The Berlin Water Company

From "Inevitable" Privatization to "Impossible" Remunicipalization

Ross Beveridge and Matthias Naumann

Introduction

On October 29, 1999, the partial privatization of the Berlin Water Company (*Berliner Wasserbetriebe*; BWB), was finalized when the city of Berlin entered a public-private partnership with RWE Umwelt AG/Vivendi (now Véolia) S.A./ Allianz. To many both at the time and subsequently, the explanation for the privatization was straightforward. It was a necessity because both Berlin and the BWB had huge debts. As with other cases of privatization around the world, particularly during the 1990s, the "there is no alternative" mantra was potent in the political debate. This was a seemingly inevitable privatization, occurring at the end of a turbulent decade for Berlin.

After reunification, the hype of the emerging "Service Metropolis" (*Dienstleistungsmetropole*) had given way to media attacks on the "Unemployment Metropolis" (*Arbeitslosenmetropole*) at the end of the 1990s (Frese 1999). The speculative real estate boom in the early to mid-1990s, in part financially encouraged by the Berlin government, collapsed and left Berlin with the largest unoccupied office spaces in the world by the end of the decade (Krätke 2004: 62). City debts rose as the economy shrank through re-entry to global markets, the once subsidized industries on both sides of the Wall disintegrated, and the new knowledge sectors failed to replace them. In short, there was, by the mid- to late 1990s, a financial and economic crisis in Berlin. It led, in turn, to what we might, following Peck (2012), now call "austerity urbanism" centered on privatization and public sector cuts.

However, after a mere thirteen years of privatization RWE agreed to sell its quarter share of the BWB back to the city of Berlin in May 2012. Although RWE received a high price of 654 million Euros, this was still a startling development, creating the conditions for what Berlin's politicians had argued was impossible, given the long-term privatization contracts and continuing indebtedness of the city – the remunicipalization of the BWB. How can we account for this turnaround? How did a political discourse of no alternatives transform into one of many alternatives? This article argues that the Berlin water privatization case, like much of the broader policy agenda in the city during the 1990s and 2000s, can be seen as emblematic of the contradictions of neoliberal policy (Peck and Tickell 2002), and the ongoing possibilities for change this can offer.

The article has the following structure. Section 1 describes the global context of water privatization and neoliberalism. Section 2 outlines a politics of inevitability in Berlin during the 1990s, based on the global city aspiration, and the privatization of the BWB as crisis emerged in the late 1990s. Section 3 details the contestation of water privatization and the reversal of the privatization. The paper concludes with some brief remarks on post-neoliberal urban politics.

Neoliberal Urban Governance and Water Privatization

Privatization of public companies and property is a key element of the neoliberal political project. Since the 1980s privatization and commercialization of public enterprises and public goods, along with the liberalization of markets, have transformed the role of government around the world. Privatizations in the water sector can be understood within the "accumulation by dispossession" strategy (Ahlers 2010; Harvey 2003) and as an integral part of "entrepreneurial" urban governance (Harvey 1989). While privatization decisions in some sectors, such as the car industry, telecommunications, post, have not in general caused major conflicts, privatization of drinking water supply and wastewater disposal services has often been strongly contested. This is partly explained by the fact that water is an indispensable good, one which cannot be substituted by other resources. Water also plays a particular role in the shaping of local identities, is highly intertwined with local natures and thus crucial to nature-society relations (Bakker 2010; Castree 2008). Further, water utilities have a symbolic importance as the "last frontier" in the privatization program – on of the few domains which have not yet been affected by private sector involvement. Nevertheless, water privatization has been promoted on the same grounds as found in other sectors: that it would bring much needed investment, know-how and efficiency from the private sector (Castro 2002). Privatization has also been promoted to solve fiscal crises of the local state (Swyngedouw 2004: 27), as a conveniently quick means of reducing deficits and downsizing government within an urban politics framed by crisis.

