

**AUTONOMY IN PUBLIC SERVICE
PROVISION AND THE CHALLENGE
OF ACCOUNTABILITY: INSIGHTS
FROM GERMAN POLICY FIELDS**

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Autonomy in public service provision and the challenge of accountability: Insights from German policy fields

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Abstract: The creation of “autonomous operative” organizations – either by privatization or devolution – is a dominant trend of recent public governance reforms. While privatization and devolution affect traditional accountability arrangements based on democratic procedures quite considerably, this is not because the intensity of regulatory mechanisms is decreasing. New market-based accountability mechanisms such as competition, price, and performance are often layered upon existing regulatory regimes, such as organizational boards with elected representatives of the public.

The paper contributes to the understanding of the relationship between conflicting principles of procedural and performance accountability by exploring the accountability regimes of autonomous operative organizations: What activities and strategies are applied by differing actors to manage the interface between the organization and their political and social stakeholders? To what extent can differing accountability mechanisms ensure that common good goals are achieved? 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 of Germany.

Autonomy in public service provision and the challenge of accountability: Insights from German policy fields

I. Introduction

The creation of “(semi) autonomous operative” organizations – either by privatization or devolution – is a dominant trend of recent public governance reforms. This development brings the issue of accountability centre stage: By whom and for what are autonomous organizations delivering public services held accountable? While privatization and devolution affect traditional accountability arrangements based on democratic procedures quite considerably, this is not because the intensity of regulatory mechanisms is decreasing. New market-based accountability mechanisms such as competition, price, and performance are often layered upon existing regulatory regimes, such as organizational boards with elected representatives of the public. As a result, autonomous organizations delivering public services are exposed to enduring and potentially competing external demands (e.g., democratic principles are juxtaposed with efficiency goals). These demands may impact the degree to which core values of public services such as universal accessibility to services, affordability and quality may be achieved, if other goals such as profit-making become prioritized.

The paper contributes to the understanding of potentially conflicting principles of differing accountability forms, such as public and market-based accountability, by exploring the accountability regimes of (semi) autonomous operative organizations: To what extent can differing accountability mechanisms ensure that universal accessibility to services, affordability and quality are achieved and why? From the perspective of public accountability the achievement of these goals is important as they demarcate common goods from private goods.

We address the above questions by conducting 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 autonomous organizations become involved. Accordingly, this paper

aims to shed light onto how and why differing accountability mechanisms may be integrated (or not) so that common good goals are achieved in the (semi) autonomous service delivery organizations.

The next section presents our theoretical and analytical framework, which first discusses different degrees of autonomous service delivery and their impact on accountability. Then we develop suppositions concerning the relationship between autonomy and service delivery. We are especially interested in how service provision is affected in terms of accessibility, affordability, and quality. Section 3 operationalizes the latter criteria and presents the sources of data used. Sections 4 and 5 discuss the results of our empirical studies. The conclusion highlights critical trade-offs between different accountability means in the context of (semi) autonomous organizations.

II. Theoretical framing

1. Autonomy

We refer to autonomy of public service organizations as the degree to which a public service provider becomes detached from the state; i.e., a separation of politics from operational and financial decision-making (Mayntz, 2004; Thom & Ritz, 2006). Autonomy might be depicted as a step-by-step detachment from the state. Defining the degree of structural separation is indeed a fuzzy terrain (Talbot, 2004) as autonomy could be granted to varying degrees, i.e., the degree to which the state has control over the service provider in terms of operational and financial decision-making and asset ownership.

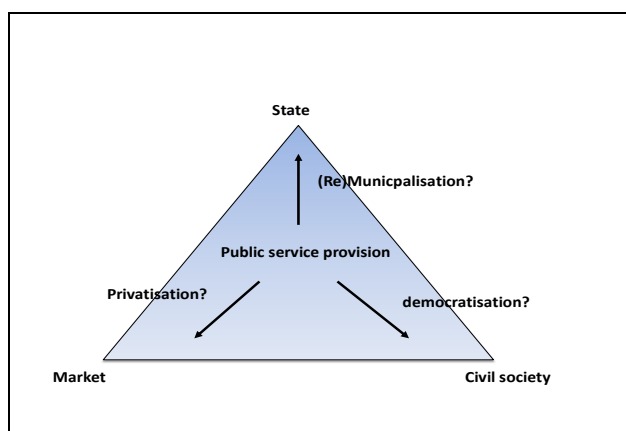
As shown in figure 1, one means of autonomy or rather lack thereof would be service provision provided by the *state*. A non-autonomous organizational form with direct public management, i.e., a public bureau, typically at the municipal level, would provide services (Pollitt & Bouckaert, 2004). A second form of high autonomy is related to the *market* (cf. figure 1). Service provision would be provided through direct private management and a transfer of 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. The latter results in a total decoupling from government (in terms of democratic procedures regarding the utility's operations) (Thom & Ritz, 2006).

