherr, et al., 2012).

Representative electoral accountability decreased with the partial privatization. Citizens had no direct means to influence decision-making through representative institutions, neither through the Parliament nor through public voting. The only democratically authorized body *in*directly involved in decision-making was the Senate, as co-shareholder with the private actors, through its *representation* in the supervisory boards.

Perhaps due to the decreased degree of representative electoral accountability, as well as due to discontent with the structure of the Berlin Waterworks, the Berlin civil society took hold of *direct democratic accountability* means. Citizens first had to establish such direct democratic tools by changing the State of Berlin's constitution to legalize the public initiative and referendum in 2006. The public thus was able to add an additional check and balance via the successful civil societal initiative that led to a new law mandating that the previously private contracts between the State and the private actors be open to public scrutiny in 2011. This popular initiative was the beginning of the remunicipalization of the Berlin Waterworks (Anker & Schomaker, 2011).

Finally, *public scrutiny* played an important role in the partially privatized Waterworks. The Waterworks received negative press in the – local, regional, national and international – news since the onset of the PPP model (Lieberherr, 2012). In addition, civil societal organizations protested against the partial privatization since 2006 (Passadakis, 2006). These groups also increasingly put pressure on the Parliament to take action against the Senate and the PPP (Lieberherr et al., 2012).

Dresden housing case

Even though the City Council of Dresden decided to sell the municipal housing company WOBA Dresden completely, it tried to uphold *political and administrative accountability.* The City Council established a new committee in charge of housing issues. In order to monitor compliance with the sales contract, the company was obliged to submit an annual report to the City Council and inform the politically responsible actors about plans for the sale of property. Moreover, the city of Dresden requested a seat and a say in the board of directors of the WOBA Dresden and appointed the city council's head of finance to the supervisory board. Finally, the City Council strived to strengthen the position of the tenants in organizational decision making and pushed the company to set up a tenant committee to foster *customer accountability*.

To hold the private provider accountable to public interests and to counterbalance the dominance of *market-based accountability* in the context of full privatization, the City Council of Dresden negotiated a Social Charter with the Gagfah group during the sales negotiations (Gagfah S.A., 2005). Rent control, protection of tenants' rights, sustainable investments are core goals of municipal housing. Accordingly, the Social Charter as a mechanism of *political accountability* substantiates tenants' rights by implementing rent control and prescribing the tenant's right of pre-emption in case of secondary purchase. Moreover, the Social Charter specified investment duties of the new private owner. The company committed itself to spend 5€/qm² for flat maintenance (Landeshauptstadt Dresden 2009) and also accepted an upper limit for investments (Social Charter, § 3 Gagfah S.A., 2005). Luxury renovations were restricted to avoid raising rents in the city and to safeguard sufficient affordable housing space. In addition, the private company accepted to allocate 8,000 flats for needy persons. Finally, to avoid short-term cash generation, the City Council conditioned the purchase upon holding onto 32,000 apartments for at least 10 years. However, these agreements were only vaguely defined. For example, in the case of reselling the flats the Gagfah was not obligated to demonstrate how the new owners were to be held accountable to the agreements fixed in the Social Charter. In addition, performance data were repeatedly delivered with a delay of up to one year; meetings of the City Council Committee 'public housing' had to be rescheduled because Gagfah excused missing presentations with sudden computer problems (SPD Fraktion Dresden, 2009). The availability of performance data, however, was also hindered by the particularities of the stock corporation law, which requires from all board members to decide in the interest of the company (and not in the interest of the general public).

Particularly during the early stages of privatization, *political and administrative accountability* was weak, as the local government neglected the infringements of the privatization contracts and downplayed problems with regard to affordability and the quality of the services delivered in its responses to parliamentarian enquires (Landeshauptstadt Dresden, 2010). Enjoying continued political support, the Gagfah Group ignored the critique from public stakeholders completely. Despite this challenge, no alternative procedural means such as *agency accountability* were implemented in the Dresden case.

However, ongoing *public scrutiny*, in addition to a changing political climate (financial crisis 2008, a more critical stance towards private actors) finally had its effects on the politicians in the City Council. The Gagfah's noncompliance with the Social Charter could no longer be overlooked and as the public debate became increasingly critical, the City Council initiated two complaints against the Gagfah claiming contract penalties for alleged violations of the WOBA privatization agreement in the total amount of EUR 1.084 billion. The Gagfah Group, however, seemed not to be intimidated and initiated counter-complaints against the city of Dresden and its head of finance.

