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The empire strikes back: Corporate responses to remunicipalisation

By Olivier Petitjean

Over the last years, there has been a significant trend towards the remunicipalisation of public services in many sectors, which challenges the dominant narrative of a seemingly irresistible tide of privatisation since the 1980s and 1990s. Remunicipalisation involves taking back a public service out of the hands of a private entity. In some cases, this private operator is a small, local company. In many cases, though, cities are dealing with large, powerful transnational corporations, such as Suez and Veolia in the water and waste sectors. In most cases, then, remunicipalisation takes place in the context of a blatant imbalance of power in knowledge and resources between a local public authority and a global corporation. It is all the more significant that we have witnessed so many remunicipalisations in spite of such unfavourable conditions.

Corporate representatives tend to deny this imbalance and portray themselves as subjected to the rules and conditions imposed on them by politicians and public officials. Formally, from a purely legal perspective, the relationships between public authorities and corporations are on an equal footing: in theory, cities can freely negotiate the terms of their contractual arrangements with private operators, and they are equally free to end these contractual arrangements if they prove unsatisfactory. Reality is often very remote from this 'theoretical' model. Corporations have far more resources than local authorities, and far more allies; there are many ways in which they can make their interests prevail and limit the political options of elected political representatives.

This article is an overview of some ways in which corporations respond to remunicipalisation, before and after it takes place. Its aim is to illustrate the different levers of power and influence that corporations are able to use to prevent or hinder remunicipalisation. Also it aims to provide some strategic learnings for city officials and civil society groups confronted with the uphill battle for remunicipalisation. It relies heavily on the experience of the French water sector, where there has been an intense (and partly successful) political battle to break the stranglehold imposed by private corporations over the last 20 years.

'First, they ignore you...'

A few years ago, an international publication by the private water sector referred indirectly to remunicipalisation as *'the R word'*.¹ It was probably a sign that the first, standard response of corporations to the threat of remunicipalisation – trying to pretend it does not exist – was starting to unravel. They were not ready to acknowledge that return to public management of water was a viable, potentially attractive alternative to the domination of corporate giants, yet they could not ignore it anymore either.

At first in France, corporations tried to do as if water remunicipalisation was not happening. Then, they tried to depict the early examples of remunicipalisation as marginal initiatives, motivated by purely ideological reasons. Both arguments, of course, have been disproved. First off, remunicipalisation is real: we have counted at least 110 cases in the water and sanitation sector in France since 2000. What is more, it has been demonstrated that such a move also made sense from a technical and economic point of view.² Even conservative mayors, who could not be accused of ideological bias, have done it.³ Still today, the default response of private sector representatives to remunicipalisation will be to dismiss it.

It remains true, however, that remunicipalisation is unlikely to ever make headlines in the national media. First, it is essentially a local development, whereas most media attention is focused on national or international issues. Often, the very politicians who push remunicipalisation in their city do not wish to make it a politicised or public issue, for fear of appearing partisan or attracting attention to what they are doing. What is more, these developments contradict some commonly held beliefs about the public sector and the unavoidability of corporate dominance that are deeply ingrained in mainstream media. This is why the work of publicising remunicipalisation is so important.

Hostile environment

Corporations have more financial and technical resources, they have more experience in a variety of contexts, and they are used to dealing with many local authorities. City councils have none of those things, and when a public service has been privatised for a very long time (or forever: think of Nice or Barcelona which have never had publicly managed water services), their expertise in the water sector needs to be rebuilt from scratch. In the case of the Paris water remunicipalisation, the city decided to take the time necessary, years before the end of the private contract, to regain this expertise.

Given the profound imbalance of power between scattered local authorities (often small) and corporations, the former obviously need assistance. National public administrations, sectoral bodies, academics and consultancy firms should all be there to help local authorities deal with corporate providers and make the best decision possible according to their policy objectives, by providing adequate advice and expertise. In reality, the opposite often happens.