Shifts from the state to the market are predominant today in public service provision reforms. 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 organisation 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. Thereby 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



2. *Accountability implications*

The issue of how to hold service providers accountable for their actions is indeed a central concept in the governance literature that is profoundly affected by the emergence of (semi) autonomous organisational forms in the public service sector (Michels & Meijer, 2008; 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 sought by actors (cf.: Bovens, 2010).

In western democracies, accountability is closely linked to democratic legitimacy of governance. 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 (Mayntz, 2003, 16; Scharpf, 1997). 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, however, where implementation structures no longer follow bureaucratic procedures with clear hierarchies and downward chains of delegation but rather market logics of contracting-out, traditional democratic procedural 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).

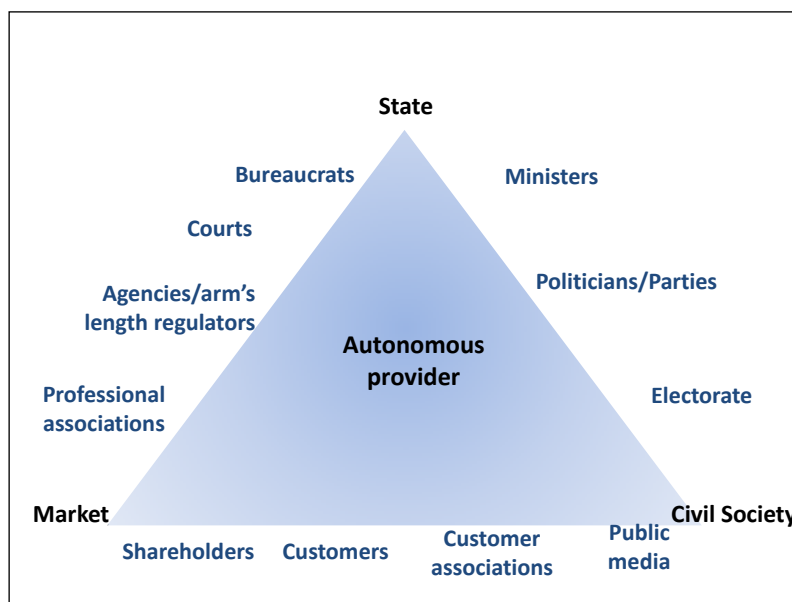
The question then arises: what type(s) of accountability are viable in today’s governance of organizational forms with increasing autonomy from government to ensure that policy goals are met? Specifically, to what extent can differing accountability mechanisms ensure that common good goals are achieved? 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 effectiveness and describe our methods and criteria for case selection.

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 of accountability, there might be new forums such as audit

agencies and their performance requests as well as 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



Following the literature on accountability and autonomy (Scott 2000; Hodge/Coghill 2007; Mulgan 2006) we argue that (semi) autonomous 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, 44). Hence, the number of accountability forums is not decreasing, but rather multiplying. 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

<i>Accountability Type</i>	<i>To whom?</i>	<i>For what?</i>	<i>Via what mechanisms?</i>
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, 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.

Assessing accountability mechanisms

Going beyond mapping accountability relations we are interested in assessing accountability mechanisms in relation to the service delivery outcomes. The political science literature has typically focused on the ‘perceived’ outcome rather than on actual problem-solving (Benz & Papadopoulos, 2006; Dingwerth, 2005, 2007; Gilley, 2006; Scharpf, 1999). Our focus is on the actual outcome, i.e., the physical or material consequences on such common good goals as, for example, service delivery accessibility, affordability and quality (cf. Easton, 1965; Scharpf, 1999). Making the link to accountability, the question is how diverse accountability means intervene in actors’ interests (in our case, autonomous organizations with public and private actors) so as to safeguard that the common good 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 in terms of common good goals, as the representatives should be held accountable to those they are representing. For example, citizens hold their political representatives to account via their voting power. This assumes that the citizens push for common good goals (Pierre, 2009). Moreover, through the electoral and political accountability, the public should be informed about how interests are specified and on which grounds, which should also foster the public acceptance of the services provided (Haque, 2001).

