

Wag the Dog: Governing German Rail from a Principal-Agent Perspective

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Ever since German Rail, the largest state-owned enterprise in Germany, was converted into a stock company in 1994, the federal government has been criticized for a lack of policy ambitions. From a principal-agent perspective, the federal government gives the impression of being a reluctant principal. The first objective is therefore to explain the strategic interaction between the federal government and German Rail since the 1990s. The second aim is to increase the explanatory power of the principal-agent concept by adopting a strand of literature in which the principal's unilateralism and diverging preferences—standard assumptions in the principal-agent literature—are complemented by strategic cooperation, confluence, and inverted principal-agent interactions. This conceptual redirection, which considers the impact of a broader range of actors involved, not only explains key events in German rail policy but also highlights the advances of an elaborated principal-agent concept.

KEY WORDS: reluctant principal, state-owned enterprise, confluence, inverted principal-agent relations

摇尾狗：以委托代理视角看待德国铁路公司的治理

自从德国铁路公司（德国最大的国有企业）于 1994 年转变为股票公司后，联邦政府便一直被批判缺少政策雄心。从一种委托代理视角来看，联邦政府给人留下了不情愿委托人 (*reluctant principal*) 的印象。因此，本文的首要目标是解释自 1990 年以来联邦政府和德国铁路公司之间的战略相互影响。第二个目标则是通过采纳一系列文献来增加委托代理这一概念的解釋力。在这些文献中，委托人的单边主义和不同偏好（即委托代理文献中的标准假设）通过战略合作、汇合、以及委托代理互动的倒置而得以补充。这种通过考量更广范围内所涉及的行为者发挥的作用，从而产生的概念重定向，不仅阐述了德国铁路公司政策中的重要事件，同时强调了一种复杂的委托代理概念的发展。

关键词: 不情愿委托人, 国有企业, 汇合, 倒置的委托代理关系

Menear al perro: Gobernar a Ferrocarriles Alemanes desde una perspectiva de principal-agente

Desde que Ferrocarriles Alemanes, la mayor empresa estatal de Alemania, se convirtió en una sociedad anónima cotizada en la bolsa en 1994, el gobierno federal ha sido criticado por falta de ambiciones políticas. Desde la perspectiva del principal-agente, el gobierno federal da la impresión de ser un principal renuente. El primer objetivo es entonces explicar la interacción estratégica entre el

gobierno federal y Ferrocarriles Alemanes desde los años 1990. El segundo objetivo es aumentar el poder explicativo del concepto principal-agente adoptando una línea de literatura en la que el unilateralismo del principal y las preferencias divergentes— posiciones estándar en la literatura principal-agente— se complementan con cooperación estratégica, confluencia e interacciones principal-agente del capital invertido. Esta redirección conceptual, que considera el impacto de una gama más amplia de actores involucrados, no solo explica los eventos clave en la política de Ferrocarriles Alemanes, sino que también resalta los avances de un concepto principal-agente elaborado.

PALABRAS CLAVES: principal renuente, empresa estatal, confluencia, relaciones principal-agente invertidas

Why does the dog wag its tail?

Because the dog is smarter than the tail.

If the tail were smarter, it would wag the dog.¹

Introduction: Explaining the Reluctant Principal

Until the late 1980s, utilities such as telecommunications, energy, and rail had been thought of as a “natural monopoly.” The legitimacy of this model eroded under the impression of rising inefficiencies, the collapse of state-owned economies in Eastern Europe, and the single European market plan, all of which have contributed to a wave of deregulation and privatization reforms across Europe (Coen & Héritier, 2005). This political breakup, however, did not entirely eliminate trade-offs between political control and efficiency, multiple or conflicting goals (Rentsch & Finger, 2015). This paper suggests that a better understanding of deregulated or privatized public utilities is possible by employing a principal–agent (PA) perspective (see also Kankaanpää, Oulasvirta, & Wacker, 2014). While the PA concept has gained popularity for analyzing interactions in international relations, the European Union, or political-bureaucratic relations, it has also spawned criticism. The PA concept is often regarded as overly simplistic, biased against the agent (Döhler, 2018; Zardkoohi, Harrison, & Josefy, 2017), or based on assumptions too narrow to work in politics (Waterman, Rouse, & Wright, 2004, pp. 19–42). In fact, the case under observation, that is, German rail policy, poses a challenge for the canonical PA version.

Two actors take center stage in this policy domain: the federal government and Deutsche Bahn AG (DB); the latter is the single most important provider of transport services, with more than 300,000 employees and annual revenues of 40 billion EUR worldwide (Deutsche Bahn Group, 2016). At the same time, DB is one of the—if not the single—most criticized company in Germany. Almost every rail customer is able to recall a hair-raising story about DB on demand. Beyond the media coverage of operating deficiencies, such as a lack of punctuality and poor customer service, there is a constant flow of critical requests in parliament as well as reports by the Federal Accounting Office and the Monopolies Commission, a governmental advisory body, which focuses mostly on DB’s supposed under-achievements. Although DB has operated as a stock company since 1994, it remains fully state-owned. Hence, each critique of DB is at least indirectly

addressed to the owner too and should prompt immediate action. As seen from a PA perspective, however, the federal government does not act as a textbook principal who is supposed to enforce his preferences unilaterally (Waterman et al., 2004, p. 36). The first research question, therefore, aims at explaining the reluctance of the federal government as the single owner of DB, even at the price of being held accountable for DB's underperformance.

Such forbearance does not fit the canonical PA concept in which the principal occupies the 'driver's seat'. However, the assumption of the principal's unilateralism has been relaxed in recent years, and the transactional nature of PA interactions has been stressed instead (Carpenter & Krause, 2014, p. 13). This strand of the literature provides a springboard for specifying the conditions under which a reluctant principal is likely to emerge. Thus, a second research aim is to expand the explanatory range of the PA concept to cases in which the relationship between the principal and the agent is more ambiguous than top-down, which typically holds true for governing state-owned enterprises with multiple goals (Bruton, Peng, Ahlstrom, Stan, & Kehan, 2015; Rentsch & Finger, 2015) but can also be expected in other, more complicated PA configurations.