Characterized as the "common-sense of the times" (Peck and Tickell 2002: 34), neoliberalism can be understood as "a political rationality that both organizes these policies and reaches beyond the market" (Brown 2005: 38). Colin Hay (2007: 10) has argued that one central feature of neoliberalism has been the presentation of its policies not as the "best" option but as the only logical, rational option in a context of economic globalization. Hence the "there is no alternative" mantra of politicians like Margret Thatcher and the "inevitabilized" cuts to state expenditure in the ongoing fiscal crisis (Peck 2012: 630). The depoliticizing effects of neoliberalism have become an increasing concern in the social sciences (e.g. Burnham 2001; Flinders and Buller 2006; Hay 2007; Mouffe 2005; Rancière 2003; Swyngedouw 2009; Žižek 2008). For Swyngedouw neoliberalism has helped reduce the "political terrain to a post-democratic arrangement of oligarchic policing" (2007: 6), in which the outcomes of policy-making – what is possible, desirable and who should be included and excluded – are virtually known in advance.

Despite its apparent dominance, neoliberal policies, such as water privatizations, have been recently contested and sometimes reversed. Neoliberalism has been challenged by an increasing number of protests on different scales and in different fields (Leitner et al. 2007). Ultimately, as Peck (2012: 630) states, neoliberalism has failed to secure sustainable economic, social and environmental development. Outcomes are unclear, ongoing and subject to contestation and change. A "politics of change" has sometime become apparent, a "roll-with-it neoliberalism," in which tentative institutional and policy shifts have emerged in particular places at particular times (Keil 2009: 233).

This is especially the case in the water sector. Even the arch-promoter of privatization, the World Bank, has questioned the benefits of privatization (Castro 2002: 4 f.; Hall et al. 2005: 287). After huge protests, large private water companies, such as Suez or Veolia, have withdrawn from a number of developing countries (Hall et al. 2005: 286; Swyngedouw 2009b: 41). Meanwhile a broad strand of literature dealing with the often disastrous outcomes of water privatizations in the global south has emerged (Ahlers 2010; Aubin 2002; Barlow and Clarke 2003; Cocq and McDonald 2010; Kazimbaya-Senkwe and Guy 2007; Madaleno 2007; Mirosa and Harris 2012; Shiva 2002; Wu and Malaluan 2008; Zaki and Amin 2009). Examples for ending privatization projects can not only found in cities of the Global South, however, but also in cities like Paris (Barraqué 2012), while the uncertain outcomes and contradictions of privatization are vividly illustrated in Berlin.

A Politics of Inevitability: The Global City Aspiration and Crisis in 1990s Berlin

In his dissection of the construction of economic crisis in 1970s Britain, Hay (1996) reveals how selective readings of events by the media and conservative politicians, and the strategic inter-linking of "facts," helped construct a particular version of crisis, one which apportioned blame to the unions and an overblown state. This in turn laid the ground for the "unavoidable" policies implemented by Thatcher in the 1980s to reduce the role of the state and weaken the unions.

Politicians often invoke the inevitability of a certain policy given their reading of the prevailing economic, social and political conditions. Presenting a policy as inevitable is often an effective political tactic in that it directs attention to the apparent severity of the situation and away from the normative and ideological assumptions which underpin all policies. It works to reduce politics to a discussion of "needs must," based upon the "hard facts," and politicians to simple executors of unavoidable, even if harsh, measures.

Arguing that economic and financial imperatives leave little options in policy-making may not be a new strategy but it is one that has become more prevalent with the rise of neoliberalism. Hay (2007: 100) has stated that a defining feature of the shift to neoliberalism has been the presentation of policies not as the 'best' option but as the only option in a context of economic globalization: "it is the very condition of economic credibility and competence in an era of globalization (Hay 2007: 100)." In 1990s Berlin such a strategy was also apparent, thought it became intertwined with fiscal crisis.