Following this literature, we thus posit that the differing accountability mechanisms outlined above can affect the achievement of common good goals. Specifically, we expect the following interrelationships between increased autonomy, differing accountability types, and service delivery.

- 1) If we find only traditional democratic accountability means (e.g., administrative, political) in the context of autonomous operative organizations, then we posit a decrease in the achievement of common good goals in terms of universal access, affordability, and quality. Drawing on the work of Romzek (2000) we assume that governance reforms where the service providers have increasing autonomy require an adaption of accountability means, i.e., have a more diversified palette with autonomous organizations.
- 2) If we find a lack of traditional democratic (that is political and administrative) accountability means, then we posit that there will be a negative effect on the common good goals. Although there is a need for alternative accountability forms with autonomous organizations, following the work of Pierre (2009), we expect that if a democratic anchoring is lacking, then of common good goals may suffer.
- 3) Alternative accountability mechanisms such as 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 common good goals. This remains an empirical question.

III. Case selection & Methods

To assess our above suppositions about accountability and public service delivery, 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 and subsequently differing degrees of autonomy. The case selection is thus theoretical to fit with our aim to assess (semi) autonomous operative organizations. Both cases fall in the realm of the market mode (cf. figure 1). However, we have 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. Our cases also differ in terms of their sectors, which as implications for their governance. Public housing policies have lost a great deal of importance on the German public service

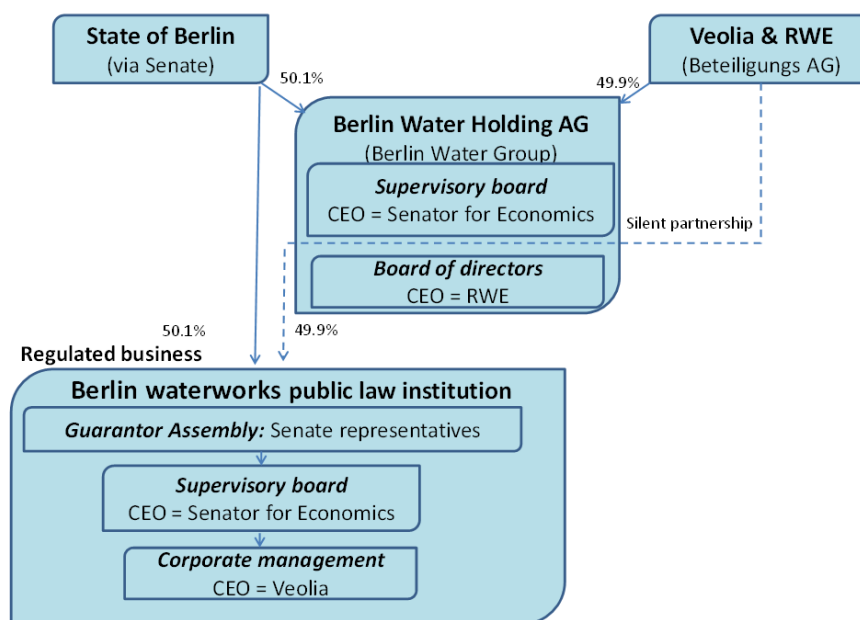
provision agenda in recent years. The heyday of housing policy was in the 1950s and 1960s when public housing programs were considered to be necessary to overcome war damage. While in East Germany public housing continued to be considered as a core state responsibility, public subsidies for rented housing 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 politically and socially accepted. In contrast to public housing, water is still considered a core state task, as every individual needs water services to survive. Moreover, water involves a *universal service provision mandate* in the water sector, 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. 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.

The Berlin case is a semi-autonomous organization, representative of a public-private partnership. In 1999, the bankrupt city-state of Berlin entered a twenty-nine year contractual agreement with the private investors Veolia and RWE¹ (Beveridge, 2010). The State sold 49.9% of the Waterworks’ assets to the private actors. A Holding – a joint-stock 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) (see figure 3). Through this Holding, private actors – as ‘silent partners’ – could own and make capital investments in the Waterworks and conversely, could receive profits in the form of interest on the capital required for operations. 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 & Hüesker, 2010). However, although the corporate management was held responsible to the Senate via the supervisory boards in both the Waterworks and the Holding, the Senate was unable to make unilateral decisions. The organization has increased autonomy than previously when it was a solely public organization, as the decision-making became linked with that of private actors.

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.² The Waterworks also had an additional statute delineating its rights and obligations (Hüesker, 2011). 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. This cost-plus tariff structure generated a rate of return on capital for the shareholders – to compensate them for their investment and risk.