In pursuing its dual aim, this paper proceeds as follows: the next section outlines the institutional context of German rail policy in an effort to provide initial evidence for the reluctant principal claim. In a second step, the agency literature is screened for specifications of nonunilateral PA interactions. These conceptual modifications are applied in a third step, where three key events of German rail policy are analyzed. As DB is under close observation by policymakers, the media, and transport policy specialists, this empirical section can draw on a wealth of published material, with the remaining blank spaces filled out by a few background interviews. The final sections provide an explanation for the reluctant principal based on a modified PA framework.

The Institutional Framework of German Rail Policy

The transformation of the state-owned enterprise Federal Rail into a stock company was intended to solve several urgent problems. The financial situation of Federal Rail had worsened dramatically, the market share of rail transport had been in constant decline for decades, and the reunification process required the integration of the East German Reichsbahn, which was in an even worse condition (Lehmkuhl, 1996; Schwarz, 1999). With the rail sector representing a restructuring case of epic dimensions, the stage was set for a reform prepared by a government commission instated in 1989. The main recommendations, adopted into law in late 1993, led to a "once-in-a-century reform" (Schwarz, 1999, p. 409). The linchpin was the separation of rail operations from sovereign functions, such as infrastructure planning, safety oversight, and licensing, which were transferred to a new agency. Converting Federal Rail into a stock company was expected to reduce tax-financed subsidies and reclaim shares of the transport market once the company had been released from "government patronage" (Lehmkuhl & Herr, 1994, p. 648; Lodge, 2002, p. 147). Against the recommendations by the rail commission,

rail tracks were not separated from DB (Schwarz, 1999, p. 408). To secure a two-thirds parliamentary majority for the required constitutional amendment, the Bundesrat, which represents the state governments, was given approval for major rail-related legislation and an open-ended reform process (Ederer & Ilgmann, 2015, p. 248). After converting Federal Rail into a stock company, the second step was to turn DB into a holding company for separate corporations, which preceded the third step—a partial privatization—which would take place when DB's finances had consolidated. These concessions pacified the state governments but also empowered them from mere third-party stakeholders to assume a principal's role whenever a legislative agreement was required.

The 1994 reform transformed the relationship between the principal and the agent from a hierarchical into a discretionary one. First, DB was relieved of being subject to ministerial oversight, which may take a command-and-control form. Formally, DB is part of the federal government's asset management by the Ministry of Finance, which by no means has acted as a performance-driven shareholder activist (Bundesrechnungshof, 2016a). Although Federal Rail required approval for important decisions by the Ministry of Transport, including rail investment, debt financing, tariff setting, and hiring employees, the management board of DB was granted full operational autonomy (Legel, 2008). According to German stock law, members of the supervisory board, who appoint and monitor the management board, are considered independent (Lieder, 2010, p. 131). Influence is formally restricted to making appointments and giving directions during the annual shareholder meeting. This is certainly not an efficient barrier against political meddling since informal contacts can easily bypass the formal channels of influence. However, giving direct instructions would violate the common understanding of the management's directive power.

A second change in the previous governance regime resulted from the multiple-principal setting, which reflects German codetermination law. Hence, the supervisory board of DB must be composed of 20 members; half of the members must be employees who are usually represented by trade union officials. The other half, to be appointed by the federal government, regularly includes top civil servants from three federal ministries. Although the Ministry of Transport takes the lead ("Federführung"), the Ministry of Finance and the Ministry of Economics pursue different interests at times, especially if budgetary or competition issues are at stake. As the Ministry of Transport is responsible for competing transport carriers, such as road traffic, shipping, and air transport, it has to manage centrifugal forces itself (Dienel, 2007). This setting is augmented by the roles that the federal government has to perform simultaneously as the owner of DB, as a financier for rail traffic and track modernization, and as a regulator responsible for establishing competition. In 1994, neither the specifics of stock company law nor the multiple-principal/multiple-role setting was anticipated as a potential problem (Lodge, 2002, p. 147).

A third readjustment is competing rationalities created by the principal remaining in the realm of politics, while the agent—at least in legal terms—operates in the private sector. Potential conflicts between entrepreneurial and political

goals were superimposed by the rationale to unleash private sector dynamics and to free policymakers from the line of fire on sensitive issues, such as staff cutbacks and the thinning out of unprofitable rail routes. At the same time, public service obligations, which remain substantial, were understated. The federal government is required to secure “an appropriate range of rail transport services” (Art. 87e Section 4 Basic Law). Although legal scholars differ in their interpretation of this lofty formulation, public service obligations frequently play a role in rail policy debates.

With the end of the “rail reform euphoria” (Gies, 2006, p. 165) in the late 1990s, the leftovers of the original reform intentions surfaced more clearly. Both the unburdening of the federal budget and changing the modal split in favor of railways were only half realized. Federal subsidies remain substantial, and the market share of rail transport stagnates at approximately 17 percent (Schwilling & Bunge, 2014, p. 78), thus remaining far from the 25 percent that was targeted by the federal government’s sustainability strategy. Last but not least, opening the rail net for competition remains a policy goal; the as yet subpar of this approach are still a constant subject of criticism (Monopolkommission, 2015). To avoid misunderstandings, it is important to note that reluctance—although it may appear deficient or to end short of problem-solving—is not a normative statement but shorthand for the principal’s strategic responses to various tradeoffs, which are elaborated upon below.

Two makeshift indicators can substantiate the claim that the federal governments, apart from its partisan composition, act reluctantly. First, there are coalition agreements, which increasingly serve as tally lists for intended policymaking. By announcing a plan to “implement rail reform consequently” (Koalitionsvertrag, 1994, p. 18) and “to make rail reform a success” (Koalitionsvertrag, 1998, section 4), the 1994 and 1998 agreements remained overtly vague. Every single coalition agreement reinforced the “more traffic on the rail” gospel, which is a goal that—if measured as a percentage of the intermodal split—has never been reached. Nondiscriminatory access to the rail net has been announced repeatedly since 2002 but has been the result of EU pressure more than a generic policy goal. In 2005, an initial public offering (IPO) was indeed mentioned for the first time, but it was clouded in numerous conditions (Koalitionsvertrag, 2005, p. 58). The 2009 coalition agreement simply confirmed previous rail policies, which mainly resulted from the failed IPO in 2008 (Koalitionsvertrag, 2009, p. 37). However, at this time, strengthening competition and incentivizing DB to spend more money on railway maintenance became tangible goals. Nevertheless, it was not before 2013 that a “goal-oriented business policy” (Koalitionsvertrag, 2013, p. 42) signaled more ambitious guidance by the principal.

