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The Deadlock of Metropolitan Remunicipalisation of Water Services Management in Barcelona

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ABSTRACT: This article chronicles the complex, meandering, contested, and path-dependent unfolding of the remunicipalisation agenda pursued by a range of political forces and social movements in Barcelona as it has developed over the past few years. The remunicipalisation of water services management debate in the city has been marked by increasingly convoluted and intricately intertwined and enmeshed institutional configurations, legal controversies, entrenched and contested political positions, and sustained social activism. The case of Barcelona's water supply system is emblematic of the difficulties, resistances, and contradictions that open up when a long-standing status quo is challenged by the rising momentum of an oppositional agenda. The article narrates the unfolding of the controversy, demonstrating how the institutional configuration of water supply, which is organised at a metropolitan-regional level (comprising 22 municipalities and the city of Barcelona), multiplies contestations and controversies as local governments and their power coalitions respond differently to pressures and demands for remunicipalisation. In the first part of the article, we present a brief history of the private water supply system that has been in place in Barcelona since the 19th century with a particular emphasis on the complex architecture of its post-dictatorship institutional reconfiguration. The second part focuses explicitly on the making of a water controversy during the last decade when social and political demands for remunicipalisation intensified. The third part explores the present institutional, legal, and political deadlock, concluding with possible future avenues for the remunicipalisation debate (and its associated political possibilities) as well as other avenues to strengthen the metropolitan governance of water beyond the remunicipalisation debate.

KEYWORDS: Remunicipalisation, privatisation, public-private partnerships, water governance, Barcelona, Spain

INTRODUCTION

This article chronicles the complex, meandering, contested, and path-dependent unfolding of the remunicipalisation of water services management agenda pursued by a range of political forces and social movements in Barcelona over the past few years (henceforth, as a shortcut, we shall use "remunicipalisation"). The water remunicipalisation debate in Barcelona has been marked by increasingly

convoluted and intricately intertwined and enmeshed institutional configurations, legal controversies, entrenched and contested political positions, and sustained social activism. The case of Barcelona's water supply system is emblematic of the difficulties, resistances, and contradictions that open up when a long-standing status quo is challenged by the rising momentum of an oppositional agenda.

Barcelona has had an almost uninterrupted (with the exception of a brief period of collective management during the Civil War) private organisation of its urban water supply and distribution since 1867. Despite the existence of some grassroots campaigns since the early 2010s, the call for remunicipalisation by the newly elected local government in 2015 – led by the progressive and grassroots political party *Barcelona en Comú* – came as a shock to both the water company and to those who would prefer to maintain the status quo. They considered the attack on private ownership to be ideological and political, and insisted on the continuation of the existing institutional organisation that they claimed produced very few discontented customers and delivered economically efficient services. It is important to mention that the AGBAR group, a key actor in the provision of water in Barcelona, has been affected by other remunicipalisation processes (that eventually materialised) in Spain, such as those of the mid-sized cities of Valladolid (north of Madrid) in 2017 and in Terrassa (close to Barcelona) in 2018. In these two cases, the termination of long-term contracts, the presence of a majority of forces of the political left on the city councils, and the actions of pro-remunicipalisation social movements ("*Taula de l'Aigua*" in Terrassa, or "*Plataforma por la gestión 100% pública del agua en Valladolid*" or "*Valladolid Toma la Palabra*" in Valladolid) stimulated the municipalisation processes (Bagué, 2018; Cadevall, 2018; Castro and Bagué, 2018; Martínez and Redondo, 2018). Arguments used in both cases were that water, as a critical resource for life, should be managed publicly and that public management would result in better conditions (for example, reduced prices) for citizens. Both arguments are basic components in the strategy for remunicipalisation in Barcelona; however, the complexity of the Barcelona case in terms of both scale and legal entanglements makes this case unique, at least in the Spanish context.

This article narrates the history of this controversy, demonstrating how the institutional configuration of water supply, which is organised at a metropolitan-regional level (comprising 22 municipalities plus the city of Barcelona), multiplies contestations and controversies as local governments and their power coalitions respond differently to pressures and demands for remunicipalisation. As a matter of fact, the case of Barcelona is unique in Spain given the current structure of metropolitan water supply and sanitation provision. This complex configuration is further laced with legal controversies on the one hand and a multiplicity of competing voices on the part of those who favour remunicipalisation on the other.

We argue that these inconsistencies, multiple conflicts, and proliferating positions have produced a deadlock situation, whereby it is difficult to discern effective ways forward to nurture or strengthen the case and political support for remunicipalisation. In this sense, the Barcelona example demonstrates that social and political support for remunicipalisation is important, but that geo-political configurations, complex institutional arrangements, legal histories, and heterogeneous social and political positions may produce stalemate conditions that might prevent or at least stall the process.

We combine historical narratives, document analysis, detailed mapping of the contemporary corporate, institutional and governance arrangement of water supply, media analysis, and in-depth interviews (12) with privileged interlocutors, including representatives of civil society organisations,¹ water companies,² a water expert,³ elected local representatives from different political parties

¹ Enginyers sense Fronteres (Engineers without borders)/Aigua és Vida (Water is life) (interview #4), Ecologistes en Acció (Ecologists in Action)/Aigua es Vida (Water is life) (interview #5), Federació D'Associacions de Veïns i Veïnes de Barcelona (FAVB, Federation of Neighbourhood Associations of Barcelona) (interview #3) and Xarxa Sobirania Energètica (XSE, Network for Energy Sovereignty) (interview #6).

² Interviews #7, 8 and 9.

³ Interview #12.

supporting the debate,⁴ public regulators,⁵ and local government officials⁶ that were directly involved or affected (or had an opinion as it is the case with the water expert) by the ongoing debate on the nature of water supply in Barcelona. All interviews were conducted between May and July 2018. The questions for the interviews were predetermined by the questionnaire scheme for the larger set of case studies that are part of this Special Issue (see Introduction) and revolved around the role of stakeholders' perspectives about remunicipalisation debates, their perception of stakeholders' actions (in favour or against), the resources/actions mobilised to defend their position, and the likelihood of remunicipalisation occurring in the near future. In addition, we have systematically documented the historical evolution of the case through the analysis of reports from local, regional, and national newspapers, press releases and documents produced by the different actors, and a review of related legal documents (e.g. rulings by the courts around issues related to water supply management in Barcelona).