1990s Berlin

Policy-making in Berlin in the 1990s is as much a story of urban governance in the context of globalization as it is an account of German reunification. In large part, it can be seen as a project of conforming to the global norms of urban governance. Berlin was suddenly exposed to the processes other industrialized cities had been facing since the 1970s (Strom 2001: 4). After 1990, both parts of the city experienced the collapse of their highly subsidized industries and a significant decrease of jobs in the public sector (Ellger 1992: 45). The hope that there would be a boom in other sectors to compensate for the jobs has not been fulfilled. Beveridge (2012a) has argued that urban governance in 1990s Berlin and the partial privatization of the BWB should be seen as the outcome of the embedding of a "politics of inevitability" in Berlin: a (neo-liberal) policy-making agenda centered on the belief that Berlin must and, indeed, could successfully adapt to the global economy after decades of virtual separation. It was a decade defined by policy-making to "re-invent Berlin as a post-industrial service metropolis" (Häußermann and Colomb 2003: 201), as a global city. As in other cities and nation states, globalization was a "powerful agent of depoliticization" (Hay 2007: 125).

As found elsewhere around the world, this politics of inevitability took the form of "no alternatives," along with promises of impending prosperity. Typical was the statement made by the Economy Senator, Wolfgang Branoner (CDU), in the midst of economic hardship in 1999: "Truly, we will become the most 'state-of-the-art' city in the Western World" (Böhm and Hasse 1999). The message was clear. Things may indeed be bad, but it is just a matter of time before Berlin will prosper. The aim of such political rhetoric was to depoliticize the socio-economic hardships which emerged in the city and the drive towards knowledge, high-tech sectors, real estate boosterism, commercialization and privatization. The naturalization of the forces of economic globalization was combined with a belief that Berlin would inevitably prosper through adaptation. Berlin was the capital of the newly reunified Germany, the largest economy in the European Union and a "gateway city," strategically placed between Western Europe and the emerging market economies of Central and Eastern Europe (Krätke 2001: 1777). The Berlin government's continued hyping of Berlin should be criticized, but it must be stated that many business, political, and academic experts thought Berlin was well-placed to grow into a key economic center in the global economy, at least until the mid-1990s (Gornig and Häußermann 2002: 334).

By this stage, economic and financial problems were becoming clear. Berlin's aim to be globally "competitive" was and still is restricted by its inability to overtake rivals within the German context (ibid.: 339). Despite slightly improved economic development in recent years, Berlin is still far behind other German cities like Munich, Hamburg, Cologne, Frankfurt and Dusseldorf, which had developed considerably during the Cold War period and taken on many of the economic and financial functions normally associated with capital cities (e.g. Frankfurt is the German and mainland Europe financial capital; Gornig 2009).

Berlin and the Berlin Water Company in Crisis

From the mid- to late 1990s, financial and economic problems grew. On the October 29, 1999, the same day as the partial privatization of the BWB, the President of the German National Audit Office (*Rechnungshof*) criticized the city's government for being around 46 billion US-Dollar (90 billion DM) in debt (Schomaker 1999). In the ten years after the fall of the Berlin Wall, unemployment had risen by five percent to around 15 percent, while the city's population had steadily dropped. Berlin was in effect a shrinking and not a global city. Although the government's policies contributed to this financial and economic situation, the strategy of future promises through re-structuring remained intact, and relatively unproblematized (for more detail see Beveridge 2012a).

The crisis of public finances was, however, also a result of the failed urban development projects of the city government, especially during the 1990s. Big, prestige projects were an integral part not only of trying to transform Berlin into a global city but also of neoliberal urban politics. The coalition of Christian

Democrats and its junior partner from the Social Democrats was responsible for costly projects such as the unsuccessful application for the Olympic Games in 2000 and the collapse of a public bank in 2001 (Lederer and Naumann 2011). The government also invested and promoted huge private sector investment in real estate in the city, encouraging a property boom, which went bust in the mid-1990s and resulted in huge amounts of empty office space in the city. It was within this context of attempted adaptation to the apparent norms of economic globalization and the emergence of a fiscal crisis that privatization of the public companies emerged in the mid- to late-1990s.