A second indicator of reluctance is the use of corporate control, which has been upgraded significantly since the late 1990s (Lieder, 2010, p. 126). The supervisory board is now entitled to ask management for information beyond the regular reporting duties. The supervisory board can establish special committees to monitor management more closely and is even empowered to require consent for important decisions (Lieder, 2010, p. 128). These new competencies have diffused

slowly, if at all, into the interaction between the federal government and DB. By 2016, the supervisory board had established three permanent committees (executive, audit and compliance, and personnel) on a voluntary basis and a mediation committee as required by law (Deutsche Bahn Group, 2016, p. 51). This setup seems to be the minimum for a company of the size and complexity of DB. In 2017, the supervisory boards of the Deutsche Telekom were equipped with eight permanent committees, Deutsche Bank with seven, and Deutsche Post with six. Even if the federal government might appear to be a “super blockholder”, often regarded as an additional resource for monitoring management (Gnan, Hinna, Monteduro, & Scarozza, 2011, p. 723), the supervisory board appears aloof. Despite the three government members are prepared by ministerial bureaucrats with multiple sources of information, the primary goal is to avoid disagreement during board meetings rather than to ask critical questions. The remaining members take information exclusively provided by DB at face value (Interviews 2016), which indicates that reluctance is a strategic option and not a constraint that chains the principal without any alternative.

The dyadic PA relationship remains at the core of German rail policy. However, two additional points stand out. First, the multiple-principal setting, which is amplified by the multiple roles attached to different ministries and makes it difficult, although not impossible, to generate a clear-cut rail policy. Second, while multiple principals are a well-known feature in PA reasoning (Waterman et al., 2004, p. 93), third-party stakeholders, which in our case include the state governments, consumer groups, labor unions, and DB competitors, often remain out of the purview. While shareholders, acting as principal vis-à-vis management, are involved in an explicit contractual relationship, stakeholders operate on an implicit relationship (Hill & Jones, 1992) but yet can exercise considerable pressure on the principal as well as the agent. This is typical for politics in which stakeholders are exposed to the externalities of a given PA relationship and thus have legitimate claims to exercise influence. The subsequent search for conceptual modifications can therefore be concentrated on (1) strategy formulation under the condition of goal ambiguities and (2) PA interaction under impending interferences by third-party stakeholders.

The Theoretical Perspective: Bilateralism in Principal–Agent Relations

The standard PA assumption is that the principal is able to specify contractual duties in detail. The bulk of agency costs then result from monitoring the agent's activities. Complete contracting and efficient monitoring, however, require simple objectives, which enable the principal to figure out his preferences. This condition does not prevail in politics, where objectives are often complex and subject to diverging preferences, thereby rendering them difficult to detail from the outset. The discretion for the agent resulting from incomplete contracting, which potentially triggers opportunistic behavior, is counterbalanced by incentives in the standard PA model (Carpenter & Krause, 2014, p. 15). A different solution is offered by the idea of specification costs, arising from the difficulty to “identify acts of the

agent that would satisfy the principal's preferences" (Mitnick, 1980, p. 150). Learning from repeated PA interaction, possibly even creating "shared heuristics" (Mitnick, 2012, p. 30), is proposed as a more efficient alternative to expensive monitoring. Similarly, Hendry contradicts the complete contracting assumption by looking at specification costs as the problem of formulating specified contracts for complex and multifaceted goals (Hendry, 2002, p. 99). In addition to the principal's inability to detail tasks, the "honest incompetence" (Hendry, 2002) of the agent who lacks knowledge and guidance on how to satisfy the principal is stressed. In politics, specification costs typically appear as consensus-building costs, as was the case with the underspecified 1994 rail reform. This example suggests that specification costs rise in multiple-principal/third-party stakeholder settings.

The standard PA concept assumes a "natural conflict" (Kiewiet & McCubbins, 1991, p. 24; Miller, 2005, p. 205) between two actors, each following their own goals. Nonetheless, Mitnick already included a "fiduciary norm" (Mitnick, 1980, p. 92, 150) in the agent's motivational repertoire. This early anticipation of what would become the stewardship theory, in which the conflict of interest and thus of agency costs can be reduced to zero (Caers et al., 2006), is being increasingly pursued in PA research. The same is true for reciprocity and even trust-based PA interaction, which have been addressed from different perspectives (Cuevas-Rodríguez, Gomez-Mejia, & Wiseman, 2012; Fehr, Gächter, & Kirchsteiger, 1997; Miller & Whitford, 2016, pp. 120–40). Trust could replace a contractual relationship if the agent has garnered a reputation of being reliable. Although trust "appears to be the antithesis of strategic calculation" (Ensminger, 2001, p. 199), this objection is rebutted if trust is regarded as a rational calculation of risk. This is the case, for instance, when reduced monitoring or information provided by the agent is examined in light of previous experience or reputation signals. Cooperative behavior may finally lead to a better payoff for both sides. However, if third-party stakeholders enter the scene, interaction is likely to reach beyond a dyadic PA relation. One possible effect has recently been coined "confluence," denoting a strategy with heavy externalities that "arise when agent and principals together find the right circumstance to behave opportunistically against third-party interests" (Zardkoohi et al., 2017, p. 414). The examples provided by Zardkoohi et al. include fraudulent reporting and risk-taking in which management and shareholders collude against investors, customers, or regulators, underline the prevalence of this type of PA interaction.

A growing strand in the literature refers to the power of the agent, which contradicts the "ultimatum bargaining" (Miller, 2005, p. 206) authority that the principal commands in the canonical concept. Moe (2005) uses the example of teacher unions and their ability to influence the electoral process by which their principals assume office. This, in turn, enables the agent to manipulate the principal's agenda or even its preferences. In a similar vein, Europeanists have unveiled how the European Commission is able to weaken the veto power of the member states during international negotiations by driving up the costs of rejecting pre-negotiated proposals (Delreux & Kerremans, 2010, p. 363). Government agencies that

are able either to exploit a multiple-principal context or to press the principal for action by employing superior expertise (Daniels, 2014) provide another example of bottom-up interaction. Departing from the principal's unilateralism refers not only to the agent's proactivity but also to a reversal of roles that is usually attributed to both sides.