Next to these institutionalized accountability relations, the Gagfah group was faced with non-institutionalized demands for accountability from both *citizens (electoral in terms of direct democratic)* and *public media (public scrutiny)*. The privatization project of the municipal housing company was contested from the very start. The far reaching privatization decision was supported by the majority of the

City Council; the majority of the City Council, however, did not represent the majority of the public opinion. Upset citizens and tenants criticized the privatization project and expressed their concerns via demonstrations and the public media. Questioning especially the possibilities to hold an investor-owned company accountable to core public values, they were not convinced by the argument that the transaction would enable annihilating the city of Dresden's public debt in one stroke.

To avoid full material privatization, citizens initiated a petition for a referendum. The initiative 'Maintain the WOBA – against privatization' was supported by a tenant association, the trade unions, and members of the green party, the social-democrats and the post-communist party. Although the initiative collected a considerable number of votes (altogether 45,000 votes), the necessary quorum (63,000 votes) was not achieved. Even though the initiative was not able to hold the City Council accountable by using instruments of *direct democracy* and could not prevent full material privatization, they managed to draw a high level of public attention to the case. The media – both the local newspaper and the national press - acted as a mechanism of public accountability by providing a forum holding not only the Gagfah Management, but also local politicians accountable. A local newspaper became the citizens' voice and informed their readers regularly about the Gagfah's unduly rent adjustments and neglected maintenance and repair. Even the liberal Financial Times Germany reported critically about the company's operation and addressed them as a tenant's nightmare (Schreiber, 2010).

4.2. Public service delivery outcomes

Table 3 summarizes the outcomes for both the Berlin and the Dresden cases. First we present the results for Berlin and then for Dresden below.

Table 3: Summary of service delivery outcomes in the Berlin and Dresden cases

Criteria	Berlin Waterworks	Gagfah Group in Dresden
Accessibility	+ 99.8% for water supply and 99% for sanitation; 1-2% increase in connection rate since 1999 (Statistik Berlin Brandenburg, 2011)	+/- Compliance with the number of flats assigned for needy persons fixed in the privatization contract, but only for length of the contract
Affordability	- Cartel Authority verdict that water prices = 25% too high (EUWID, 2011g), as the cost-plus component is up to 44% of the water price (EUWID, 2011e). . Social tariffs exist. Social tariffs exist.	- Unduly rent increase, subversive interpretation of privatization contract, re-selling of flats without offering them to tenants for 85% of the market price
Quality	+/- no chlorine; concerns regarding micro-pollution (cf. Endnote V)	- Non-compliance with the investment duties fixed in the privatization contract (5€/qm² per year as minimum amount)

Source: Own representation based on text below

Berlin Waterworks case

Accessibility: The connection rate to the water networks was high in Berlin and slightly increased under the partial privatization (see table 3). However, initially following the partial privatization, findings indicate that the Waterworks neglected to expand the wastewater network. However, this led to new legislation mandating that household connections are increased (Hüesker, 2011).

Affordability: The Berlin case is characterized by highly rising water prices. Particularly the tariff system led to affordability challenges, as the calculation method fixed a high return on capital, which was borne by the users. The subsequent rise in water prices led to the above mentioned investigation by the Cartel Agency which concluded that the drinking water prices are too high (see table 3). It thus demanded that the Waterworks reduces its water prices (EUWID, 2011b). Yet the Waterworks fought this decision, arguing that this conflicted with the Enterprise Law and the Tariff Ordinance and that the Cartel Authority lacked competence to intervene (EUWID, 2012b). Although water prices would have increased due to inflation, the cost-plus component of the tariff was a major portion of the water price (see table 3).

Quality: Drinking water quality was high under the PPP constellation, above the national averages; (EUWID, 2011f). No data on public health incidences could be found. However, Berlin has a complicated drinking water situation, where treated wastewater flows into drinking water sources. As two-thirds of the drinking water comes from bank infiltration, which is highly dependent on surface water quality, concerns of micro-pollution have been raised[iv] (Lieberherr, 2012).

Dresden housing case

Accessibility: Already the decision of the City Council to privatize social housing in Dresden had a negative impact on the accessibility of the services provided, as it was a clear aim of the conservative local government to cut down the number of subsidized public flats. There was and still is an ongoing struggle between right and left wing actors concerning the questions of both who is needy and how many flats are necessary to provide affordable housing for needy persons. However, leaving this political struggle aside and focusing only on the criteria for accessibility fixed in the privatization contract, the assessment of the public service delivery outcomes by the Gagfah group is rather positive. The Gagfah group agreed to assign approximately 8,000 flats to needy persons and complied with this contract. Yet, it is an open secret that Gagfah's commitment to supply affordable housing is only limited to the time period of the privatization contract. The strategy of the corporation is based on selling or renting flats assigned for social housing to market conditions as soon as price maintenance agreements expire.