The article is structured as follows. In the first part we present a brief history of the private water supply system that has been in place in Barcelona since the 19th century, with a particular emphasis on the complex architecture of the post-Franco dictatorship, and the institutional reconfiguration of the water supply system. The second part focuses on the making of a water controversy during the 2000s when social and political demands for remunicipalisation intensified. The third part focuses on the present institutional, legal, and political deadlock around remunicipalisation, and concludes with possible future avenues for the debate (and its associated political possibilities) as well as other avenues to strengthen the metropolitan governance of water.

QUENCHING BARCELONA'S THIRST: A BRIEF HISTORY OF A PRIVATE VENTURE

Barcelona's early water supply system dates back to the 11th century and to the *Rec Comtal* canal built to bring water to the medieval city from nearby catchments. In 1778, another canal, the *Mina de Montcada*, added new water flows to the city. Barcelona's modern water supply system originated in 1867, when the council granted a concession to the water company, *Compañía de Aguas de Barcelona* (CAB), to excavate more wells in the *Besòs* Basin (Masjuan et al., 2008; March, 2015). This company was created in Liège (Belgium) with the participation of Belgian and French capital. In 1882, the CAB was dissolved and the *Société Générale des Eaux de Barcelone* was created in Paris (AGBAR, 2018a).

The 1866 and 1879 Spanish Water Acts had declared all surface waters to be a public good and their use granted by municipalities in the form of concessions (Martin-Pascual, 2007). The company quickly achieved a dominant position in the supply of water to Barcelona and other nearby areas by taking over most other private water companies. However, by 1900, two competing strategic visions of how to organise and manage water supply arose. Industrialists and landowners saw water as an economic good to be managed by the private sector, with the national state building new dams and other infrastructure to guarantee and enhance supply for private water suppliers. In contrast, the city council considered water to be part of the public domain, outside the market, and defended a 'fair' distribution of available resources. The city council began to challenge the role of the private water company and strived for municipalisation. The municipality attempted to purchase the company in 1905. Subsequent tense negotiations between the town council and the private company culminated in an initial agreement in 1912 in which the company would receive 72 million pesetas (about USD13.8 million) in exchange for the transfer of management to the council (with a transition period of six years required to train the municipal workforce) and for the provision of an additional 160,000 m³ of water (Martin-Pascual, 2007). The municipality of Barcelona would also provide services to the municipalities formerly supplied by the

⁴ Barcelona en Comú (BeC) (interview #1) and Esquerra Republicana de Catalunya (ERC) (interview #2).

⁵ Catalan Water Agency (ACA) (interview #10) and Àrea Metropolitana de Barcelona (AMB) (interviews #1 and #11).

⁶ Barcelona's Local councillor of water and energy (interview #1).

private company through the *Llobregat* and *Besòs* water concessions. The control of water had to be entirely public and future initiatives to enhance supply would be strictly supervised by the town council through a Water Board. Nonetheless, hostility from economic elites and conservative political actors towards municipalisation remained so persistent that the town council and the national state had to postpone the final approval of the proposed municipalisation plan. Moreover, from 1913 onwards, conservative political parties opposing municipalisation controlled the town council of Barcelona, and led the opposition to the original agreement. War in Europe also meant that the French and Belgian owners of the company were left with little business activity in their own countries, therefore focusing all efforts on sustaining the Barcelona venture. In addition, a typhoid fever outbreak in 1914, due to the poor condition of water from the municipality-controlled *Mina de Montcada*, consolidated the opposition to municipalisation and contributed to shelve the project (Capel, 2007; Martin-Pascual, 2007).

In the early 1920s, a conglomerate of Spanish bankers (*Banco de Barcelona*, *Banco Hispano Colonial*, *Banco de Bilbao*, *Sindicato de Banqueros de Barcelona* and *Banca Arnús*) took advantage of the low exchange rate of the French currency and purchased the *Société Générale des Eaux de Barcelone* and changed its name to *Sociedad General de Aguas de Barcelona* (henceforth SGAB) (AGBAR, 2018a). While, arguably, this could be seen as a speculative move by the bankers, soon thereafter they realized the economic potential of the water business. The SGAB started to diversify activities and began the acquisition of foreign societies operating in Spain devoted to water and energy services. The SGAB consolidated its control over the water supply of many cities of the Barcelona conurbation that are currently part of the metropolitan area of Barcelona.⁷

The uninterruptedly privatised supply of water was reversed for a short period of time during the Spanish Civil War (1936-1939). The company was collectivised and its control passed to the company's workers who achieved successful performance results, despite the difficult task of providing water in times of war. Several management reforms increasing the efficiency of the company (for instance the unification of tariffs in the city) date back to the collectivisation period (Gorostiza et al., 2013). In January 1939, after Franco's victory, the private executive board of SGAB was restored, and the company reassumed its role as the main provider of urban water for Barcelona and its surroundings.

The Francoist reconfiguration of the Spanish hydrosocial landscape (Swyngedouw, 2015) affected water supply in Barcelona as well. During the 40-year dictatorship the water supply of Barcelona was expanded to include surface waters from the *Llobregat* River and from the distant *Ter* River through a 100 km-long aqueduct (March, 2015). The company was given a 99-year abstraction concession (2.2 m³/s in 1953, and an additional 1.1 m³/s in 1957, further expanded with 2 m³/s in 1960) by the Spanish state to draw water from the *Llobregat* River (TSJC, 2016). Despite the new water supplies, the greater thirst for water of a rapidly growing city, together with drought periods, encouraged both public powers and the SGAB to search for additional solutions to the problem of water supply. Intense urban development in the Barcelona conurbation during the 1960s, with subsequent growth in water demand of over 5% per year, prompted the town council of Barcelona to obtain a concession of 8 m³/s from the *Ter* River (Jové, 1995). This concession to the municipality of Barcelona could have reopened the debate on municipalisation. However, the political situation at the time precluded this, and in 1965 the municipality and the SGAB reached an important agreement by which the latter would distribute the water from the *Ter* River. By then, the municipality had definitely given up on supplying water directly to its citizens. The *Ter* River began to quench Barcelona's thirst in 1966.