The "wag the dog" idiom refers to the most extreme deviation from the canonical PA concept. In that case, the principal deliberately cedes authority to the agent. One example is renewable energy policy in the EU, which has become an "inverted" PA relationship (Ancygier, 2011). EU member states often struggle with domestic veto actors and therefore accept the European Commission's discretion ("agency slack") to enforce controversial policies. Even though inversion may cause bureaucratic drift, it can also help the principal to bypass opposing forces or to overcome preference heterogeneity among multiple principals (Copelovitch, 2010).

To clarify the status of these modifications relative to the PA concept, Figure 1 displays a sequence of actions. This sequence serves only analytical purposes that in reality will appear as a unified operation. Both third-party stakeholders and multiple principals, in our case three federal ministries and—at least temporarily—the state governments and parliament, belong to the starting condition of a PA relationship. Third-party stakeholders include consumer groups, DB competitors, the European Commission, and others with legitimate claims in rail policy. The principal's inability to specify delegated functions as well as difficulties in building consensus among multiple principals, that is, specification costs, are likely to be most effective during strategy formulation and interaction. Cooperation, confluence, and inversion, in turn, represent different coping strategies in response to—or as a result of—the starting conditions.

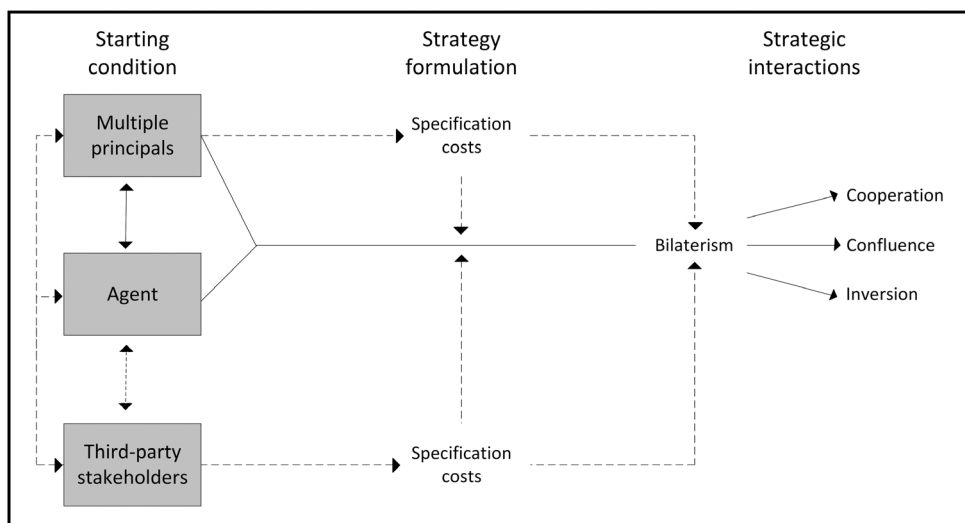


Figure 1. Elaborations on the Principal-Agent Relationship.

Governing German Rail

The following section addresses three rail policy issues in which the principal, due to high costs, could be expected to act unilaterally: the cancelled IPO, the funding of rail infrastructure, and the continuing efforts to strengthen competition in the rail net. The analysis, first, aims at reconstructing the preferences of involved actors, which cannot be expected to remain static across policy issues (Bornemann, 2016; Döhler, 2015). Second, whenever a lack of unilateral action is observed, which presumably take the shape of cooperation, confluence, and inversion as coping strategies, the policy context is checked for changing conditions.

The Privatization Controversy

After the election of the Social Democratic-Green Coalition in 1998, the long-announced IPO gained traction. In 1999, the second step of the rail reform was completed by converting DB divisions into separate stock companies, with DB acting as a holding company (see Figure 2). The legal unbundling served as a precondition for an IPO of minority shares, and its precise terms had to be negotiated as a separate piece of legislation (Lehmkuhl, 1996, p. 86). This provided the state governments with a veto point and set the stage for a lengthy and often confusing debate about the pros and cons of a stock market launch during which high specification costs prompted an inverted PA interaction.

In 2000, for the first time, the federal government expressed disappointment about the achievements of the rail reform, which was not only caused by the “horrific figures” (Gies, 2006, p. 164) of DB’s business operations in the same year and the stagnating rail share of the transport market but was also a response to growing EU pressure to open railways to competition (Dyrhaug, 2013). The Minister of Transport appointed a ministerial task force on the “future of railways” (Gies, 2006, p. 167) in 2001 in which ownership unbundling became a major issue. The idea of separating transport services from infrastructure (rail net and stations) had been on the agenda since the 1994 reform but had been fiercely opposed by DB (Ilgmann, 2007, p. 14; Politico 2012). For the federal government, it would have been quite beneficial to streamline the complex structure of DB, which had almost 700 subsidiaries worldwide (Bundestag 2014, p. 40). At the time, the Ministry of Transport was divided on the issue. Although the general policy division favored separation as a means of preventing DB from discriminating against competitors, the rail policy division followed its protective role for DB and favored an integrated rail company. Then, DB’s CEO managed to become a task-force member and outmaneuvered the proseparation Minister of Transport (Peter, 2008, p. 30). Instead of a complete separation, the task force agreed to make the infrastructure subsidiary “independent” from transport services, a vague term that led to a confusing variety of institutional solutions proposed in the ensuing debate. Probably as a result of disagreements with DB management, the Minister of Transport was not reappointed for the second term of the red-green coalition, which began in 2002 (Gies, 2006, p. 181) and coincided with an inverted PA relationship.

Beginning in 2002, DB management started a largely debt-financed but nevertheless politically “unchecked worldwide shopping trip” (Ilgmann, 2007, p. 15), which included the 2.5 billion EUR acquisition of Stinnes-Schenker (a logistics company) and the 2 billion EUR acquisition of British rail company Arriva (Bundestag 2014, p. 44). The clear goal was to become an international mobility company able to cover the entire value chain of transport (Engartner, 2010, pp. 77–78). As the national champion strategy had been in high gear in Germany since the 1990s, with former monopolists Deutsche Telekom and Deutsche Post serving as templates, it is safe to assume a tacit acceptance by the federal government. The national champion strategy not only raised DB’s appetite for an IPO but also temporarily deactivated one of the multiple roles of the federal government. Although DB speculated that recruiting private investors would increase entrepreneurial freedom, the federal government was willing to sacrifice parts of its public service obligations in exchange for the prospect of a short-term cash injection and an obviously unrealistic forecast of reduced railway subsidies.

