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Deregulation and Reregulation: Structural Change and the Adoption of "Performative" Norms in the German Telecommunications Sector

Andrew M. Koch and Gerhard Fuchs

ABSTRACT

Reports on the deregulation of the German telecommunications industry during the restructuring of the regulatory regime for telecommunications at the Federal Republic of Germany. Deregulation as a performative strategy; Telecommunications and regulatory competence; Technical innovation and regime change in the 1980's; Search for structural reform.

Introduction

The conservative "revolutions" of the early 1980s have been identified with the promotion of what has been termed "deregulation." This term is often associated with the structural change of a regulatory regime. It implies a decline in government regulation, the diffusion of decision making, and the minimalist state. Deregulation also generally denotes a market strategy of economic development. As a result, deregulation is associated with the liberalization of economic practices, privatization of industry, and less state intervention in the economy in order to encourage entrepreneurs.

This chapter focuses on the deregulation of the German telecommunications industry. During the 1980s, the Federal Republic of Germany underwent a vast restructuring of the regulatory regime for telecommunications. This case of deregulation is interesting because it is in stark contrast to the structural changes usually associated with deregulation. In the German telecommunications sector, deregulation actually lead to a more centralized and integrated regulatory structure. It will be asserted that the transformation of the regulatory regime resulted from changes in the global market for communication technologies, technological innovation in the field of telecommunications, and the political strategy of the conservative government to exploit these changes to leverage alterations within the existing decentralized regime. By emphasizing the national government's role in developing and maintaining "infrastructure," decision making power over telecommunications was effectively removed from the hands of the Länder (state) governments.

On the most general theoretical level, we will challenge the idea that "deregulation" indicates an "absence" or "decline" in regulation. In the instance of German telecommunications, this was clearly not the case. Our case study indicates the development of a new regulatory regime in place of the old one. In Germany, deregulation did not even represent a "decentralization" of power in the telecommunication sector. Deregulation actually led to consolidating policy making power on the national level. Thus, we concluded that "deregulation" implies no specific structural alteration, centralization, or decentralization of regulatory practice. The strategy will always be "context specific."

If deregulation does not imply a specific structural alteration, does this mean that deregulation is synonymous with "marketization?" Our claim is that the term "marketization" is simply not complex enough to include the multifaceted nature of deregulation..

We contend that the structural changes in the German telecommunications sector can be subsumed under a more general terminology. Specifically, we believe that what occurred in the German telecommunication sector represents a shift from public, pedagogical norms to "performance" norms. Performance norms, in the sense that Lyotard (1984) and Luhmann (1969), refer to them, constitute an organizational strategy designed to increase market competitiveness, develop administrative efficiency and competence, and enhance the quantity of "product" available for consumption. As a result, "performance" also builds up regime legitimacy by enhancing competence and control, potentially contributing to employment possibilities, plus increasing the total quantity of goods available for consumption. But even though "performance" has economic implications, it is not a derivative of liberal market ideology. It represents a much broader cultural context than is denoted in modern liberal ideology.

In German telecommunications, adopting "performative" norms has resulted in a significant step toward more centralization of administrative authority, a significant increase in private telecommunications, and a great deal more telecommunication options available for consumption. This result represents the undoing of a consciously constructed strategy in the federal constitution. One can predict that this will have a long-term impact on German political culture.

Deregulation as a "Performative" Strategy

"Deregulation" is a term that defies clear theoretical explanation. This is the case because it can be applied to numerous practices in the political arena. As Hancher and Moran (1989) suggest, deregulation can mean the end to a rulemaking structure or it can be applied to the practice of structural or rule alteration. A theory of deregulation is also problematic since there is no singular goal that it seeks to achieve. In some cases, deregulation may be 'oriented to a substantive political end, such as the diffusion of political power in the quest for a minimalist state. In other cases, the ends may be of a more instrumental nature, such as the desire to promote employment and industrial growth by diminishing the "red tape" involved in business practices. It should not be assumed, as is often the case that the substantive and instrumental goals are mutually reinforcing. Such assumptions exist only on the level of ideology.

Further complicating a clear theoretical definition of "deregulation" is the fact that it is often associated with the Reagan/Thatcher style of liberalism that was reflected in the rhetoric of the 1980s. Reagan, Thatcher, and to some extent Helmut Kohl, spoke of the benefits of privatization, unimpeded market forces, and a minimum of regulatory interference in the economy. This clearly left the impression that deregulation was associated with liberal market ideology. However, there is a problem with this association. If deregulation represents a process of marketization, reflecting liberal ideology, then why is deregulation also the strategy adopted

by the socialist regimes in France and Spain (Dyson and Humphreys, 1989, p. 141)? Deregulation of the telecommunication sector has become common practice across the European Community by both conservative and socialist governments.