Figure 3: Ownership and decision-making structure of the Berlin Waterworks



Source: Own representation, based on Moss and Hüesker, 2010 and Ochman 2005.

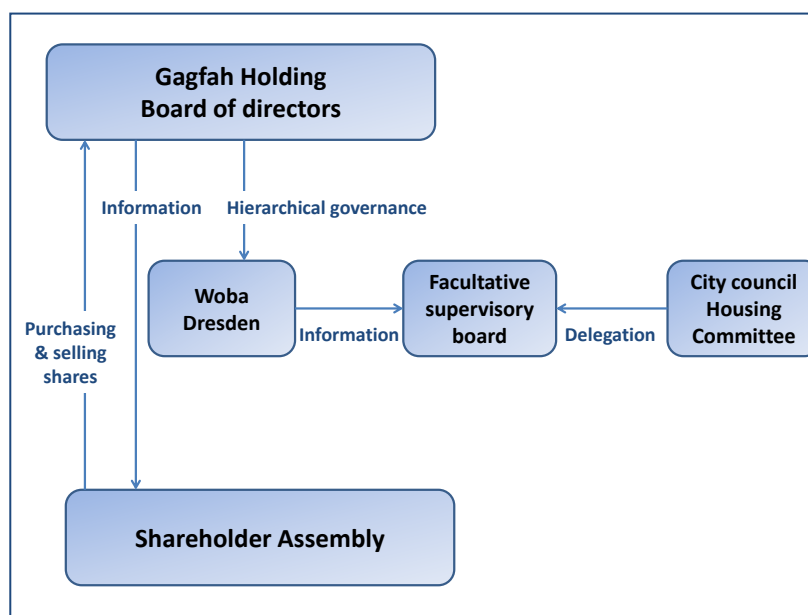
The Dresden case exemplifies a higher degree of autonomy than the Berlin case, as it involves a complete divestiture on the high end of the autonomy scale towards market based governance. In 2005 a majority in the city council decided not only to privatize the *whole* public housing stock in Dresden, 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.

In terms of legal forms, the Gagfah group is a stock company (*société anonyme*) 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 (*Vorstand*) and a Supervisory Board (*Aufsichtsrat*), but the one-tier system with a Board of Directors (*Verwaltungsrat*), 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 WOBA Dresden GmbH 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; WOBA Dresden even has no own web presence. 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 supervisory board. However, this is only facultative board without clear sanctioning competences.

Figure 4: Ownership and decision-making structure of the Gagfah Group



Source: own representation

1. Operationalizing the common good criteria

Table 2 defines how we will empirically measure the common good criteria in the two cases. Since we assess differing sectors, the specific indicators for the three criteria vary, as they are sector-specific.

Table 2: Operationalization of common good goals

	<i>Accessibility</i>	<i>Affordability</i>	<i>Quality</i>
Water sector	Percentage of connected households to the water supply network.	Existence of social tariffs or state subsidies for poor and vulnerable groups – if such groups exist – in the context of water poverty ³ Perceived affordability can be related to a reduction in water prices.	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 counselling, support for migrants, old people, or single parents.

2. Data sources and analysis timeframe

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 analysed policy documents, including, laws, administrative reports as well as formal documents like contracts, statutes and corporate communication. We also draw on archival data, i.e., secondary data, e.g., previous research studies on the topic. Finally, we triangulate the above sources with 11 in-person interviews, which were conducted in 2011 (see Appendix 1 for a list of interviewees and their affiliations). The interviewees included primary and secondary partners: the primary interviewees are representatives of the utility, in managerial positions, employed by the utility for at least five years. The secondary interviewees are from water-related institutions in Germany, comprised of actors at both the local, regional and national levels, from professional and industry associations and research institutes.

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 reports, CSR reports, statements from the management during press releases, and interviews with the public media.

The timeframe of analysis for the water case is from 1999, when Berlin partially privatized its waterworks, up until 2012. The remunicipalization process and the transfer back to 100% public ownership in 2013 is not assessed. The focus is thus on Berlin Waterworks as a semi-autonomous organizational form providing water services to the city of Berlin. The timeframe for the social housing study is 2006-2012, 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.

IV. Accountability and service delivery outcomes in two public services

We now trace the differing accountability types in relation to the achievement of common good goals in terms of the accessibility, the affordability, and quality of the services provided in these two cases.