Making Water Privatization Inevitable

Berlin's water utility and its privatization in 1999 are for a number of reasons of particular importance. The Berlin Water Company (BWB) is not only the biggest water company in Germany, it was also strategically important for private investors, to enter the still predominately public German market (Barraqué 2009: 241) and to enter liberalizing Central and Eastern European water markets. The wider context of the BWB privatization was characterized by a global trend that saw both private and municipally-owned companies become competitors in global water markets (Swyngedouw 2003: 8). Further, in many other German cities water utilities were not only privatized but also commercialized to compete with private water companies (Wissen and Naumann 2006: 3).

In line with these international trends, and the restructuring of other municipal companies, the BWB underwent commercialization even before it was privatized. The BWB was actually a profitable company at this stage. In 1995, the total revenue of the BWB was 1 billion US-Dollar (1.75 billion DM) and the profit for that year was around 30 million US-Dollar (51 million DM), according to the Executive Director (N.N. 1997). Echoing Berlin's "global city" ambitions, the BWB was to be re-made as a global player in the water market. Again, this strategy rested on the hope to establish Berlin as "gateway" city to markets in Central and Eastern Europe. Similar to other failed urban development projects, huge investments of the BWB ended in loss-making failures. Emblematic was the purchase of the wastewater treatment plant Schwarze Pumpe in June 1995, which became the most high-profile failure amongst many. In the end, Berlin lost around half a billion Euros in the course of investing in Schwarze Pumpe, according to official reviews (Rechnungshof von Berlin 2004). The BWB management was forced to deny the highest water prices in Germany were caused by such fiascos, stating that investments were funded by bank loans alone and that price increases were the result of the costs upgrading infrastructure in East Berlin (Wiengten 1997). The city's fiscal problems also increased between

1995 and 1997, with debts rising from about 27 billion US-Dollar in 1995 to around 33 billion US-Dollar in 1997 (Marschall et al. 1997).

It was in the context of the BWB debt crisis and Berlin debt crisis that water privatization was first proposed in 1997 and implemented in 1999. Ultimately, the privatization had little, if anything, to do with water management. It reveals the extent to which the traditional concerns of water policy-making and management were subordinated to the broader objectives of the government. Shifts towards neoliberal practices of government led first to the re-making of the BWB as a commercial enterprise and then as a set of assets which could and should be sold to ease the city's debts.

Apart from the opposition parties DIE LINKE and the Greens the privatization deal was accepted by most of the city's political players. Part of the deal have been promises of no price rises for the first four years, the compromise of keeping 50.1 percent in public ownership and job security of the BWB's employees, which defused initial opposition from the unions. The unions accepted the privatization as inescapable and focused on negotiating an advantageous deal for the employees of the BWB (Beveridge 2012a).

Confidential Contracts, Public Referendum – Contesting Water Privatization in Berlin

Profits, Prices and Re-regulation

The sale price of 1.96 billion US-Dollar for 49.9 percent of the company has been generally seen as high (Lanz and Eitner 2005a: 4), and can largely be attributed to a mix of the fierce competition between the water companies, especially the French giants, Vivendi and Suez, the attraction of Berlin as the new German capital with over 3 million paying customers and the continued belief that the BWB could exploit water markets in Central and Eastern Europe (Beveridge 2012a). It was also, however, a result of the details of the Partial Privatization Law which, at least initially, contained the profit guaranteeing "R+2 formula" (aimed to ensure similar annual profit rates of ca. 8 percent to those enjoyed by the privatized water companies in England and Wales).

Beside guaranteed profits for private investors other outcomes of the privatization included new decision-making structures, greater profit orientation and new regulatory instruments (Beveridge 2012a; 2012b; Hüesker 2011). Decision-making in the privatized BWB rested on the principle that no major decision can be made without the agreement of both private investors and the state of Berlin. Informal arrangements between both sides were established in order to reach a consensus prior to the involvement of the parliament in the more official decision-making procedures. These long-term, secretive and informal arrangements reduced transparency and legitimacy in water policy despite the fact that the state still retains a majority shareholding (Hüesker 2011). Much of the financial dimension of water policy in Berlin has not been subject to political scrutiny since privatization. Profits were loosely fixed in the long-time secret contracts, and thus not open to parliamentary discussion, which had inherent and direct consequences for prices. The greater profit orientation of the BWB was followed by massive increases of water tariffs since 2004. Between 2003 and 2006 prices for water supply were raised three times (with an overall increase of 21 percent) and on four occasions for sewerage services (by a total of 30 percent). Berlin now has the highest water tariffs in Germany (Bundeskartellamt 2012).