Finally, deregulation is often ambiguous since it is mistakenly used to describe a "restructuring" of the regulatory regime that governs a particular policy area. This use of the term does not imply a decline in overall regulatory oversight, but an alteration of the decision making structure through which administrative power flows. Referring to this structural alteration as deregulation is a result of looking at the disintegration of old structures, rather than accounting for the formation of a new regulatory regime. As Hancher and Moran correctly point out, the paradox of the "rule cancellation" definition of deregulation is that it is generally simply a prelude to reregulation (Hancher and Moran, 1989).

It is in this context that the reregulation of the German telecommunications industry must be understood. The deregulation of telecommunications took place within the regulatory regime in which decision making power was dominated by the Länder. In that context, deregulation represented a breakdown of the equilibrium that maintained the system in the post- WWII era. But this regulatory breakdown was accompanied by the creation of a new regulatory regime at the national level, the legitimacy of which was granted by the constitutional court's ruling in 1986. This decision delineated the end of the old regime and the beginning of the new one.

However, this reregulation represented more than an alteration in the flow of power within the FRG. This change also illustrated a paradigm shift in the telecommunications sector. As Dyson and Peter assert, broadcasting in Europe, generally, has a "public service" orientation (Dyson and Humphreys, 1989). Today, however, "[t]he concept of telecommunications and broadcasting as 'public goods' that require stringent controls is giving way to a market model of provision." This is particularly true of Germany, where the "entertainment" function of broadcasting had traditionally been subordinated to the "information" and "education" functions.

But the restructuring of the regulatory regime in German telecommunications legitimated more than the "market." In allowing the growth of a private, competitive telecommunications sector, the court also legitimated the shift to "performance" measures in an area of German culture from which they had previously been excluded. As Niklas Luhmann claims, "in postindustrial society, the normative values are replaced by the performance of procedures" (Luhmann, 1969). Setting priorities within the telecommunication sector constitutes the construction of a "normative regime." It was the normative structure governing telecommunications that was most fundamentally altered by the reregulation.

Telecommunications and Regulatory Competence

According to Scharpf (1976), the most significant element of German federalism is that above the decentralized decision making units (states, local communities, etc.) exists a central institution (the national government) that represents the general public and is empowered to formulate and decide on a political program. Though this central unit is dependent on information provided by the subunits, it does not necessarily depend on their approval.

In telecommunications, the situation was different before 1986. The telecommunications industry had been consciously decentralized in the post-WWII period. According to the constitution, states are supposed to be the driving, decisive force in media politics. Decentralization was achieved by dividing the areas of competency over telecommunications. The federal constitution implicitly distinguishes between the development and maintenance of "infrastructure" and competence over policy that regulates the production, content, and funding of media broadcasts.

The federal government's role was to develop and administer the infrastructure for telecommunications. Individual Länder governments were to regulate the organization, financing, and content of programming.

The Federal Postal Administration (OBP) administers this function and is responsible for the technical infrastructure of radio and TV (cable, transmitter, satellites, etc.). The legislative powers of the federal government cover primarily the regulation of "frame conditions" (antitrust law, foreign relations, protection of minors and consumers in general, regulation of advertising, etc.). In accordance with the jurisdiction of the federal constitutional court, the states should make the fundamental decisions about the structure of the media system; the federal government (especially the OBP) is supposed to follow the states' guidelines. In this chapter, we refer to the OBP and its legitimating statute as it was before the reorganization of 1989.

DBP's monopoly of the technical infrastructure is guaranteed by the German constitution. Although the OBP is not part of the government apparatus, but a public enterprise (*Sondervermögen*), there is a minister for posts and telecommunications. Self-imposed decrees (not laws) regulate the OBP; furthermore, the parliament does not control the DBP budget. (This has changed with the 1989 reorganization. Now, this ministry is comparable to a regulatory agency.)

The Federal Postal Administration has been split into three semi-independent corporations with special management structures. Thus, the Federal Postal Administration controls all types of electronic communications, including most radio and TV transmitters, cable systems, and satellites.

With regard to content and regulation, however, the German constitution does not give the federal government significant legislative powers over the media. Traditionally, radio and TV were considered "cultural" affairs and culture is one of the few areas in which the states preserved substantial legislative rights. In 1981, the Federal Constitutional Court stated that the Länder, not the federal government or private bodies, must ensure that programming is generally balanced and reflects the existing diversity of public opinion.

Accordingly, each state decreed its own broadcasting law and assembled its own supervisory body for public broadcasting. All issues affecting more than one state must be settled by unanimous agreements between the heads of those states. Major controversies about the extent of political influence exercised on the media were settled by court decisions in 1961, 1971, 1981, and 1986.