In France, Veolia, Suez and the private industry have managed to influence or exert control on the whole water sector, including national-level officials, so that the 'advice' received by local authorities is skewed in their favour. This is true of both the technical advice specific to the water sector, and of the legal advice about what local authorities can or cannot do in terms of EU law, for instance. Many of the specialised consultancy firms hired by local authorities to advise them on their options for water services are biased, often because they have a historical connection with private corporations or have an indirect economic interest in the matter (and sometimes, to be fair, they are reluctant to support remunicipalisation because of their experience with poorly run public services). Sectoral bodies and trade associations are funded by private companies and staffed by seconded personnel from Suez and Veolia. Public administrations often take a narrow view of the issues at hand and are biased in favour of the private sector for two reasons: fiscal austerity (private management makes it look as if government is spending less) and supporting national 'champions' such as Suez and Veolia to continue to be global leaders in the water market.

The only force that could counter-balance an environment so hostile to remunicipalisation is collaboration among public services. This can be done through public-public partnerships⁴ or through the creation of networks such as France Eau Publique or Aqua Publica Europea at the European level, which allows for mutual support and operational synergies (at the national level) such as joint procurement, sharing of technical developments, etc.

Buying hearts and minds

In the battle for remunicipalisation, winning the 'hearts and minds' of the different stakeholders and of the general public is crucial. Elected politicians, public administration staff, water sector workers, civic organisations, consultants, and of course citizens: there are many players who can push for or against remunicipalisation. Private companies have long understood how important it is to cultivate good relationships with decision-makers and all those who could influence their business. And they have the financial capacity to dedicate significant resources to this. In France, Veolia organises every year a lavish

dinner for French mayors during their official annual conference. But this is only the tip of the iceberg in terms of the lobbying targeted at local officials. For years, both Veolia and Suez were involved in the financing of French political parties, through commissions on water contracts.⁵ This kind of blatant abuse has become very rare, but as an illustration, until recently Veolia was still a sponsor of the annual festival of the Communist newspaper *L'Humanité*, and bought expensive ads on its pages. The reason is simple: Communist mayors from the suburbs of Paris had (and still have) deciding votes when it came to awarding the contracts to water service provider SEDIF and SIAAP in the sanitation sector, both strategic for Veolia.

Even when political leaders opt for remunicipalisation, private companies can turn to other stakeholders to mount opposition. It can be the opposition groups in the city council; or sometimes private companies turn to national governments that actively seek to thwart remunicipalisation efforts by local authorities, as seen in Spain when the national government joined a lawsuit initiated by the private sector against the city of Valladolid. Or sometimes they have made allies with the workers from the water service providers and their unions, particularly in the water and energy sectors where wages and conditions were historically better in the private companies. This strategy was compounded by the fact that proponents of remunicipalisation were sometimes undiplomatic in their public discourse against private companies, omitting to differentiate between workers who were just doing their job and company executives and shareholders who focused on profit-making. In France, initially, some union leaders actively campaigned against water remunicipalisation. This is no longer the case as workers and unions have come to see that their fears about remunicipalisation were not justified and as conditions within the private water companies have worsened.

In Barcelona, where the city council is seeking to take back its water service from the hands of the private sector and is trying to organise a citizen referendum to this effect, the water company Agbar (now a subsidiary of Suez) has pushed this strategy very far. It has improved the conditions for its workers to turn them against remunicipalisation, it has lavished civil society organisations in Barcelona with generous subsidies and sponsorships, and it has launched large-scale advertisement campaigns in the media... all on top of its traditional funding of local political parties.

Legal straitjackets

So, corporations have more resources and deeper pockets than local authorities, but at least, the average reader would be justified to think, 'there is the law', and the law is the law. The relations between public authorities and private operators are governed by legal and contractual rules that should correct this profound imbalance of power. In theory, cities have the right to defend their interests and end their contractual relations with private companies if they have good reasons to do so. In practice, however, things are not so simple. There are many layers of legislation, national and international, and unfortunately some legal provisions and mechanisms serve the interests of corporations. Even when a contract expires and a local authority exerts its seemingly very normal right not to renew it and take the service back to public management, there are still legal avenues for corporations to challenge the decision or, at least, claim large sums of money in compensation.