1. Accountability

Berlin Waterworks case: No explicit restructuring of accountability means occurred in Berlin. No alternative means such as *agency accountability* in the form of a semi-independent sector-specific regulator became implemented in the context of partial privatization. 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). However there was neither formal

comparative competitive regulation nor a new forum that held the waterworks to account for these activities; the Senate departments monitored the rate of return (see below). 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; EUWID, 2011a). Yet the Cartel Authority lacked clout as it was not an institutionalized regulator *in the water sector* (EUWID, 2011d).

Administrative accountability remained strong 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. In terms of economic regulation, 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 (*Interessenwahrungsvertrag*) 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). Indeed, 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.

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). Hence, the Constitutional Court (*judicial accountability*) and the Parliament became important sources of 'checks and balances' in the context of this semi-autonomous service provider. 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, Klinke, & Finger, 2012). Hence, the court ruling did not have the intended results *de facto* as were decided upon *de jure*.

The Parliament (*political accountability*) also 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, 2011a, 2012a). In sum, the Parliament and the Constitutional Court lacked a degree of clout as they do not have direct control over the Waterworks.

Representative electoral accountability decreased with the partial privatization, as the citizens had more clout to affect the Waterworks via the Parliament previously, when the Waterworks was publicly owned. As the Parliament lacked clout over the Waterworks, so did the citizens with their voting power. 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 indirectly involved in decision-making is 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 the (up until then less frequently employed) 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 (*Volksbegehren*) 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 (Tagesspiegel, 2011; Interview 2.3). This popular initiative was the beginning of the remunicipalization of the Berlin Waterworks (Anker & Schomaker, 2011).

In terms of alternative accountability means, *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. An interviewee reported that “people read ‘secret contracts, profit private, oh terrible [...]’” (Interview 1.1). 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 (EUWID, 2011d, EUWID, 2011e, 1).

In sum, the Berlin Waterworks remained primarily under administrative and political accountability. However, representative electoral accountability decreased with the partial privatization. In reaction to this, citizens employed direct democratic means, which had previously not been used. Despite no explicit restructuring of accountability in the form of the agency type, alternative forms of accountability occurred through civil societal action, e.g., public scrutiny.

Dresden housing case: To hold the private provider accountable to public interests and to counterbalance the call for financial accountability from the company's owner, the City Council of Dresden negotiated a Social Charter with the Gagfah group during the sales negotiations. Rent control, protection of tenants' rights, sustainable investments are core goals of municipal housing which should be pursued also in marketized housing policies. Accordingly, the Social Charter 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 accepted in the same an upper limit for investments (Social Charter, § 3). 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 8000 flats for particular 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.

Even though the City Council of Dresden has decided to sell the municipal housing company WOBA Dresden completely, it was tried to uphold *political accountability*. The city council established a new committee being in charge for 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*.

Next to these institutionalized accountability relations, the Gagfah group was faced with non-institutionalized demands for accountability from both *citizens* and *public media*. The privatization project of the municipal housing company was contested from the very first moment. The far reaching privatization decision was backed-up by the majority of the City Council; the majority of the City council, however, did not represent the majority of the public opinion. Critical citizens and upset 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 for core public values, they were not convinced by the argument that the transaction would allow to wipe out the city of Dresden's public debt in one stroke. To avoid full material privatization, citizens' initiatives 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 PDS. 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 the full material privatization, they managed to draw huge public attention to the case. The media – both the local newspaper *Sächsische Zeitung* 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. The local newspaper *Sächsische Zeitung* became the citizen initiatives 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).

2. Common good goal achievement

Berlin Waterworks case: The sources of checks and balances in the city-state became disputed because a mixing of accountability seems to have occurred: as

majority shareholder and as regulator, the Senate became its own economic regulator as it was involved in setting its rate of return. For instance, the Senate's administrative enforcement right about costs became regarded as questionable as it is part of the public administration and is thus indirectly dependent on the Waterworks' profitability (Hüesker, 2011). This accountability constellation was found to have an impact (to a degree) on the service delivery outcomes of the Berlin Waterworks. Naturally there are other factors that have affected the outcomes, which are also addressed below and summarized in table 3.