In 1975, the AGBAR group (who owned SGAB) was created. In 1979, *Lyonnaise des Eaux* (which later was to become Suez) entered the shareholder structure of SGAB, becoming, together with the Catalan

⁷ Apart from Barcelona, the SGAB supplied in 1932 Hospitalet, Cornellà, Esplugues, Sant Joan Despí, Santa Coloma de Gramenet, Sant Adrià de Besòs, Badalona, Montgat, Tiana, Montcada and Cerdanyola del Vallès, as well as other municipalites of the Barcelona region (Voltes-Bou, 1967).

Bank *La Caixa*, the main shareholder of AGBAR (AGBAR, 2018a). This process paralleled the end of the dictatorship in Spain and the inauguration of local democratic elections. In Barcelona, this democratisation process also inaugurated the creation of a metropolitan agency (*Corporación Metropolitana de Barcelona*) [Metropolitan Corporation of Barcelona] with some functions in urban service provision, including public transportation and metropolitan planning. At the turn of the 1980s, the supply of bulk water was increasingly envisaged as a public duty beyond the local scale regardless of whether urban water supply was private or public. In Barcelona, this service was metropolitan in scale, and managed by the *Corporación Metropolitana de Barcelona* (henceforth CMB) (La Vanguardia, 1980a, 1980b). The latter intended to buy raw water supply facilities from the SGAB, but this materialised only partially through taking over one of the two treatment plants in the *Llobregat* River supplying Barcelona (Abrera), owned by a subsidiary of AGBAR. However, the water treatment plant of Sant Joan Despí remained under AGBAR ownership. In 1983, the CMB constituted the *Societat de Gestió Metropolitana d'Abastament d'Aigua* (SOGEMASA) [Society for the metropolitan management of water supply] to manage bulk water supply. The metropolitan municipalities remained in charge of ensuring urban water distribution, but continued to do so through agreements with private water suppliers.

However, in 1987, the CMB was dissolved because it allegedly infringed on municipal jurisdiction (guaranteed by the Spanish Constitution of 1978 and the Catalan Statute of Autonomy of 1979). The CMB was subsequently divided into two metropolitan agencies: one to manage public transportation and the other to manage water and sanitation. This resulted in a fragmentation of responsibility over water services. While the *Generalitat de Catalunya* (the regional government) would be in charge of water resource planning, the metropolitan agency was mandated to coordinate municipal water and wastewater services, forecast future demands, and build hydraulic works to ensure these demands would be met. In the early 1990s, the raw water supply network that fed Barcelona, formerly managed by the CMB, began to be managed by the regional (and publicly owned) water company *Aigües Ter-Llobregat* (henceforth ATLL). Regardless of the metropolitan and regional reconfigurations of raw water supply, urban water delivery remained unchanged and the SGAB continued to supply Barcelona and many other metropolitan cities. It is important to highlight that while, since the 1990s the mother company of SGAB, the AGBAR group, was mainly owned by the Spanish bank *La Caixa* and the French utility *Lyonnaise des Eaux* (and later Suez), in 2015 Suez bought all the shares of the former and became the sole owner of AGBAR. Suez therefore has become a major player in the Barcelona remunicipalisation process although it has mostly maintained a low profile in the remunicipalisation debates.

Since 2010, there has been an important reconfiguration of the metropolitan governance of Barcelona. Following the creation of a single metropolitan body in 2011, the *Area Metropolitana de Barcelona* (henceforth AMB), a mixed-capital company between the SGAB (part of AGBAR) and AMB (85% Aigües de Barcelona, 15% AMB) was established in 2012. The latter, named *Aigües de Barcelona Empresa Metropolitana de Gestió del Cicle Integral de l'Aigua S.A.* (henceforth ABEM), manages the urban water supply of 23 municipalities and also wastewater treatment of all the 36 municipalities of the AMB. This means that it supplies 86% of the water in metropolitan Barcelona (or 93% if we take into account all the companies of the group), so that 9 out of 10 consumers in the metropolitan area of Barcelona depend on water from the AGBAR group (TSJC, 2016). Until 2012, the urban water cycle in Barcelona showed a clear distinction between water supply (provided by a private company) and sewage and sanitation (the first one provided by municipalities and the second by a public entity). Since 2012, a new public-private company has taken control of the whole water cycle except for sewage, which remains in municipal hands.

An apparently unimportant event could arguably be interpreted as a trigger of the current debate around the creation of the new mixed-capital metropolitan water company. In 2006, the SGAB cut off the water supply of a family that owed 6,500 Euros in unpaid water bills because of a leak in the basement of their building. The family took SGAB to court and in October 2010, a decision from a low level court

(*Tribunal Contencioso-Administrativo*, JCA) nullified the debt on the basis that "the price the Sociedad General de Aguas is charging for the services it provides to the citizens of Barcelona is illegal" (La Vanguardia, 2010; see also JCA, 2010). Most importantly, the ruling argued that there was "no [legal] concession contract" and, therefore, "we are in front of a void concession because of the absence of the required procedure" (La Vanguardia, 2010; see also JCA, 2010). While the ruling did not directly challenge the company status (it did not have any direct legal effects on that matter), it put pressure on the authorities to legalise an uncertain legal status. Arguably this could be one of the reasons for the creation of the new metropolitan company described above, which, as we shall see, resulted in more controversy and additional legal claims.

THE MAKING OF A POLITICAL CONTROVERSY

In this section we focus on the recent remunicipalisation proposal by the Barcelona city council. This discussion requires excavating the controversy around the establishment of the mixed company (ABEM) and the associated legal dispute since the outcome of this process will set the contours and conditions of the present remunicipalisation endeavour.

The creation of the new company was controversial from the beginning as critics maintained that the new metropolitan supplier had been selected without opening a new public tender as required under Spanish law. As a result, other potentially interested private companies, such as *Aguas de Valencia*, took the issue to court. In March 2016, responding to the claim of *Aguas de Valencia*, the courts ruled against the concession of the metropolitan water supply granted in 2012 to the newly created public-private company because a formal tender process had not been followed (TSJC, 2016). The ruling argued that certain elements that were used to avoid any competitive tender process – i.e. AGBAR's historical exclusivity rights, as well as technical and economic motives – "present weaknesses to justify the bidding exception" (ElDiario.es, 2016a). AGBAR argued that this ruling did not question the legal nature of the concession of water in Barcelona, but only the form and procedure taken to create the mixed-capital company (ElDiario.es, 2017).