The most famous – or rather infamous – of these legal mechanisms are investor-state dispute settlements (ISDS). In a nutshell, these take place in private, opaque commercial tribunals which companies can resort to when they consider that their investments and their profits have been unfairly diminished by governments, in order to ask for a hefty compensation. The key problem with this system is that the definition of 'unfair' is decided by a panel of private arbitrators, on the basis of vague commercial law principles rather than on the substance of the cases. As a result, most ISDS cases are resolved in favour of corporations, which is why it caused such a public outcry when it was proposed they be included in the Transatlantic Trade and Investment Partnership (TTIP). Some ISDS

cases have been initiated against laws passed to protect water sources from fracking or mining, against new taxes or against raising the minimal wage. There have been several high-profile cases targeting remunicipalisation or renationalisation of public services, particularly in Argentina.⁶ Every time a large-scale remunicipalisation is being considered by a local authority, you can be sure the threat of an ISDS complaint is aired, explicitly or implicitly.

In a sense, however, ISDS is just the tip of the iceberg. Many national or EU laws can also be used against remunicipalisation. Some countries such as Spain have even passed laws that actually ban local authorities from creating new local public companies. In the end, a simple fact remains: cities can decide to privatise their water service any time, but once they have signed a contract with a private company they cannot get out of it when they want, and they remain bound by its terms. In addition, any dispute on the implementation of the contract will be judged by a commercial court, under commercial law, in which corporate lawyers are obviously very versed – local officials much less so. And any mistake in the remunicipalisation process or in the terms of the contract can be paid very dearly, in the form of financial compensation.

This legal straitjacket on remunicipalisation is not so much about the actual trials and court cases – which remain very few – as it is about the constant threat of legal action. This is something that local politicians usually want to avoid at all costs, and it is often sufficient to hinder remunicipalisation or convince them to pay significant compensation to private providers. Experience shows, however, that when city councils choose to go to court and challenge the compensation claimed by corporations, they often succeed in getting these compensation costs cancelled or at least reduced. This is why, in the fight for remunicipalisation, legal expertise is perhaps just as important as technical expertise.

Political control versus technical control

Another key learning from French experiences with water remunicipalisation is that taking back control of the services involves much more than just deciding not to renew a contract. You might be in charge in principle, but many key aspects of the service were put in place by private operators. And many times, even when all the material pipes and the plants have been returned to public management, the private companies still own (or claim to own) all the immaterial aspects of the service, such as data on equipment and customers, information systems, patented technologies used in water plants, possibly water meters, and the like. They can decide either to make remunicipalisation more difficult by retaining some of these assets, or by charging local authorities for their continued use by the remunicipalised operator. This obviously maintains remunicipalised operators in a position of fragility, at least until they can build their own tools and take back control of the immaterial aspects of the service as well.

Price wars

Price is often a key reason for politicians and citizens to want to do away with private management of public services. Behind many stories of remunicipalisation, there is a background of unjustified price hikes and the siphoning of cash from the public service for private benefits. This is the key problem with public services being run for profit. Take away the unnecessary financial transfers to a parent company and its shareholders, and you can lower the price almost instantly. This is just what the city of Paris did when it remunicipalised its water service: the price of water was cut by 8% on account of the many million euros that were being 'saved' because there was no private shareholder involved any more. More recently, in Montpellier, the price of water dropped by 10% upon its return to public management, while maintaining the same level of investments. This publication includes many other examples where a return to public management has resulted in significant savings while maintaining or improving the quality of the service and the conditions for workers.