Table 3: Summary of effectiveness in Berlin

+ accessibility 99.8% for water supply and 99% for sanitation; 1-2% increase in connection rate since 1999 (Oelmann, Bösch, Kschon, & Müller, 2009; Statistik Berlin Brandenburg, 2011)

- affordability a concern but have social tariffs; average annual water costs = 220 Euros (EUWID, 2011b) with an average income of 38,724 Euro, before taxes; ⁴ users pay 2.17 Euros for a cubic meter of drinking water and 2.45 for wastewater treatment (EUWID, 2011b); but have public support for vulnerable customers

+/- quality (no chlorine); concerns regarding micro-pollution (complicated drinking water sources)

Accessibility: The connection rate to the water networks was high in Berlin and slightly increased under the partial privatization – cf. table 2 (Oelmann et al., 2009; Statistik Berlin Brandenburg, 2011). As the households not connected to the wastewater network are a source of concern for the drinking water sector, the Senate took action to increase this connection rate (according to the Wastewater Treatment Plan). However, initially following the partial privatization, findings indicate that the Waterworks neglected to expand the wastewater network, which thus led to the above mentioned legislation on mandating the expansion of the network and increasing household connections (Hüesker, 2011). This was found to be due to the Parliament pushing for the rapid connection of unconnected households in areas where groundwater protection is important and that are closer to the wastewater network.

Affordability: Here we find the strongest link between the accountability constellation and the service delivery outcomes, where accountably means under the PPP led to affordability concerns, particularly in the context of 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 25% too high (EUWID, 2011g). It thus demanded that the Waterworks reduces its water prices (EUWID, 2011a, 2011b). Yet the Waterworks fought this decision, as it said that this conflicted with the Enterprise Law and the Tariff Ordinance, which it was obligated to comply with (EUWID, 2011b, 2012b). Moreover, the competence of the Cartel Authority to intervene with the Berlin Waterworks has been questioned. Although water prices would have increased due to inflation etc., the fictive costs today are a major portion of the water price - up to 44% (EUWID, 2011e; Interview 4.1). The civil societal engagement in direct democratic accountability, i.e., in the form of a popular initiative, served as a means to counter the rising prices and to hold the Waterworks to account. The end-goal of the popular initiative was to foster a remunicipalization, that would lead to an alleged decrease in water prices (Anker & Schomaker, 2011).

Quality: Drinking water quality was high under the PPP constellation (EUWID, 2011f). The water quality performed above the national averages, except in terms of certain incidences of *coliforms* and *E.coli* found to be above the national average (Hüesker, 2011; Interview 2.1; Oelmann et al., 2009). 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. This leads to concern about drinking water quality, particularly in terms of micro-pollution. Moreover, two-thirds of the drinking water comes from bank infiltration, which is highly dependent on surface water quality.⁵ This in turn is affected by the wastewater treatment technology as well as the treatment of storm water, i.e., the water draining from the streets etc. into the waterways during rain events (EUWID, 2011f).

Dresden housing case: After having entered the market for social housing, the Gagfah group was entangled in a complex web of accountability relations, with politicians, upset citizens, public media, and financial investor as competing accountability forums. The effectiveness of these accountability mechanisms to hold this investor-owned company accountable to core values of public service provision, are addressed below and summarized in table 4.

Table 4: Summary of the service delivery outcomes Gagfah Dresden

+ accessibility: compliance with the number of flats assigned for needy persons fixed in the privatization contract (8000 flats for particular needy persons)
- affordability: unduly rent increase, subversive interpretation of privatization contract, re-selling of flats without offering them to tenants for 85% of the market price
- quality: non-compliance with the investment duties fixed in the privatization contract (5€/qm ² per year as minimum amount)

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 wing 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 effectiveness of the service provision by the Gagfah group is rather positive. The Gagfah group agreed to assign approx. 8000 flats of the portfolio for needy persons and performed 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: While the accountability means had a positive impact with regard to accessibility, they proved ineffective when it comes to affordability. From the very beginning, institutional expectations with regard to affordability of social housing laid down in the social charter were disrespected from the Gagfah group. The corporate strategy of the Gagfah group was based on trading profits and the promptly liquidation of investments, not on 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) in a first step already only one year after the ownership change. What's 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 however for new tenants. Such a contract

interpretation, however, was not in the intention of the City council. Another example for subversive contract interpretation of the Gagfah group was the consideration of all rent increases after infrastructure investments as contractual behaviour (Gagfah S.A. 2007), even if the rents were increased significantly above the agreed limit.

Quality: Here we found the weakest link between accountability constellations and the service delivery outcomes. The agreed 5€/qm² for flat maintenance fixed in the privatization contract were already far below usual conditions. However, 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 complained increasingly frequent about shabby and mouldy flats, non-working 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.