Two issues drove up specification costs during the IPO run-up: (1) which parts of DB should be privatized, with the rail net being the most controversial target and (2) the precise terms of the IPO, including the percentage of flotation and different legal constructions for transferring ownership. In 2006, when the crucial question of an IPO with or without net was still open, the federal government commissioned a consulting paper that spelled out various IPO scenarios with rare clarity. The report predicted a loss of political influence over DB because private investors would use the federal government’s self-created straightjacket of making the IPO a “success story” (PRIMON 2006, p. 283) as a lever. Furthermore, the report assumed that DB would divert funds away from infrastructure investment toward dividends and that the funding gap would be passed on to the federal government or financed by charging higher prices for regional rail contracts (PRIMON 2006, p. 283). Finally, the “illusion of fresh money” (PRIMON 2006, p. 300) was questioned because it had been predicted that the sales revenue would be paid back to investors as DB shares could serve as a dead pledge to squeeze out more tax-financed subsidies. Despite the well-known problems that activist shareholders are able to unleash—even from a minority position—and the doubts raised by the PRIMON report among MPs and state representatives, the federal government, pressured by DB management (Esser & Randerath, 2010, pp. 256–257) and the appetite for short-term revenues by the Minister of Finance (Manager-Magazin, 2007), stayed on course. Delegating corporate strategy to the agent in preparation of the IPO served as a coping strategy to reduce specification costs by dodging politics. DB’s single-handed launch of a sub-holding for three transport subsidiaries, ready for a minority share sell-off (Knierim & Wolf, 2014, pp. 132–133), clearly indicate the hat swap between principal and agent. The federal government hoped that this would minimize veto effects, while DB was enabled to target an IPO à la carte.

The PRIMON report, however, persuaded both coalition parties in parliament to oppose a separation of the rail net from rail operations (Ehlers, 2007). A subsequent federal government bill, which proposed the flotation of up to 49.9 percent

of DB shares (excluding the infrastructure companies), was equally rejected, triggering the search for solutions fit for a bicameral majority. To counter the fear that private investors would exploit DB against political provisions, Social Democrats proposed a “people’s share” (Volksaktie) without voting rights. This unrealized rescue attempt exemplifies the trade-off between consensus building among multiple principals and the (decreased) attractiveness of DB shares to private investors. Other IPO proposals also faced the specification-cost problem as they came under fire immediately from disadvantaged third-party stakeholders and pre-existing doubts in parliament, in the media, and among consumer groups. Despite this unfavorable prologue, the Grand Coalition between CDU and SPD decided on a flotation of 24.9 percent of DB Mobility Logistics (see Figure 2) in May 2008.

Although the privatization bill considered previously raised objections, the IPO was cancelled in October 2008 when the global financial crisis rendered IPOs generally unpromising. This abrupt end is less telling of the PA relationship than of the preceding strategic behavior of the federal government and DB. Until the early 2010s, supervisory board members had restricted themselves to not getting caught up in the details when controlling DB’s management (Interview, former board member, November 2016). Likewise, the majority of nonpartisan observers, such as the scientific advisory board of the Ministry of Transport (Wissenschaftlicher Beirat beim Bundesminister für Verkehr, Bau und Stadtentwicklung, 2012, p. 146), the Federal Accounting Office, and rail policy experts (Böttger, 2013, Ilgmann, 2007; PRIMON 2006, p. 282), noticed a lack of strategic guidance for DB. This reluctance did not occur accidentally; rather, it served the interest of the federal government to support the stock market launch. Through the lens of a

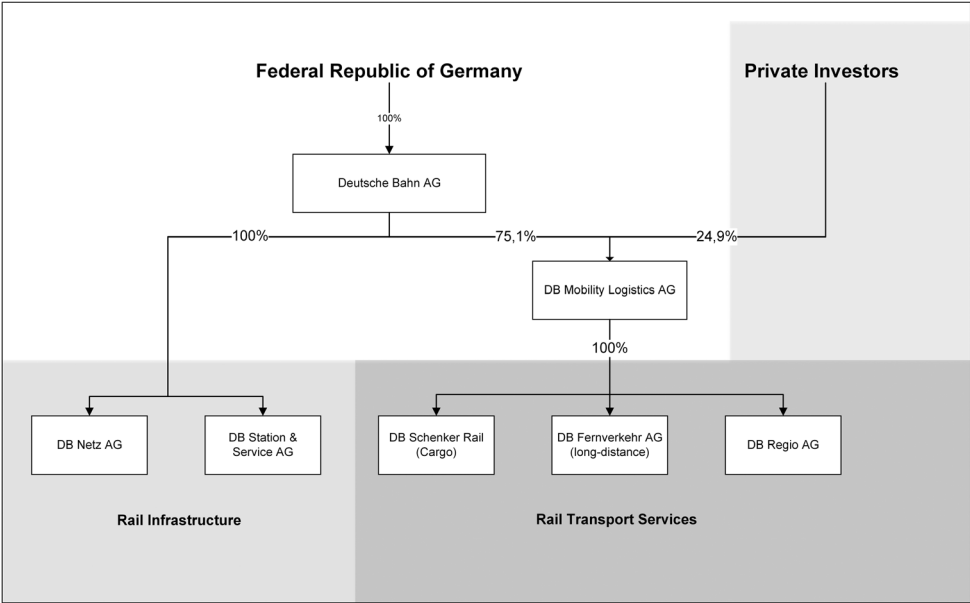


Figure 2. Organization of DB in the 2008 Privatization Plan.

principal that repeatedly has to take the blame for its agent, institutionalizing an inverted PA relationship by selling shares, and thereby hoping to sell responsibility, appears to be a rational coping strategy.