However, in June 2018, the legal services of the municipality of Barcelona (Ajuntament de Barcelona, 2018b) confirmed that when the mixed-capital company was constituted in 2012, SGAB did not have any qualifying title to provide the domestic supply service in Barcelona (see also El Periódico, 2018). This socio-legal conundrum provided a potent weapon for questioning and contesting the institutional and economic architecture of water services provision in the Barcelona Metropolitan Area, and particularly in the city of Barcelona.

Growing grassroots activism for remunicipalisation

Water activists in Barcelona close to the NGO *Enginyeria sense Fronteres* (Engineers without Borders) and the Federation of Neighbourhood Associations of Barcelona (FAVB) have been denouncing water privatisation in the region of Catalonia since the early 2000s. The FAVB has been involved in many social struggles, some of them water-related, most notably during the so-called "Water Wars" against water taxes in Metropolitan Barcelona during the 1990s (Domene and Sauri, 2012). Since the ruling in 2010 by the *Tribunal Contencioso Administrativo* (JCA) nullifying a family's debt (see above) and indirectly casting doubts on the validity of the contract of the SGAB in Barcelona (with no legal consequences), the FAVB has been an active voice in demanding remunicipalisation (FAVB, 2012). Despite these struggles around public water management (as well as environmental struggles to improve aquatic ecosystems) it was not until November 2011 that the platform *Aigua és vida* (Water is life) (henceforth AeV) was created to protest against the dismantling of the public water sector in Catalonia (interviews #4 and #5). Many of the activists that founded that platform had been involved in anti-privatisation struggles in Latin America and elsewhere before initiating the debate in Catalonia (interview #4).

Specific to the case of Barcelona, the platform also voiced concern about the alleged irregular situation of the water contract in the city, again pointing to the aforementioned 2010 court ruling (La Vanguardia, 2012a, 2013a; see also JCA, 2010). Ever since the creation of the mixed capital metropolitan company, AeV led the struggle for the remunicipalisation of water in the city. Among the different arguments against the creation of such a company, AeV pointed out very material implications, such as an overcharge of some 4,300 Euros per family over the 35-year life-span of the company (representing about 124 Euros of overpayment per year) and the lack of a competitive bidding process (Aigua es Vida, 2013; interview #5). AeV considered remunicipalisation as a means to 'deprivatise' the water sector and enhance democratic decision-making and sovereignty, in particular with respect to decisions to cut off people from water supply and to improve sustainable management of water resources (interview #5). AeV (2018a) argued that over 75% of the Barcelona population was in favour of public and democratic water management, in all likelihood referring to the poll of 800 people that appeared in January 2017 in the Catalan newspaper *El Periódico* (El Periódico, 2017) reporting that 80% of Catalans were in favour of the 'deprivatisation' of health services, and water and waste collection. It is important to note, however, that the question was put together for the three services (health, water and waste) so it cannot be known for certain that 80% are in favour of "deprivatisation" of water services in particular.

In early 2018, over 50 local organisations (social movements and civil society associations) organised a petition in support of a local referendum on the remunicipalisation of water in Barcelona, a strategy also promoted by grassroots organisations to reverse water or energy privatisation in cities such as Berlin (2011), Hamburg (2013) and Thessaloniki (2014) (Beveridge and Naumann, 2013; Becker et al., 2016; Bieler and Jordan, 2018). In the case of Barcelona, they managed to mobilise 330 volunteers and gathered over 26,000 signatures in two months (Aigua es Vida, 2018a). The petition proposed the following question be put to citizens: "Do you wish water management in Barcelona to be public and with citizen participation?" Initially, the local law allowing such public consultations fell short of the necessary support in the plenary session held by the Barcelona Council in April 2018 (La Vanguardia, 2018). In this council vote, it seemed that the process of public consultation was rejected because of procedural rather than substantive issues (interview #12). In October 2018, the local law was finally passed by the Barcelona Council (El País, 2018e). However, the local referendum on remunicipalisation of water will not be held until the next electoral cycle, and its implementation will therefore depend on the results of the upcoming local elections in May 2019.

The FAVB suggested that the two most pressing issues about private water management are the price that consumers pay for water and concern with environmental issues (notably a lack of incentives to reduce consumption) (interview #3). For the FAVB, there would be a 'window of opportunity' for remunicipalisation once the ruling of the TSJC on the metropolitan company is finally issued: "If the [metropolitan] company is illegal, then you do not need to buy the company, as this company does not exist". The FAVB also supported remunicipalisation at the metropolitan level through a metropolitan public water company instead of leaving it as a purely municipal issue (interview #3).

The resources mobilised by those social movements to carry on with their struggle are minimal, according to the interviewees (interviews #4, 5 and 6). In economic terms, probably the most powerful actor within AeV is the FAVB, which manages an annual budget of about 240,000 Euros (mostly from an agreement-grant from the town council of Barcelona and another from the Catalan government) that serves to pay its eight staff and publish the monthly journal *El Carrer* (interview #3). They mostly rely on volunteers. Despite their limited resources, their actions have been successful if one considers the response of the SGAB (see next sections). Despite the fact that the local referendum has not (yet) taken place, awareness among citizens has been raised significantly (interview #3). It is interesting to note, however, that given the limited resources of grassroots organisations most of their energies have been invested in promoting remunicipalisation without enough time to discuss what the remunicipalised water supply should look like (interview #6). In any case, grassroots groups have been successful, especially through the local referendum campaign, in pushing the debate to the institutional level (interview #2).

The institutionalisation of the remunicipalisation debate in the post-2015 council

In February 2015, the newly established progressive political party, *Barcelona en Comú*, presented an anti-austerity "emergency plan" that could be "immediately implemented" if they captured local power. Among other actions, the plan included the remunicipalisation of urban services such as water (La Vanguardia, 2015; Barcelona en Comú, 2015). In an interview before the local elections, Gerardo Pisarello (number two on the *Barcelona en Comú* ballot) stated that the remunicipalisation of water "is an essential measure to take back public control over the economy", while recognising that it needed legal evaluation (EIDiario.es, 2015). In May 2015 *Barcelona en Comú* won the local elections, but with only 11 seats (out of 41⁸). This obliged the party to seek a coalition with other political parties (among them the Socialist Party of Catalonia, with whom they established a stable coalition, a year after the elections, from May 2016 until November 2017).