V. Discussion

In Berlin we found that the accountability means were not structurally adapted. No agency accountability was introduced. Instead, administrative accountability, via the Senate departments, continued to be predominant. In addition representative democratic sources of accountability were considerably weakened. The results indicate that the accountabilities became entangled in Berlin: The regulation occurred primarily through the senate departments, which, indirectly, were affected by the rate of return. This finding is more reflective of the criticism that non-autonomous (public) organizations receive, rather than semi-autonomous (public-private) organizations, in terms of a conflict of interest where the owner is simultaneously the regulator.

This issue of entangled accountabilities was particularly problematic in terms of economic regulation, as the Senate had the dual role of economic regulator and shareholder, which had negative effects on affordability. These results can be linked to the financial structure that relied on private capital and hence a cost-plus tariff structure to ensure a rate of return. Indeed, the findings indicate that the system of regulation has not necessarily regulated the rate of return to foster common good goals. For example, an indication was the Senate signing extra-legal contracts with private investors, which led to a de-facto result (fixed rate of return) favouring the private sector interests but was rejected by the constitutional court. As a result of the

rising water prices, the Cartel Authority was called-in to investigate the financial structure. 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. Moreover, while the Cartel Authority has declared the water prices as too high in Berlin, it remains unclear as to whether the Waterworks will decrease the water prices, as the Cartel Authority has called for (EUWID, 2012c).⁶

In Dresden, the study of the organizational reactions of the Gagfah group to the competing external demands reveals that the company considered the financial investors as the most decisive account-holding forum, disregarding complaints from tenants as well as calls for public accountability from politicians and the electorate. Customer accountability proved to be a rather weak mechanism, not being able to hold the private provider responsible for satisfying service delivery. The tenants committee remained without effect as it was not fixed in the purchase contracts as an official grievance committee and had no access to sanction instruments (Ramisch 2008). What's more, political and administrative accountability, the two most important instruments to ensure compliance with core values of public service provision, turned out to be ineffective, too. A closer look on the accountability mechanisms implemented by the City Council brings to light the typical pitfalls of effective contract accountability. These are firstly advanced specification of mutual expectations, responsibilities, and obligations of the contracting parties, secondly the availability of performance data to allow politicians and bureaucrats the evaluation of the private service provision (Romzek/Johnston 2005). Both conditions were not met in the Gagfah case. As described above, the privatization contract between the City Council and the Gagfah group entailed several agreements which were only vaguely defined – e.g. the affordability criteria - and thus provided incentives for the private provider to “game” the system and subvert accountability. Information responsibilities, too, were only very laxly formulated. For example, in the case of reselling the flats the Gagfah was not obliged to demonstrate how the new owners were to be held accountable to the agreements fixed in the Social Charter. In addition, the Gagfah group fulfilled the fixed information responsibilities only sloppily. For instance, 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).

So far, the Gagfah case seems to be just another sad example for the principal-agent problems typical for privatized public services, where the principal is not able to control the agent due to hidden action and hidden information. With the local government in Dresden not enforcing the accountability mechanisms rigorously, financial accountability could continue to play a crucial role in the first years after privatization. What makes the Gagfah case interesting are the dynamics *within* this complex web of accountability relations in the longer run. Ineffective political accountability, (re-)activated citizen accountability and public scrutiny via public media. The critical citizen initiative continued to monitor the organizational strategies of the Gagfah Group even though their petition for a referendum has failed and the privatization decision was put into effect. The citizen initiative as well as the local newspaper *Sächsische Zeitung* constituted a forum holding not only the Gagfah group, but also the local government accountable. However, 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 parliamentary enquires (Landeshauptstadt Dresden 2010). The Gagfah Group enjoying continued political support decided to ignore the critique from public stakeholders completely. Analysing the corporate communication – webpage, press releases, and interviews with CEOs – it is striking that the company hardly ever responds to the accusations raised in the public media.

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. As the ignorance of 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. Moreover, the head of finance was dismissed from the supervisory board.

The legal action against the Gagfah Group had a negative impact on the Gagfah stock market price which slumped down from 11,7 € in April 2008 to 3,8 € in October 2011, when the conflict between the city council and the company hit one's peak. Having lost not only political support, but also those of its shareholder, the Gagfah group finally was willing to accept corporate responsibility for public values. The CEO was discharged and replaced by a manager who is well-known in the housing branch for cooperative behaviour and experience with privatization projects in salient policy fields. Corporate communication with regard to citizens, public media, and politicians changed completely. The subsequent annual report compiled by the new management adopted a new communication style acknowledging the responsibility of the company for accessible and affordable public housing with satisfying quality (Gagfah S.A. 2013). Yet, as the new head of the Gagfah group is in charge only since 2013 it remains to be seen whether or not the new corporate strategy is mere window dressing or an indicator for a substantial change of the corporate culture and what the impacts are on the outcomes of service delivery.