In response to these problems, some re-regulation occurred. Gradually, from 1999 onwards, the government of Berlin introduced new laws on the methods of water tariff calculation. Before 1999, the purely public water company, namely its supervisory board, decided on water tariffs. Now, however, the Berlin Company Law (*Berliner Betriebegesetz*) regulates in detail how water tariffs should be calculated. The Senator of Economy, who has political responsibility for the BWB, has to agree on that calculation and there must be external supervision of this process by regularly changing consultancy firms. The re-regulation of the BWB in the years following privatization reveals a process apparent in other privatized water sectors, most notably in England and Wales (Bakker 2003): introducing private sector, profit driven companies in water supply and sanitation services, and the virtually inevitable rise in prices it brings, creates social unrest which politicians usually have to address. Overall, these new regulatory capacities of the state can be seen as tools for the better control of public-private companies but they do not compensate for the democratic deficits which have emerged through privatization.

Growing Criticism and Calls for Remunicipalization

The privatization of the BWB, originally planned by private investors as a reference for further privatization, became, because of its secretive character and negative outcomes, an increasing target of criticisms from researchers, activists and Berlin politicians (Beveridge 2012a; 2012b; Hüesker 2011; Lederer 2004; Monstadt and Schlippenbach 2006; Passadakis 2006). A change of government in the city also opened up new possibilities for questioning the privatization deal. After the banking scandal in 2001 the conservative-social democratic coalition collapsed amidst allegations of corruption and was replaced by a left, so-called red-red coalition of Social Democrats and DIE LINKE. Harald Wolf, one of the strongest opponents of the privatization, became DIE LINKE Senator for Economy and took responsibility for the public-private BWB from 2002 to

2011. He introduced the new regulatory initiatives described above. However, contradicting its own position on privatization, DIE LINKE approved further privatizations of state companies and land during the first period of the coalition government between 2001 and 2006 (Lederer and Naumann 2011: 130), e.g. the privatization of the housing company GSW, including 64,000 flats, to an international consortium of financial investment funds in 2004 (Holm 2010: 394 ff.)

Despite the declared political will to stop privatization 7,000 flats were sold in the second election period from 2006 to 2011 of the red-red Senate (Holm 2011: 95). While DIE LINKE tried to increase the pressure on the private owners of the BWB through re-regulation, social movements in the city demanded the immediate annulment of the contracts (Lederer and Naumann 2011: 140). The fact that the party did not end privatization once in power caused much frustration among social movements, while DIE LINKE themselves felt that they were being blamed for a privatization deal for which they were not responsible (ibid.). Upon re-election in 2006, however, the left government did express its desire to strengthen the public sector and the remunicipalization of the BWB was written into the coalition contract with the SPD (ibid.). Indeed, both parties in government wanted to end the deal with and dependency on the private investors. But without the private investors' agreement the state of Berlin could not officially terminate the privatization contracts prior to 2028. Thus the adoption of this policy objective may be interpreted as being a first symbolic step in putting the BWB privatization back on the political agenda.