Dealing with Infrastructure Investments

To achieve capital market viability (“Kapitalmarktfähigkeit”) as a precondition for the IPO, DB engaged a “dressing up the bride” (Holzhey, 2006, p. 8) strategy to impress potential investors. Brightening the balance sheet by cutting or postponing the maintenance and repair of rail tracks and rolling stocks was part of preparing DB for the IPO. The collateral damage of this cutback policy increasingly disturbed DB’s operational reliability (Bundesrechnungshof 2006, Holzhey, 2006; Rotter, Hoffmann, Pechan & Stecker, 2016) and eventually gave rise to the confluence type of interaction. In addition to technical deficiencies, for example, connection failures, delays, air conditioning malfunctions during hot summers, and even derailling, nonessential issues, such as clogged toilets, closed “Bordbistros,” and a lack of free on-board internet, which was not introduced until 2016, dominated headlines and reinforced the impression of a shipwrecked company (Wirtschaftswoche, 2012). Thus, the Liberal–Christian Democratic Coalition was compelled to boost its rail policy ambition.

The designers of the 1994 reform expected that DB would have a pronounced self-interest in maintaining the rail net (Böttger, 2013, p. 221). However, the national champion strategy generated strong incentives to divert funds into global business activities, which today account for more than 50 percent of DB’s annual revenues (Böttger, 2016, p. 44). According to the 1994 reform, the federal government is responsible for financing construction, modernization, and the replacement of worn-out rail tracks, whereas maintenance remains the sole responsibility of DB. By providing all the key figures itself, DB was nevertheless able to funnel federal funds into maintenance by leaving rail tracks to deteriorate and redefining maintenance as replacement (“Ersatzinvestitionen”). Although this perverse incentive has been well-known since the early 2000s (Bundesrechnungshof, 2007, p. 6) and the federal government has been criticized more than once for its sloppy control of DB’s use of earmarked money (Bundesrechnungshof 2006), this subject became a concern mainly as an objection to the IPO. To counter fears of underinvestment, a goal and funding agreement (“Leistungs- und Finanzierungsvereinbarung”—LuFV) were written into one of the failed IPO bills (Mitsch & Beckers, 2008, p. 96), which survived the ensuing legislative flip flopping and actually came into effect in 2009.

The LuFV, which grants DB 2.5 billion EUR annually in exchange for achieving predefined quality goals, can be regarded as a belated upgrade of DB’s commitment to rail maintenance. Previously, efforts on that score were driven by Parliament, for example, by requiring DB to publish an annual report on the condition of the rail net. The Ministry of Transport, by contrast, largely acted as a bystander seemingly unconcerned by the lack of reliable data (Peter, 2008, p. 39; Quandt, 2011). This information asymmetry did not vanish during the first term

of the LuFV since DB's monopoly to provide data on the condition and age of rail facilities continued. After a lengthy delay, a new agreement was signed in 2015. On the surface, the "LuFV II" appears to be a compromise between DB and the federal government. Although federal government upgraded its capacity to monitor the conditions of the rail net independently, DB agreed to invest a fixed sum in maintenance while retaining discretion over investment targets. In addition, the annual subsidy for rail replacement and modernization rose to 3.5 billion EUR on average. Although competitors and rail experts criticized the controls and sanctions as being too weak (Bundesrechnungshof 2016b, p. 33, MoFair 2016, p. 100), the federal government and DB received positive media reactions to shoveling more money into the rail net. The delay it took to reach this agreement, however, hints at the follow-up costs the principal has to face when engaging in inversion and confluence.

Goal conflicts and information asymmetry are "the two spark plugs that power the principal-agent theory" (Waterman et al., 2004, p. 22). Usually, however, no threshold value is given until the principal is activated to reduce information asymmetry. Given the cost of monitoring, principals can tolerate or ignore information asymmetry as long as the performance of the agent remains satisfying. If, however, the agent is able to manipulate the performance indicators, the principal faces an uncertain or even risky position. Explaining a reluctant principal under such conditions requires treating information asymmetries not only as a problem but also as a strategic option. Despite LuFV II, DB retains control over essential data, such as the age and condition of rail facilities. Compared to stock companies with floating shares in which armies of analysts, the financial press, and investors closely scrutinize each audit report, management statement, and relevant decision DB's accounting and financial reporting remain opaque. This situation is due, *inter alia*, to profit transfer agreements that hamper external observers from tracking the cash flow inside the complicated group structure (Böttger, 2013, p. 222). An activist principal would increase efforts to reduce information asymmetries. In cases such as DB, however, in which bad news easily triggers joint liability or demands by opposition parties, the state governments, and consumer groups to increase public spending, a "constrained observability" (Miller & Whitford, 2016, p. 124) of the agent's performance may in fact better serve the principal's interests. Claiming company secrets to prohibit the Federal Accounting Office as well as regulatory agencies from scrutinizing DB's internal calculations (Bundesrechnungshof 2016b, p. 30, 61) corroborate this strategy belonging to the confluence category of PA interaction.

To be sure, artificial information asymmetries cannot be used indefinitely since underperforming agents will eventually be detected or, worse, will be experienced by third-party stakeholders. This happened during the "winter-related railway chaos" (Der Spiegel, 2011) of 2010/11. Interrupted connections, delayed trains, frozen tracks, etc., further hurt DB's reputation and once again exposed the Minister of Transport to the joint liability trap. As the tediousness of rail investment effects and politicians' need for quick results drifted apart, the federal government tightened its controls of DB (Welt, 2016). Political demands to sell foreign

assets and to focus on the national core business have been on the rise ever since (Böttger, 2016, p. 48), which essentially challenges DB's national champion strategy. However, as the following section reveals, the mutual interdependency prevents the principal from tightening the screws on all types of rail policy issues.

Regulating for Competition

Due to the slow progress of competition on the rail net, stakeholder pressure from the EU and the growing camp of mostly small DB rivals eventually pushed back the confluence between the federal government and DB. Deregulating state monopolies since the 1990s was mitigated by institutional and policy-based legacies. Regulation, especially in its regulation-for-competition incarnation, was unknown in Germany. Instead, the dominating policy idea was oversight ("Aufsicht"), which is a government function aimed at controlling market behavior rather than at creating markets (Döhler, 2011, p. 523). It is therefore unsurprising that the pro-competition elements in the 1994 rail reform, which responded to a European directive (Lehmkuhl, 1996, p. 75; Lodge, 2002, p. 156), remained embryonic. Even though the rail net was formally opened for new entrants, DB was left with numerous discriminatory levers. The idea of an independent regulator authorized to enforce sectoral competition was equally alien to the institutional legacy of German politics (Döhler, 2002, 2011, p. 527). Hence, the Federal Rail Authority (Eisenbahn-Bundesamt—EBA), an engineer-driven agency mainly responsible for rail safety, remained "a toothless tiger" (Coen, Héritier & Böllhoff, 2002, p. 42; Rotter et al., 2016) in competition enforcement, which, in addition to vertical unbundling, became the central competition policy issue during the ensuing PA relationship.