With the arrival of the new government in Barcelona (and hence changes in the political composition of the board of the Metropolitan Area of Barcelona), the AMB started to review the procedure for the creation of the mixed-capital water company. When the first legal ruling of 2016 by the TSJC was issued, the AMB agreed to focus on both the valuations of assets and the likely scenarios for ratification of the ruling of the Spanish Supreme Court (i.e. the 'illegality' of the company) (interview #1). In addition, the AMB, although directly affected by the ruling, decided not to appeal to the TSJC against the ruling (as AGBAR did). Barcelona's city councillor in charge of water issues argued that "we believe that [the ruling by the TSJC] is defending the public interest" (interview #1). However, it is important to note that there is no agreement within the AMB to remunicipalise, just a consensus to start considering remunicipalisation (interview #1).

In October 2016, the cities of Barcelona and Paris signed an agreement to share knowledge and learning on several urban issues (including right to housing, reduction of inequality, deepening of democracy, and public water management) (Badia-Casas, 2016). The experience of Paris with remunicipalisation is mentioned by many proponents of remunicipalisation as the model to follow for Barcelona, despite the fact that, in Paris, the process was completed with virtually no public participation. In the words of the local councillor of water and energy "we need a new model of water management that recovers and updates the concept of the common good, at the service of, with, and for everybody" (Badia-Casas, 2016).

In November 2016, some important actions were taken by the local administration. First, a study commissioned by the town council challenged the legal nature of the existing concession to AGBAR (EIDiario.es, 2016b). The report argued that there was no legal contract with the municipality, only a concession by the Spanish state to withdraw water from the *Llobregat* river in 1953 (EIDiario.es, 2016b) (the contract length with the state was for 99 years, see TSJC, 2016). This report contended that, with a legal contract with the municipality or not, in 2003 the company should have returned all the assets linked to the water supply service to the municipality on the grounds that the last *de facto* contractual relation between the company and the town council dates back to 1953 and should have had a contractual duration with the municipality of 50 years (EIDiario.es, 2016b). Consequently, the local government of Barcelona obtained the endorsement of the majority of the Council plenary (with the votes of *Barcelona en Comú* (BeC) (11), *Partit dels Socialistes de Catalunya* (PSC) (4), *Esquerra Republicana de Catalunya* (ERC) (5), and the *Candidatura d'Unitat Popular* (CUP) (3)) to begin to take the necessary steps for water

⁸ The composition of the Barcelona's local plenary after the 2015 local elections was as follows: Barcelona en Comú (BeC) 11 councillors, CiU (CiU already extinguished, currently PDeCAT) 10 councillors, Ciudadanos (Cs) 5 councillors, Esquerra Republicana de Catalunya (ERC) 5 councillors, Partit Socialista de Catalunya (PSC) 4 councillors, Partit Popular (PP) 3 councillors, and Candidatura d'Unitat Popular (CUP) 3 councillors. It is important to mention that during the legislature there have been changes in the composition of the plenary as 1 councillor from ERC and 1 from CiU left those parties and became independent.

remunicipalisation in Barcelona (ElDiario.es, 2016c). The first steps implied the commissioning of several technical reports.

On 22 March 2017 (World Water Day), seven local councils (Barcelona and six other municipalities⁹) announced the aim to create the Catalan Association of Municipalities and Entities for the Public Management of Water (*Associació Catalana de Municipis i Entitats per la Gestió Pública de l'Aigua, AMAP*) (Ajuntament de Barcelona, 2017). On the occasion of that event, the mayor of Barcelona, Ada Colau, stated that "[w]ater is a basic necessity and not a commodity, and as a fundamental right must be managed with criteria of general interest" (Ajuntament de Barcelona, 2017). However, it was not until early 2018 that the association was formally constituted with the aim of giving support to the municipalities that wanted to pursue public water management (Ajuntament de Barcelona, 2018a). The Executive Commission of the Association is headed by Barcelona's city councillor of water and energy. In the first constitutive meeting of the association, that included not only the original seven municipalities but also two public water companies¹⁰ and the NGO *Enginyeria sense Fronteres*, the local councillor of water and energy stated that "public water management is a dominant model in the world showing that it is economically feasible, guarantees better quality of service, and a better price for users" (Ajuntament de Barcelona, 2018a). Empirical evidence is mixed on this topic, but there is broad consensus that public water agencies are just as efficient as their private counterparts, and in some cases more so (Bel et al., 2010; Chong et al., 2006; Gómez-Ibáñez, 2003; Shaoul, 1997).

In February 2018, the AMB presented an audit of the process that led to the creation of the mixed capital water company in 2012. The Agreement of the Metropolitan Council of the AMB of 26 April 2016 commissioned an audit of the existing assets in the domestic water supply network, and of the economic value of the assets contributed by the SGAB at the time of the constitution of the metropolitan water company in 2012. This study concluded that AGBAR overestimated the value of the assets that it had transferred to the new company: while the net assets transferred were valued at €476 million by AGBAR, the audit calculated its value to be just €130 million (El País, 2018a). This overestimation has its origin in assets already paid for and other expenses that were assumed by urban developers (€230 million) as well as in infrastructure related to raw water supply (€116 million) (El País, 2018a). In addition to assets already paid for, this difference of €346 million also included €116 million, or the value of assets serving raw water supply, which was not a matter of competence of the AMB and therefore, according to the report, could not form part of the infrastructure of the metropolitan water cycle (Ajuntament de Barcelona, 2018b). According to the councillor of water and energy issues "only 27% of the transferred assets were real" (ElDiario.es, 2018). In June 2018, the legal services of the municipality of Barcelona valued the assets (at the city level) that the SGAB (AGBAR) contributed to the mixed capital company at €41 million (Ajuntament de Barcelona, 2018b). In November 2018, the AMB made public the audit showing that the assets transferred to the mixed-capital water company by the public administration (valued initially at €50.5 million) were underestimated. According to this study, the AMB contributed €585 million (Ara.cat, 2018).

The position of the political parties

As of 2018, there are three political parties in the town council of Barcelona (and on the board of AMB) that have voiced their support for the remunicipalisation of water, although with some differences and nuances: *Barcelona en Comú* (BeC) (an anti-austerity party ruling the city), *Candidatura d'Unitat Popular* (CUP) (an anti-capitalist pro-Catalan independence party), and *Esquerra Republicana de Catalunya* (ERC) (a social-democratic pro-independence party). According to the councillor of water and energy, BeC strives to "create a public model at the metropolitan scale because reorganising the workforce of the metropolitan company for each municipality could be complicated" (interview #1). However, if eventually

⁹ Badalona, Cerdanyola del Vallès, El Prat de Llobregat, Sabadell, Santa Coloma de Gramenet and Terrassa.