While DIE LINKE saw no real possibility to end the unwanted privatization, a new anti-privatization social movement emerged. In 2006, the "Berlin Water Roundtable" (*Berliner Wassertisch*), disappointed by DIE LINKE and inspired by successful anti-privatization movements around the world, started campaigning against the secret contracts and rising water tariffs. Drawing on new features of Berlin's constitution, which enabled a majority of citizens to change laws via a public referendum (*Volksbegehren*), a campaign for a referendum to publish the secret privatization contracts began. After collecting about 280,000 signatures the campaign had met not only the formal conditions necessary to start a *Volksbegehren*, it also helped transform the discourse within the city on the BWB and other privatized companies. The Berlin Senate, including DIE LINKE, first blocked the initiative claiming the new law was not constitutionally applicable in this case. It was argued that it would be illegal to force private investors to publish private contracts which were finalized before this new law came into force. For nearly two years the Berlin Senate and the *Berliner Wassertisch* were before the Constitutional Court fighting over whether the Senate was allowed to control the contents of the *Volksbegehren* at this stage of the political process. The *Berliner Wassertisch* won in October 2009, with the court ruling the Senate did not have the right to stop the referendum (Hüesker

2011). Additionally, in summer 2010, Berlin's parliament decided on a new law, forbidding secret contracts with public companies.

Finally, a Berlin newspaper published the secret contracts in October 2010. Two weeks later the Senate of Berlin also published the contracts on its webpage. Nevertheless, the *Berliner Wassertisch* decided to go on with the referendum. This took place in February 2011, and a huge majority of 98.2 percent of those who voted, more than 660,000 voters, supported the law proposed by the *Berliner Wassertisch* to publish the privatization contracts (Nowakowski 2011). Ultimately, the Senate decided to comply with the outcome of the referendum and published all the confidential amendments. Besides publishing the contracts, the state of Berlin began negotiations with the private owners about remunicipalizing the BWB in 2010, and this continued after the elections in 2011 and the establishment of a new social democratic-conservative coalition. One of the private owners, RWE, and the Berlin Senate agreed on a price of 654 million Euros for the 24.95 percent share of RWE in the BWB. In 2013, the other owner, French company Veolia, also started negotiations to sell its share. The executive's plan is to fund the buy-out from the future de facto guaranteed revenues of the BWB. In other words, if Berlin becomes the only shareholder it can refinance remunicipalization out of the revenue gained from water tariffs. In the short-term, this means an increase in city debts to borrow the money to buy the company back and, in this case at least, a rejection of a local "deficit politics" (Peck 2012), whereby the aim of cutting the deficit frames policy objectives. This represents quite a turnaround when we consider that the main argument for privatization at the end of the 1990s was to reduce the city's debts. Berlin in 2013 does in fact have more debt than Berlin in 1999, even if it is no longer growing as rapidly and the city's tax revenues are increasing.

Conclusion: Towards Post-neoliberal Urban Governance?

The almost consensual privatization decision, the profit guarantee and the secretive decision-making institutions of the public-private BWB were all emblematic of the broader privatization project. However, the contestation of the privatization and it's – at least – partial reversal show that despite the discursive and structural constraints of neoliberal urban governance there is the potential for change. Even in a highly indebted city like Berlin "politics and practices of hope" (Coutard and Guy 2007) can emerge. Does the case of Berlin and its water company reveal insights to possible forms of post-neoliberal urban governance?

Since 2009 the political discourse has changed significantly and utility policy has also changed. Gone is the talk of no alternatives to privatization and the need for private sector expertise. Government and civil society actors have started openly debating models of remunicipalization, despite the continued indebtedness of the city and costs this would incur. However, a genuinely new, alternative model of public ownership for the BWB has yet to emerge and is unlikely to be implemented by the current coalition government. Indeed, throughout the anti-privatization campaign, a coherent vision of a remunicipalized company was not present. This might be seen as a challenge of working within, and "rolling with" (Keil 2009), the constraints of neoliberal urban governance. It also raises a number of questions. Just how different will the new publicly-owned BWB be? Besides providing clean and inexpensive water supply and sanitation services, what objectives should a city's public water company have nowadays?

To be any different to traditional public companies of the past, there is a need to allow for greater public participation and control (Wainwright 2009). One prominent idea now being by promoted by social movements and DIE LINKE is to establish a *Stadtwerk* – an integrated public utility company offering water, energy, transport, waste disposal, etc. (Lederer and Wolf 2010). This form of public company has a long existing tradition in German cities. The challenge is to see how this model can be reinvigorated to provide greater democracy and a new form of "publicness."

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