Demands to separate the rail net from rail operations did not vanish after the failed IPO. In particular, the small Liberal-Democratic Party continued to promote a separation during its term in office from 2009 to 2013. In addition, each of the four "rail packages" that were issued by the EU Commission between 2001 and 2013 contained pro-competition elements (Dyrhauge, 2013, p. 54), and the most far-reaching one was the last one. However, the unmitigated demand for ownership unbundling caused "a furious lobbying campaign from Berlin" (Keating, 2013) that shut down the proposal even before it was published. The 2013 coalition agreement apodictically declared that DB had to remain an "integrated company" (Koalitionsvertrag, 2013, p. 42). The less demanding creation of Chinese Walls in order to prevent discriminatory practices and to stop anticompetitive cross-subsidization between DB subsidiaries has been successfully subverted by DB since the 2001 task force (Stuttgarter Nachrichten, 2016). The continued EU campaigning, which earned Germany notoriety for being part of "a blocking minority" (Dyrhauge, 2013, p. 96), is a clear indication of confluence, which, however, is often confused with DB lobbying (Esser & Randerath, 2010, p. 250).

Due to its legal status, DB is considered to "play the game" of lobbying (Interview with former supervisory board member, December 2016) similar to other private companies. DB has continuously employed former politicians as chief lobbyists. After the head of the Chancellery was hired to run DB's "Policy,

Economy, and Regulation” division in 2014, the master–servant question was raised in the media (Stern, 2014, Welt, 2015) but bore no consequences. Politicians obviously regard DB’s chief lobbyist as an entry point for wish lists rather than as an undue challenge to political primacy. The bonus agreement of a former DB CEO, who requires at least 50 specified meetings per annum with industry representatives, ministerial bureaucrats as well as with politicians from the federal, state, and EU level, supports this assumption (Handelsblatt, 2014). Lobbying by DB, whose management is among the top interlocutors for government members from various ministries (Bundestag, 2015), therefore plausibly aims at identifying shared heuristics, whose values increase if the agent has to react to multiple principals. This cooperative give-and-take elucidates the confusing statement that DB is simultaneously a victim and an offender (Ederer & Ilgmann, 2015, p. 295, Frankfurter Rundschau, 2010). Railway pet projects are traded—albeit tacitly—for protection against EU liberalization or the continued federal subsidization of rail tracks.

As nondiscriminatory access to utilities matured into a mainstream policy, the conditions for continuing confluence decreased. Similar to other rail policy issues, the federal government has to deal with goal conflicts that emanate both from its multiple-principal structure and from a multiple-role PA relationship. If multiple roles are defined such that the “same actors simultaneously wear multiple hats” (Vanhuysse & Sulitzeanu-Kenan, 2009, p. 135), this definition does not cover multiple roles that overlap with multiple principals. Although multiple-principal problems can be reduced by coordinating government members in the supervisory board of DB, the multiple-role problem often goes beyond corporate management. Legislative and EU policy issues that mobilize third-party stakeholders are frequently involved. Assuming that the proverbial hats belong to different policy domains not only activates third-party stakeholders but also amplifies their power to break up confluence. The growing market share of competitors signals the limits of the confluence between the federal government and DB.

By the end of 2015, competitors had achieved a domestic market share of 29 percent in local and regional transport (measured in train kilometers) and almost 34 percent of rail cargo at a growing rate for both market segments (MoFair 2016, p. 8, 80). Only long-distance rail remained dominated by DB, with a 99 percent share. Despite the pro-incumbent policy of most governments since the early 2000s, market liberalization has managed to creep into the rail sector. In 2006, rail regulation was transferred to the Federal Network Agency (Bundesnetzagentur—BNetzA). As opposed to the defensive EBA, which is subordinated to the DB-friendly Ministry of Transport (Döhler, 2018, pp. 196–8), the BNetzA, often supported by its parent Ministry of Economics, is equipped with a strong enforcement mission that is no longer defined exclusively in the rail policy domain. Although pro-competition supporters have gained ground inside the multiple-principal camp, there is still a strong coalition of “rail-minded actors” (Lodge, 2002, p. 160) either driven by the expected gains of a flourishing DB or to support rail as a sustainable mode of transportation. A recent government bill aimed at reducing the discretion of DB’s rail net subsidiary to raise user charges from competitors not only illustrates this standoff but also supports the

assumption that PA interaction may change according to different circumstances (Waterman et al., 2004, p. 31). Although press reports highlight the success of DB's chief lobbyist in diluting the bill (Der Spiegel, 2016; Stern, 2014), the remaining regulatory upgrades equally justify considering the bill a setback for DB, that is, signaling the end of confluence.

Discussion

Explaining the anomaly of a reluctant principal requires moving beyond a dyadic PA relationship in order to disclose the forces and interests that lead to cooperation, confluence, and inversion. These interactions are thought of as coping strategies chosen to respond to circumstances different from those assumed in the standard PA model: a multiple-principal setting, third-party stakeholders, and specification costs. The latter two are not yet routinely considered driving forces in PA interactions. This does not supersede the logic of the standard concept. Rather, it provides a starting point to discover conditions which are likely either to spawn interaction different from those assumed in the standard PA model or which change other PA building blocks such as information asymmetry, goal conflicts, or shirking by the agent.

The interactions among the three elements, which are found to be essential in our case, form the basic conditions for a reluctant principal. The multiple-principals setting leads to high specification costs that act as a brake on the principal's unilateralism. In addition, third-party stakeholders often enter the picture in a rather unpredictable fashion and may yield unforeseen effects, such as confluence. Similar to reciprocity and cooperation (i.e., interaction without externalities), confluence typically signifies a reluctant or even a captured principal. Given the heterogeneity of preferences and the high specification costs in a multiple-principal setting, it makes sense to reason that the main principal abandons unilateralism because of its 'honest incompetence' at calculating the costs and benefits of other strategic options, which would presumably even overstrain the capacity of any well-endowed principal. As PA interaction regularly operates contingent upon circumstances, activated third-party stakeholders or failing strategies may eventually force the principal back into unilateralism.