Affordability: From the very beginning, institutional expectations with regard to affordability of social housing set in the social charter were disrespected by the Gagfah group. The corporate strategy of the Gagfah was based on trading profits and promptly liquidizing investments, not long-term value enhancement. Accordingly, apartments of the portfolio without rent control were sold without offering them to the tenants at a reasonable price (i.e. 85% of the market price) only one year after the ownership change. What is more, the Gagfah group applied agreements with regard to rent capping only for those tenants who had already rented a flat at the time of privatization, not for new tenants. Such an interpretation of the contract, however, was not intended by the City Council. Another example for subversive contract interpretation by the Gagfah group was that they considered all rent increases after infrastructure investments as contractual behavior (Gagfah S.A., 2007), even if the rents were increased significantly above the agreed limit.

Quality: In terms quality the outcome of service delivery became considerably worse. The agreed 5€/qm² for flat maintenance fixed in the privatization contract were already far below usual conditions. The Gagfah group was non-compliant even with these small-scale obligations. The service agreements fixed in the social charter were heavily violated and tenants increasingly complained about shabby and moldy flats, malfunctioning elevators and heating systems. The Gagfah group, however, was not willing to accept responsibility, but accused the tenants for not taking good care of the flats.

5. Comparative analysis

In assessing how accountability mechanisms affect the public service delivery outcomes in two cases of privatization, we find that varying degrees of autonomy lead to complex accountability regimes, which can have differing implications for public service outcomes. Due to the partial divestiture in Berlin, there was an entangling of accountabilities, whereas with the full-sale of the infrastructure in Dresden, the mechanisms were more clear-cut. In Berlin, although administrative and political accountability remained

via the Senate departments, this became entangled with market-based accountability, due to the Senate's double role as majority shareholder of the for-profit waterworks and regulator. Moreover, representative democratic sources of accountability were considerably weak. In contrast, in Dresden, the City Council was not affected by the profit-making of the Gagfah Group, where political and administrative accountability remained stronger; albeit initially these were weak. In both cases, we found market-based accountability to play a key role and no agency accountability. However, we found "new" sources of accountability such as direct democratic and public scrutiny, which played an important role in both cases.

This accountability constellation was found to have an impact on the service delivery outcomes and hence has implications for our expectations. Expectation 1 is partially supported by both cases. In Berlin, the lack of clear accountability structures led to a negative effect on certain public service goals, especially affordability. However, *direct* democratic accountability and public scrutiny were able to (partially) offset this negative effect, as the citizen initiative led to the remunicipalization with the aim to reduce prices. Hence, the Berlin case partially supports our first expectation, which a lack of procedural restructuring (via agency accountability) will lead to a negative effect on public service outcomes (only partially because in our case we show the added value of the direct democratic and public scrutiny accountability means). In the Dresden case we find that although there was also no adaption in terms of an arms-length agency regulator, the City Council was able to serve as a more independent "check" on the Gagfah Group than the Senate in Berlin. However, initially the reliance on traditional democratic accountability via the City Council had a negative effect on the public service outcomes. Yet the City Council's legal action against the Gagfah Group was a turning point, which led towards better public service outcomes. Again here found an interplay with public scrutiny means, which aided this process. Hence the Dresden case partially supports our first expectation, as at first the reliance on traditional democratic accountability seems to have had a negative effect, but in the end this forum was able to steer towards a positive achievement of public service goals.

Expectation 2 is better supported by the Berlin than the Dresden case. In the Berlin case, the weakening of democratic sources of accountability via representation and the mixing of political and administrative accountability with market-based forms had a negative effect on the achievement public service goals. As such, the Berlin case supports our second expectation, which posited that a lack of traditional democratic accountability means has a negative effect on public service delivery outcomes. Similarly, we found weak traditional democratic accountability in the Dresden case to have a negative effect on the public service outcomes during the early stages of privatization, where the local government's failure to ensure that the privatization contracts were complied with, had negative effects on affordability and the quality of the services delivered. However, over the long run, the clearer traditional democratic mechanism through the City Council paid-off (in conjunction with public scrutiny means), which ultimately positively affected the achievement of public service goals. Hence, the Dresden case only partially supports our second expectation.

Finally, expectation 3 is supported well by both cases. In the Berlin case, we find that alternative forms of accountability such as public scrutiny and direct democratic means, helped to foster democratic accountability to a degree, but did not suffice to ensure the achievement of public service delivery goals fully (only to a degree). Hence, the Berlin case supports our third expectation. In the Dresden case we found that due to ongoing public scrutiny and a changing political climate, the City Council took legal action against the private company. This, together with shareholder discontent, ultimately put pressure on the Gagfah to change its practices, acknowledging the responsibility of the company for accessible and affordable public housing with satisfying quality. These findings provide support to our third expectation, that alternative accountability mechanisms can help foster democratic accountability as well as the achievement of public service goals, albeit that these accountability mechanisms alone would not have sufficed. Hence, the Dresden case provides evidence to support the third expectation as well.