At the same time, price can also be a factor that corporations can use as leverage in their fight against remunicipalisation. In France, Veolia and Suez have responded to the threat of water remunicipalisation by offering dramatic cuts in the price of water when negotiating new contracts with local authorities. Since 2000, many large French cities (Paris, Grenoble, Nice, Montpellier, Rennes) have opted to remunicipalise water. Other large cities (Lyon, Marseille, Bordeaux, Toulouse) that have decided to renew their contracts with Suez or Veolia justify their decision by these substantial price cuts. Local authorities and private companies have reported about a 25% price cut in Toulouse or Lyon, and a 20% reduction in Marseille, although consumer organisations have disputed the figures. On the one hand, this can be seen as a positive development, as it is a corrective to some of the most blatant abuses of the past. On the other hand, lowering the price of water in such proportions while still trying to make a profit obliges private companies to cut on maintenance, investments and workers' conditions. It results in a 'low cost' public service, which will prove unsustainable in the long term for local authorities, and very probably for the corporations themselves. Responsible public operators cannot and should not engage in a 'dumping' strategy to keep prices low at all cost. This is a reminder that although price is important and often decisive, it is not sufficient. Democratic control and the long-term sustainability of the service are equally important.

Co-opting remunicipalisation

First, they ignore you, then they laugh at you, then they fight you... and then they try and pretend you are on the same side. A sign of the success of remunicipalisation is seeing private companies using the same language as their opponents. Some private providers, such as Veolia for the hotly contested SEDIF (Paris suburbs) contract, have revamped their entire communication strategy and now advertise themselves as a 'public service' just like their public rival Eau de Paris (city of Paris). Others now seek to imitate the governance innovations of remunicipalised operators, such as creating seats for civil society or citizen representatives on the Board of the operators. Needless to say, these initiatives are usually much more superficial, and never reach the degree of accountability that has been introduced in Paris with the 'Water Observatory' for instance.⁷ Their aim is to suggest that the political debates of the past and the opposition between public and private management are no longer relevant. It might be perceived as a sign that remunicipalisation has won the 'battle of ideas'. While this might be true on a very general level, in practice there are still many highly problematic contracts in place, and the water sector in France remains under the domination of large corporations. More than ever, these corporations are seeking new, indirect forms of privatisation (such as the building and running of water plants) that keep them more sheltered from the public gaze, or new contractual formulas that have the appearance of public management while keeping the private company in the driving seat.⁸

Conclusion

All in all, local politicians and citizen groups pushing for remunicipalisation and undertaking to rebuild a public water service still face an uphill battle in France. The achievements of the last 20 years are all the more remarkable. In spite of the creation of networks such as France Eau Publique, the public service side remains scattered and focused on local issues in comparison to large companies such as Suez and Veolia. Many of the issues and problems that have triggered the recent wave of remunicipalisation are still present in cities such as Marseille or Lyon. The fight needs to continue in those places, as efforts continue to be needed to reinvent democratic, sustainable and inclusive public services able to face issues such as pollution and the impacts of climate change. There is no point of equilibrium in a context where the legal and political framework is still veered towards the private sector and private companies such as Suez and Veolia are still seeking to extract unjustified profits from delivering public services. If the remunicipalisation movement in France does not continue to push ahead, it might soon start losing ground.

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Endnotes

- 1 See <https://www.globalwaterintel.com/global-water-intelligence-magazine/16/4/opinion/exorcising-the-r-word>
- 2 See Benjamin Gestin's essay on Eau de Paris in this collection.
- 3 See Olivier Petitjean, 'Nice: building a public water company after 150 years of private management', in *Our Public Water Future*, 2015, <https://www.tni.org/en/publication/our-public-water-future>.
- 4 See Milo Fiosconaro's essay in this collection.
- 5 Roger Lenglet and Jean-Luc Touly, *L'eau des multinationales*, Fayard, 2006.
- 6 See Satoko Kishimoto, 'Trade agreements and investor protection: A global threat to public water', in *Our Public Water Future*, 2015.
- 7 See 'Taking stock of remunicipalisation in Paris. A conversation with Anne Le Strat', in *Our Public Water Future*, 2015.
- 8 An example in France is a SEMOP (Société d'économie mixte à opérateur unique), which is advertised as an entirely publicly controlled company that is just 'operated' by a private provider.

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