In searching for a broader explanatory statement, the simultaneous occurrence of multiple principals and multiple roles is assumed to tie up single factors. The effects of this overlap are difficult for the principal to escape since specification costs rise whenever third-party stakeholders or multiple principals amplify the heterogeneity of preferences. If the federal government's strategy is to protect DB from competition, then resistance from new entrants, the EU commission, or the BNetzA can be expected. Strengthening rail competition, by contrast, may depress DB's revenues and lead to a demand for more public subsidies. Increased subsidies for the rail net are likely to meet with resistance from the Ministry of Finance, from other transport carriers, or from parliament, which all have different spending priorities. On the one hand, this explains why the federal government has been shying away from take-it-or-leave-it provisions, which are conventionally at

the principal’s discretion, and instead prefers bargaining and informal dialogue. On the other hand, multiple roles can explain the principal’s reluctance even in the absence of multiple-principal effects. Although multiple principals are a permanent condition, not every interaction infringes on the interests of each principal; instead, principals are likely to engage only if they are affected. The state governments are mostly interested in regional rail transport and pet construction projects, while the Ministry of Economics focuses on competition issues. Parliament, in turn, reacts if budgetary or election-relevant issues are at stake. Even if the mobilization of relevant actors occurs in a selective way, this does not prevent multiple roles from further complicating the multiple-principal setting and thereby provides fertile ground for a reluctant principal.

The previous analysis extends the PA framework in three directions. The first is to go beyond the dyadic model and to include multiple principals and external stakeholders, both of which may cause high specification costs, which is our second modification. The third extension rejects the principal’s unilateralism as the only game in town and adds cooperation, confluence, and inversion to the range of strategic interaction. These modifications leave the standard PA logic intact but define conditions which lead to a different output than is assumed in the conventional model. Table 1 summarizes the main modifications to the canonical PA concept based on the sequential ordering in Figure 1.

1. The very origin of PA thinking involves a simple cast of two actors. Such simplicity has generated a large following; however, focusing on a dyadic relationship may serve as an analytical distortion by leading to the perception of “the agent as the culprit and the principal as the sole victim” (Zardkoohi et al., 2017, p. 413). This view is incorrect in political-bureaucratic relations (Döhler, 2018) and is also incomplete. Including not only multiple principals (with multiple roles) but also third-party stakeholders casts a spotlight on a whole array of formerly unnoticed trade-offs and strategic options, which—if seen from the perspective of those affected—constitute the third inherent PA problem in addition to agents’ and principals’ respective opportunism.
2. Although monitoring costs figure prominently in the conventional PA concept, the costs of specifying contracts are rarely taken into account. The specification cost argument suggests that principals “optimize the efficiency of telling agents what to do” (Mitnick, 2012, p. 4). This is not as trivial as it seems. Specification from the outset would be counterproductive, especially if the

Table 1. Canonical and Modified Components of Principal–Agent Relations

	Starting Condition (1)	Strategy Formulation (2)	Strategic Interaction (3)
Canonical principal–agent relationship	Dyadic PA relationship	Detailed contracts to reduce monitoring costs	Top–down, take-it-or-leave-it
Modified principal–agent relationship	Multiple principals, third-party stakeholders	Specification costs hamper detailed contracting/consensus building	Cooperation, confluence, inverted PA relationship

delegated function is in need of recurrent adjustment, as in our case. Instead, agency slack, which in the canonical PA concept and is assumed to provoke hidden action, can be filled in by shared heuristics, potentially reducing specification costs as well as monitoring costs. Paying attention to specification costs also invites us to rethink the goal conflict assumption. If the principal lacks the capacity to detail the agent's objectives, the targets for diverging preferences dwindle. Both the principal and the agent are then likely to cooperate, either to generate shared heuristics or to respond to external pressure. The frequent occurrence of multiple-principal settings and the complexity of functions routinely delegated in public policy emphasize granting specification costs a more prominent role in policy analysis.

3. Finally, the three coping strategies modify the ever-dominating “top-down bias” (Carpenter & Krause, 2014, p. 20) in PA reasoning. The inverted PA relationship denotes the most radical deviation from the conventional model. The case at hand suggests that whenever the principal wants to reduce uncertainty, that is, in case of risky decisions or to escape responsibility, inversion becomes a strategic option. The danger of things going wrong is nevertheless imminent. Negative outcomes such as “Madison's dilemma” (Kiewiet & McCubbins, 1991, p. 26) are looming if the agent is placed in a position ready to exploit against the principal. Several occasions were present in our case and should therefore be considered as possible negative effects of an inverted PA relationship.

Concluding Remarks

The starting point of this paper was the phenomenon of a reluctant principal, which is not part of conventional PA reasoning. In an effort to rectify the perceived mismatch between the concept and the case under observation, multiple principals and third-party stakeholders were factored into the starting condition of a given PA configuration, while specification costs are assumed to complicate strategy formulation. Finally, cooperation, confluence, and inverted PA relations, summarized as bilateralism, were introduced as strategies for coping with challenges from outside the dyadic PA relationship. Considering the frequent occurrence of multiple-principal and multiple-role settings in public policy—the most relevant conditions under which cooperation, confluence, and inversion can be expected—these strategies are likely to occur on a regular basis. Similarly, third-party stakeholders and the ensuing specification costs appear more frequently in public policy, as is considered in conventional PA thinking.

Embracing these modifications has a great potential to expand the explanatory power and the operating range of the PA concept. The previous discussion suggests that the key to a broader application is to be found in the parameters that surround the dyadic PA relationship rather than in the peculiarities of the case itself. This implies that the concept may be fruitfully applied beyond governing public functions at arm's length such as state-owned enterprises or department–

agency relations. If the research object holds characteristics that differ from the standard concept and its building blocks, this should rather trigger the search for modifications than rendering the PA concept unsuitable from the outset.

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1. From the movie trailer of "Wag the Dog" (1997), directed by Barry Levinson.

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