In both cases we found that politicians sitting in boards of privatized companies have the double mandate to safeguard the companies' *and* the public interests. Accordingly, details about organizational strategies and the budgets of privatized service providers were not discussed in political committees. As a result, both city councils suffered from a severe information lack.

VI. Conclusion

The overall aim of this paper was to map and assess accountability means in areas where public services are delivered by (semi) autonomous providers. The analysis of our two cases has revealed that the restructuring of the accountability means in the course of privatization was a process of layering, shaped by interests and institutions in the organizational environment of the (partially) private service providers. In the Berlin Waterworks case, administrative and political accountability means remained predominant. The governance reform of partial privatization was not followed by subsequent shifts in the structural accountability means (e.g., agency accountability).

The Berlin Waterworks case thus supports supposition 1, which assumes that a predominance of traditional democratic accountability, without an adaptation towards alternative means, diminishes the common good goal achievement of (semi) autonomous organizations. The Berlin case also supports supposition 2 to a degree: despite the administrative and political accountability, we find a weakening of a democratic anchorage, as these accountability forums became subject to a profit motive due to divestiture of assets to private actors. At the same time, representative electoral accountability became diminished. This accountability constellation also ultimately negatively affected the common good goals in the time span under study. However, the impact of the citizens' use of direct democratic tools on common good goals such as affordability has yet to be seen, as it is only now (after the remunicipalization in 2013) that discussions of price reductions are becoming concrete. In addition, public scrutiny was found to play a role in fostering the citizen's popular initiative. Indeed, here we see an interplay between direct democratic and public scrutiny accountability, which also relates to supposition 3. The analysis suggests that public scrutiny can serve as a valuable support for direct democratic means such as electoral accountability. Again, the ultimate effect on common good goal achievement remains to be seen.

The Dresden housing (Gagfah) case, on the contrary, was not only an example of radical divestiture, but also of fundamental alteration of the accountability relations. The means of political and administrative accountability were comparatively weak compared to the calls for accountability of the private investors. Thus, the Gagfah case supports suppositions 2 and 3: a clear lack of traditional democratic accountability means allowed cheating and subversive interpretation of the privatization contract with negative effects on the common good goals. However, public media and citizen initiatives constituted alternative forums for public accountability and provided necessary preconditions for democratic accountability, i.e. transparency and information. This finally reactivated political accountability.

Despite all their differences we can draw two general lessons from our case studies. Firstly, problems with balancing the trade-offs between efficiency and equity 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. Secondly, shortcomings of democratic accountability in the context of autonomous service delivery are not only grounded in inappropriate accountability means, but also in a lack of political will to impose sanctions on non-compliant service providers or to adhere to common good goals (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 Waterworks 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 forms in relation to the achievement of common good goals in the context of (semi) autonomous organizations. Indeed, the two cases show that the typical trade-offs of public service delivery between efficiency and equity in terms of 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 achieving common good goals may become even more complex when public services are delivered through contracts (Romzek 2014, 317).

Appendix

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No.	Institution	No. of people	Date	Interviewee quality
Berlin case study				
1.1	Berlin Waterworks representatives	3	Feb. 2011	Primary (1 single interview, 1 two-person interview)
1.2				
1.3				
2.1	Senate department for Health, Environment and Consumer Protection	3	Feb. 2011	Secondary (3 people in interview)
2.2				
2.3				
3	Berlin Competence Centre for Water	1	Feb. 2011	Secondary
4.1	Leibniz Institute for Regional Development and Structural Planning	2	May 2010,	Secondary (2 separate interviews)
4.2			Feb. 2011	
5	Helmholtz Centre for Environmental Research	1	Sept. 2010	Secondary
6.1	Association for Municipal Enterprises	2	Feb. 2011	Secondary (2 people in interview)
6.2				

Notes

¹ 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.

² 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).

³ Water poverty is defined as households spending over 3% of their disposable income on water services, which is estimated as affecting over 4 million households in England and Wales (Fitch & Price, 2002).

⁴ <https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/VerdiensteArbeitskosten/VerdiensteArbeitskosten.html> (accessed March 2012). These statistics are not Berlin-specific. In Germany, taxes amount to ca. 50%, so disposable income would be ca. 19,300 Euro; hence water prices would be a little above 1% of the disposable income.

⁵ 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.

⁶ 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.

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