¹⁰ Aigües del Prat and BCASA.

the AMB takes a direction different from that of Barcelona city council, the council would not stay inactive and may try to convince other town councils of the positive aspects of remunicipalisation (interview #1). Given the legal constraints to further develop a 'public-cooperative model' to ensure public participation, the Council may consider (in the case of remunicipalisation) opening up new spaces for citizen engagement, such as advisory councils (e.g. the water observatory) functioning as consumer assemblies. As stated in October 2018 in a meeting on the remunicipalisation of water, "the discussion is not between public or private, but on the type of public [management] that we want. Citizens should participate in the control of management and generate community around a public good such as water" (see CatalunyaPlural.cat, 2018). The pilot test of the metropolitan energy company, *Barcelona Energia*, may serve as a learning tool in this regard (interview #1). However, given the size of the population served by the metropolitan water operator – serving 3 million people, rather than the limited size of the metropolitan energy company that could serve about 20,000 households – those spaces of participation should be organised around a digital platform. The city already has a powerful digital participation platform, *Decidim.barcelona*, which could be used for that purpose.

The positioning of the anti-capitalist party, CUP, has been crystal-clear in favour of remunicipalisation; yet they initially voted against the public consultation on the grounds that the instruments to remunicipalise water were already available after the approval in November 2016 of a proposal to start the necessary steps to remunicipalise water (see above) (El País, 2018d). Their position, as defended in an opinion statement written by some of the party's representatives at the local and Catalan level is unambiguously in favour of public management. They consider water to be a common good that should be managed publicly. Therefore, "the local consultation on water should revolve around the public management model of the commons that we desire and not about whether or not water should be a common good" (Reguant and Sirvent, 2018). They "understand remunicipalisation as a way to relocalise and decentralise, and this is nothing more than recovering the ability to decide on the principles of [water] supply management, its organisation and its distribution based on criteria close to the social and ecological needs of the city's direct environment" (Reguant and Sirvent, 2018).

The position of the social-democratic pro-Catalan independence party, ERC, as expressed by the councillor spokesman for the ERC in the council of Barcelona, stated that regardless of the fact that they have not been very proactive on the topic (beyond voting in favour of initiating the process of studying remunicipalisation in 2016 and in favour of the public consultation in April and October of 2018), they could, in principle, support the remunicipalisation of water provided that the full cost for citizens of such a process would be clearly established (interview #2). The spokesman evoked the case of Berlin (see Beveridge and Naumann, 2013), where a local referendum was held on remunicipalisation, providing citizens with transparent and complete economic data on the consequences: "There is a big mystery about how much it costs. And as long we do not have information on that, it is difficult to take a clear position" (interview #2; see also CatalunyaPlural.cat, 2018). In contrast to BeC and CUP (who mobilise around a discourse on democracy and are more ideological), ERC is more pragmatic and their case for remunicipalisation revolves around the price of water (which they presently consider to be too high). They argue that Barcelona enjoys a good service under private management, so remunicipalisation would make sense only if it decreases consumer prices.

ERC and BeC agree that it will be difficult to take action before the upcoming local elections of May 2019. ERC also broadly concurs with BeC and the social movements about the scale of the remunicipalisation process, but without precluding the starting of the process in Barcelona alone: "it would make sense to do it at the metropolitan level (...) but there is little governance at the AMB and that would require making some legal changes (...). If it is easy to do it at the metropolitan level, let's do it, otherwise let's start with Barcelona" (interview #2). Interestingly, the interviewee remarked that beyond the remunicipalisation debate there are actions regarding regulation that could be implemented right now to improve transparency. This appears to coincide with voices from the AMB and the Catalan

Water Agency who argue for a more active role of the regulator in monitoring the management by water companies, whether private or not (see next section).

Last but not least, it is important to mention that despite supporting the initiative presented in 2016 to start undertaking steps towards remunicipalisation, the *Partit dels Socialistes de Catalunya* (PSC) does not have a clear position in the remunicipalisation debate, especially in the context of the breakup of the government coalition with BeC. In a public debate on remunicipalisation held in Barcelona in October 2018, one of the PSC councillors accepted that the parties that have historically governed the AMB (led by the PSC) have shown "no political will" in favour of remunicipalisation, mostly because the citizen demand has not been strong enough to be considered relevant by politicians, something also shared by other political parties such as ERC or PDeCAT (CatalunyaPlural.cat, 2018). In the same debate, a representative of PDeCAT at the AMB interestingly argued that the party "supports public governance of water, which is not the same as public management" (Sierra, 2018); according to this representative, public management does not always result in lower water prices and hence it should be carefully analysed on a case by case basis (Sierra, 2018). This statement was rebutted in the same debate by the local councillor of water and energy (Badia, 2018b). In any case, the position of PSC (as well as PDeCAT) might nonetheless be very important in the future, as we shall argue in the final sections of the paper.

The position of the water company

Managers of the private water operator that partially owns the mixed-capital company ABEM argue that remunicipalisation is irrelevant because "water is a public and municipal domain, and hence cannot be remunicipalised" (Europa Press, 2018; also interview #7; see also La Vanguardia, 2017). They are critical of remunicipalisation advocates whom they see as purely "ideological", a point shared by some analysts outside the company (Tamames et al., 2017). The private operator acknowledges that "there is a debate about the management model", be it a "public or private entity or by an intermediate formula" (Europa Press, 2018), but they argue that the best way to decide on a delivery system is by determining the most efficient and effective service provision (interview #7). In this respect, they point to several local, national and international awards they have received for their performance, including one from the Chamber of Commerce of Barcelona in 2017 (AGBAR, 2017a) and two in 2018: one for its Solidary Fund (for people unable to afford the water bill) by the Spanish Association for the Excellence of Public Services (AESP) (AGBAR, 2018e), and one for the "best social responsibility project" by the European Excellence Awards (AGBAR, 2018f). The company's CEO was also awarded the "Key of Barcelona" (AGBAR, 2018d). As such, managers are convinced that price and service in Barcelona and other municipalities they serve meet with the implicit approval of citizens. In their view, remunicipalisation would only be justified if they failed on these terms. When asked about the case of Terrassa, a town of 200,000 near Barcelona which remunicipalised its water services in 2017, a manager concluded that: "If the service is right and the price is competitive, the only thing left to think is that remunicipalisation must be ideological" (interview #8).