In sum, both cases have shown the challenges of the conflicting principles of differing accountability mechanisms vis-à-vis public service and profit goals in the context of privatization. Indeed, in both cases we found politicians sitting in boards of privatized companies who had the double mandate to safeguard the companies' profit *and* the public service goals. However, in the Dresden case, details about organizational strategies and the budgets of privatized service providers were not discussed in political committees. Hence, the Dresden City Council suffered from an information lack, whereby the City was unable to control the Gagfah Group due to hidden action and hidden information. In contrast, in Berlin, the Senate was involved in the discussion of budgets and organizational strategies.

6. Conclusion

The aim of this paper has been to map and assess accountability means when public services are (partially) privatized. More specifically, we have addressed the question of the extent to which differing accountability mechanisms can ensure that public service delivery goals are achieved. The analysis of our two cases has revealed that the restructuring of the accountability means in the course of privatization involves a process of layering, shaped by interests and institutions in the organizational environment of the (partially) private service providers. In the Berlin case, accountabilities became entangled, as the Senate was its own regulator due to its majority ownership in a for-profit company. The Dresden housing case, on the contrary, was not only an example of radical divestiture, but also of fundamental alteration of the accountability relations, where the City Council became clearly separated from the private Gagfah Group. However, neither case involved a structural shift in terms of procedural accountability means such as agency accountability. Market-based accountability became strong in both cases, where the means of representative and political accountability were comparatively weak compared to the calls for accountability of the private shareholders. These were found to negatively affect public service delivery outcomes. Yet due to multiple, alternative mechanisms of accountability, such as public scrutiny and direct democratic means, the systems of privatization were restructured in both cases, in an effort to improve public service delivery outcomes. In the Berlin case this led to a remunicipalization with the intent to reduce water prices and in

the Dresden case to a new CEO and the acknowledgement that the company has the responsibility for ensuring accessible and affordable public housing with satisfying quality.

We can draw several general lessons from our case studies. Despite the lack of agency accountability, direct democratic accountability as well as public scrutiny can serve as key accountability mechanisms to uphold public service values when political, representative and administrative accountability become weakened in the context of privatization. Moreover, problems with balancing the trade-offs between public service values vis-à-vis profit-oriented goals have a lot to do with implementation. The challenge is not only to find an appropriate mix of differing accountability means, but also to develop good performance measures, to collect reliable performance data, and to manage and monitor contractor performance. Furthermore, shortcomings of traditional democratic accountability in the context of autonomous service delivery may not only be grounded in inappropriate accountability means (e.g., no structural adaption such as agency accountability), but also in a lack of political will to impose sanctions on non-compliant service providers or to adhere to public service delivery mandates (Romzek & Johnston, 2005). This was the case in Dresden, where the politically responsible actors displayed dissatisfying performance results in the early years after the privatization in order not to question their far reaching reform decisions. The same applies in the Berlin case, where the Senate found ways to avoid the adaption of the criticized tariff calculation means.

In sum, this paper contributes to the understanding of potentially conflicting principles of differing accountability means in relation to the achievement of public service delivery goals in the context of (partial) privatization. Indeed, the two cases show that the typical trade-offs of public service delivery between equal access and affordable services of high quality are not easily solved by increasing the autonomy of the service providers. Indeed, accountability challenges and the implications for service delivery outcomes may become even more complex when public services are delivered through contracts (Romzek, 2014, p. 317).

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Endnotes

[i] Veolia Environment is a French multi-national environmental service corporation. RWE Aqua is a German multi-national energy and water service corporation. Another company, Allianz, was also initially a shareholder but later withdrew.

[ii] By 'extra-legal' contracts, we refer to contracts agreed upon by the State and private shareholders via informal arrangements through which they found consensus before the democratic bodies became involved (via more official procedures).

[iii] This is due to a claim that the federal level lacks the right to interfere at the constituent state level, despite the court ruling indicating that the Cartel Authority has this right.

[iii] Bank infiltration refers to surface water being infiltrated into the ground, so as to replenish groundwater. The rationale is that by filtering through the banks of a river or lake, the water becomes purified. Micro-pollution refers to chemical substances in surface waters at very low concentration levels (ng/L to µg/L) that are often not removed through wastewater treatment plants (Metz & Ingold, 2014).