Company managers also point to "citizen surveys" in which they claim that water is rarely if ever mentioned as a problematic issue (interview #8), noting that some respondents even believe that water is delivered by the municipality (interview #7). Interestingly, this alleged belief (i.e. that the water supplier is already fully public) was also mentioned in our interview with a representative of the town council (interview #1). Managers are also keen to argue that the entity supplying Barcelona and its metropolitan area is not a private company but a public-private partnership, suggesting that PPPs increase accountability to the public while offering the benefits of a private company's expertise, professional practice, and access to financial markets (interview #7; see also AGBAR, 2017b,c; 2018b,c,d).

Nevertheless, *Aigües de Barcelona* (and the AGBAR group in general) has taken a more proactive stance on remunicipalisation since 2016. One course of action has been to increase the company's public visibility in the form of media campaigns to inform people about the complex work behind water provision (interview #9). The company has also done more to promote its policies of assistance in the

form of social vouchers to households unable to pay their water bills (in contrast to private energy companies) (La Vanguardia, 2012b, 2013b).

Concerning economic compensations in the hypothetical case of remunicipalisation, the Managing Director of AGBAR in Catalonia stated in a media interview that if water services were to be remunicipalised before the end of contract the company should be compensated to the tune of 1-1.5bn Euros: 500m Euros for infrastructure, and the rest to compensate for lost earnings (CCMA, 2017a; see also CCMA, 2017b). Importantly, these figures differ dramatically from those presented by the municipality of Barcelona and AMB (see previous sections). He also argued that the company has a contract until 2047 and that the European Union has warned that contracts cannot be terminated during the period fixed (CCMA, 2017a), with one company manager noting that proponents of remunicipalisation do not want to recognise the efforts the company has made in terms of investments and asset creation over the years (interview #8).

It is also worth noting that AGBAR officially requested that the city council of Barcelona should cancel the aforementioned local referendum on remunicipalisation, claiming that it was "illegal" and "not clear enough", accusing the council of tackling an issue over which it did not have executive powers (El Crític, 2018). The works council from the mixed-capital company ABEM also expressed concerns with the referendum, arguing (through a letter sent to all political groups) that it was aimed only at residents of Barcelona while the remit of the company's water supply is metropolitan: "[t]his local referendum seems to be directed to the city of Barcelona leaving the AMB for the purposes of providing the service of the integral water cycle" (El País, 2018c). They argued that if Barcelona decided to leave the AMB (in terms of water management), this could have "serious negative consequences" such as "an exponential increase of the tariff", "loss of service quality", and "downgrading" of working conditions in the company (El País, 2018c). They maintained that the metropolitan service provided "efficiencies, economies of scale and optimisation". However, Barcelona's local councillor for water and energy argued that if there is a ruling by the Supreme Court that declares the company illegal, it would be safer for the workers (in terms of working conditions and employment security) if the company were to be publicly run than if the service were to be leased again (as it would have to be split up in three segments: raw water production, urban supply and sanitation) (interview #1). For the vice-president of FAVB, while trade unions in general support remunicipalisation, many local branches are less favourable because workers have sometimes seen their working conditions improve with the private company and AGBAR pays it employees above the average of the water sector: "if you are a company running a monopoly you are interested in having workers on your side", argued the representative from FAVB (interview #3).

Streamlining governance

Differences of opinion on remunicipalisation aside, we could argue that there is a virtually unanimous agreement amongst the key actors on the remunicipalisation debate about the need for streamlining governance at the metropolitan level and tightening regulations over water supply and sanitation. These matters go beyond the public-private debate, and apply to water governance gaps in Spain as a whole (González-Gómez et al., 2014; Bel et al., 2015).

The local councillor of water and energy of Barcelona agreed with that view, noting that in parallel with their efforts to remunicipalise water the metropolitan area is trying to boost their water governance capacity: "we must act as a regulator, regardless of what happens; the AMB cannot have only two people in this service. The AMB must have a department, must have criteria" (interview #1). To this end, staff has been augmented to five people working at the AMB for water, mostly in regulatory tasks, trying to set "the rules of the game" (interview #1). The councillor spokesman for ERC in the council of Barcelona further noted (in a public debate on remunicipalisation in October 2018) that regardless of the outcome other actions could be implemented, such as the creation of a Citizen Observatory of Water (similar to the one in Paris) and improving transparency (Coronas, 2018). The idea of creating a Water Observatory

was also advanced by the representatives of PSC (Andrés, 2018), although the local councillor of water has noted that while a Citizen Observatory could be useful the fact that many big decisions on the water cycle of Barcelona are taken at the global level (referring to Suez), it could render this participatory mechanism ineffective (Badia, 2018b).

The notion that the capabilities and powers of public regulatory bodies were more important than the issue of public versus private water management appeared throughout our interviews as well as in our survey of media reports and the grey literature, with senior staff at the AMB and ACA, and to some extent with AGBAR. There appears to be an urgent need to improve public governance of water, for instance by increasing the technical and managerial level of municipal services in charge of controlling concessions. According to a senior officer in the Catalan Water Agency (ACA), in municipalities "you find a general sense of trust in the investment proposals of private companies, which at the public level may be perceived as a governance deficit" (interview #10). In other words, municipalities tend to follow a certain policy of *laissez faire* regarding water companies and more so with companies that have been supplying water to cities for many decades.

Another problem identified by the interviewed senior official from the Catalan Water Agency and the politician from the AMB is the length and rigidity of concessions with water companies. Concessions are considered to be too long for consolidated systems such as that of Barcelona and ill-adapted to changing economic, social, and environmental conditions: "[t]he concessional regime is very rigid, with rights and duties hard to accommodate under a model of adaptive management. Adaptive management with a regime system able to adapt to droughts, economic crises, climate change, changes in demand, etc.; is at odds with contractual provisions made under the condition that any alteration necessitates compensations, claims of unfulfilled obligations, etc" (interview #11). This view is shared by the interviewed senior official of the Catalan Water Agency: "[p]robably today with all major investments already made and with mature systems, service could be better provided with shorter contracts" (interview #10).

This option of strengthening the governance mechanisms of the system with a much more active role of the regulator is not opposed by the water companies, with the president of AGBAR proposing the creation of a "single regulator", "with the objective to establish fixed criteria to define the quality of the service for all the territory, and define strategic investments" (AGBAR, 2018b) as well as to establish "clear rules for everybody" and sanctions in case of contract breaches (Europa Press, 2018). To achieve all this, the regulator needs to ensure that it has the means to control the performance of the service (interview#7). In other words, the company highlighted the "need [for] governance; [we need] to know what is the role each one assumes, as well as their responsibilities" (Europa Press, 2018). In this sense, the president of AGBAR stressed the importance of public-private partnerships: "public-private collaboration has been established as a model of success in almost all sectors that require large infrastructures to contribute to the economic and social progress of the country" (AGBAR, 2018b; see also AGBAR, 2017b,c; 2018c,d).

However, and according to the local councillor of water and energy, "the private sector asks for a regulatory body, [but] when you [the public administration] try to be the regulator, you become a 'sitting duck'" (interview #1). He noted that, at the time of our interview, there were over 20 legal disputes over issues such as regulating water tariffs, investments, etc. In any case, he recognised that there are important structural weaknesses in the control of private companies (for instance, with respect to auditing the investments they commit to undertake). He argues that after all the actions undertaken by the town council, and regardless of the final ruling of the Spanish Supreme Court, "nothing will ever be done again as it has been done until now" (interview #1).

CONCLUSION: DEADLOCK... OR ALIGNMENT OF PLANETS?

Despite how powerful the idea of water as a public good is, and how prevalent the social and political atmosphere is in favour of remunicipalisation, we argue that the debate in Barcelona is deadlocked. This deadlock is of a political, legal, institutional, and also ideological nature.

First, the political deadlock is a result of the very small majority of *Barcelona en Comú* in the town council and the uncertainty (at the time of writing) of the forthcoming May 2019 local elections. The results of these elections would certainly be pivotal for deciding the fate of the remunicipalisation process, not only in Barcelona but also in the rest of the AMB where important municipalities are Socialist strongholds quite hostile to *Barcelona en Comú*, CUP and ERC. Moreover, the local councillor of water and energy recognises that, given the current choreography of power both at the town council and at the AMB, the Socialist Party (PSC) has a critical role in deciding the future steps the process may take. Currently, and despite voting in 2016 in favour of opening up the debate on water remunicipalisation, the Socialist Party has not clearly positioned itself in its favour.

Second, there is also a legal deadlock related to the decisions of the courts concerning the constitution of the mixed-capital water company. Until there is a final ruling by the Spanish Supreme Court on the validity of the current configuration, there will be little change in the position of the political parties that could build up to a solid majority in favour of remunicipalisation (not only at the local level, but first and foremost at the metropolitan level).

Third, there is an institutional deadlock that revolves around the geographical configuration (and scale) of the remunicipalised water supply (in the event of remunicipalisation). This is a key issue because urban water supply operates at the metropolitan level and a process of remunicipalisation that restricts its action to a single municipality (in this case Barcelona) might risk a fragmentation of supply that could result in inefficiencies, higher costs, and unexpected outcomes, with additional implications for the water service workforce. It is interesting indeed that, while many actors promoting remunicipalisation (such as the local administration) recognise the importance of preserving the metropolitan character of urban water provision, the remunicipalisation debate has been largely restricted to the municipality of Barcelona. It will be important to follow what the other municipalities of the metropolitan area think about the possibility of remunicipalisation at the metropolitan scale.

Fourth, we argue that there is an ideological deadlock around the very idea of remunicipalisation as well. If remunicipalisation is not accompanied by a strategic vision of how to reorganize the public provision of water it may become an empty signifier or, as posed by Cumbers and Becker (2018), simply represent another form or mutation of urban neoliberalism. This is not a critique of the social movements pushing for remunicipalisation, but rather recognition of the fact that a clear 'model' (beyond general principles of 'democratic' and 'transparent' service) of what and how remunicipalisation might look like has yet to emerge. Even if the process of remunicipalisation ends up materialising in the mid-term, it remains to be seen what specific 'form' this process may take and whether or not private companies would still provide core or peripheral tasks in urban water supply (Interview #12).

These deadlocks notwithstanding, when we asked the local councillor of water and energy in Barcelona about the possibility of remunicipalisation in the coming five years he drew three different possible pathways, depending on the outcome of the ruling by the Supreme Court and on the changing choreography of power in the metropolitan area following the upcoming local elections of May 2019 (interview #1):

1. Favourable ruling and a metropolitan government in favour of remunicipalisation that has the majority: Remunicipalisation is possible although it could take a few years.
2. Unfavourable ruling, even with a favourable government: scenario that would lead to a careful reassessment of the situation with uncertain outcomes at this moment.

3. Favourable ruling, but no political majority in favour: Remunicipalisation highly difficult. It would depend on the position of the Socialist Party provided that ERC continues to support remunicipalisation.

In a debate held in Barcelona in October 2018 between activists and most of the political parties with political representation in the town council/AMB, the local councillor of water and energy (2018b), in an effort to convince PDeCAT and PSC to join remunicipalisation, suggested the following idea in the event there is a ruling that reverts the creation of the mixed capital company: agree to a period of four years of public management and, after that, evaluate the effects and impacts. Interestingly, in the same public debate a councillor for the PSC, a party that has not positioned clearly in favour or against remunicipalisation, stated that they would accept the ruling of the Supreme Court and hence they would support what the citizens vote for when they are asked in a future referendum (Andrés, 2018; see also CatalunyaPlural.cat, 2018).

Regardless of the outcome of the remunicipalisation process, it is very important to highlight the emerging consensus on the need for tighter controls, shorter contracts, clearer investment strategies, improved quality of water, more flexible/adaptive contracts, tariffs subject to political scrutiny, and strengthening of metropolitan governance. This is an (unexpected) avenue that proponents of remunicipalisation and defenders of public-private partnerships could explore together as a way out of the current imbroglio. Remunicipalisation, a very powerful argument when dealing with an essential resource such as water, faces important challenges regarding the technical and managerial capacities of municipalities and especially of small and medium municipalities (Gonzalez-Gomez et al., 2014). But above all, and as in the case of other forms of service provision, it also needs strong and competent regulation.

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