As a result, this system produced a situation in Germany that is quite different from that of other European states. While in most European countries, the majority of programs come from the capital or at least from the economic centers, the bulk of public German programming is produced by the nine independent public broadcasting corporations (*Ländersrundfunkanstalten*). Each *Ländersrundfunkanstalt* is in charge of its own (regional) radio program (currently aired on three to five channels each). Each *Ländersrundfunkanstalt* is controlled by a "broadcasting council" (*Rundfunkrat*). The *Ländersrundfunkanstalten* are organized by the Association of Public Broadcasting Corporations of Germany (ARD). As a whole, the ARD system is highly decentralized.

In summary, the traditional media structure which evolved after World War II was characterized by cultural norms that sought to isolate the media from both political pressures and intensive commercialization. This was perceived to be the best protection against overt state control of radio and TV as well economically powerful elites. Radio and TV were to be funded primarily by fees collected from users; limited advertisement was a secondary means of financing the

programs. This began to change in the 1980s as technical changes and increasing competitive pressures from outside forced Germany to reassess the situation.

Technical Innovation and Regime Change in the 1980s

Looking at the media politics from the mid 1980s to the mid 1990s, the dominant feature seems to be the impact of new technological developments. Without these new developments, discussions about deregulation, privatization, and the future of the public broadcasting system would hardly have occurred with such fervor. These technical changes include direct broadcast satellites, communications satellites, coaxial cable, and fiber optic cable. All of these are in addition to the interest private broadcasters expressed in expanding the existing use of air wave broadcasting. These technical developments helped to radically change the traditional media structure. By the late 1970s, it had become clear that the technology existed to dramatically increase the available programming in the FRO. What had not been clear in the late 1970s was whether or not the German government and citizens desired this expansion.

The range of policy options for the single states in the 1970s, given their ample regulatory powers, was manifold. Already in 1974, the Federal Postal Administration asked the Länder to develop plans about the future use of cable radio and TV and of additional satellite capacities. However, the Länder did not act. Despite the lack of constitutionally required guidelines, the Federal Postal Administration gradually acquired satellite capacities and promoted cabling, thus limiting the Länder's future actions. The DBP claimed competency for planning and implementing telecommunication satellites since those are purely technical "subjects" and, therefore, fall under their jurisdiction (the states never seriously challenged this point).

The political agenda changed dramatically when the newly formed conservative-liberal federal government came into office in 1982. The new administration made systematic media restructuring atop priority. Now, the DBP was used as an instrument to construct a new infrastructure for private competitors. The big emphasis put on constructing new media infrastructures then forced the states to act. At this point, the conservative-liberal coalition in the federal government demanded the development of uniform state media laws, an end to the "aggressive" behavior of public radio and TV institutions in the market, subsidies for private broadcasting corporations, no regulation of advertisement in private broadcasting programs, no increase in advertising space in the public media, and state support for the construction of technical infrastructure to which would primarily benefit private enterprises.

In most cases, the federal government has no real power to enact regulations in these fields. But the pressure to neglect states' rights was overwhelming, especially given the hesitant role of the Länder. Without consulting the states, the federal minister of posts and telegraphs acquired a number of satellite channels. However, the minister was not legally entitled to sell or rent them to radio or TV stations (be they private or public) because this was a clear responsibility of the states. Since a satellite covers more than one (if not several) state, the Länder had to come to a uniform decision on the distribution of satellite channels. Normally, a state treaty coordinates policy among different states. This requires a unanimous vote from the heads of state governments and approval from all state parliaments. Given the fact that until 1982, private radio and TV did not exist in Germany, the distribution of satellite channels proved to be a difficult issue for the states to resolve.

At the beginning, a consensus existed that something had to be done. But how to react was hotly debated. There was a sharp line of division between the Länder governed by a Social Democratic Party (SPD)/Green Party coalition and by those governed by a conservative-liberal coalition of the Christian Democratic Union (CDU), Christian Social Union (CSU), and the Free Democratic Party (FDP). The CDU/CSU/FDP favored private stations, whereas the SPD wanted

to protect the public media structure. Specifically, the CDU/CSU/FDP coalition demanded a freeze on advertising in the public media, no further possibility to expand the public media, and favorable conditions for the private competitors (e.g., state subsidies). In a compromise offer, the SPD declared that it would admit the legitimate role of private TV and radio, but they demanded guarantees for the further existence and development of public broadcasting.

As the CDU/CSU/FDP coalition worked toward compromise, conflicts arose among the states. The old centers of the media industry were situated in the north (e.g., Hamburg). So, even the northern SPD-governed states favored a benevolent attitude toward private competitors. But other states sought to assure their share of the expected jobs and profits. States began to compete for the expanding industry by offering subsidies to private corporations. This situation was further exacerbated by the emerging conflict between the *Ländersrundfunkanstalten* and the minister presidents. Even the *Ländersrundfunkanstalten* that were headed by members of the conservative parties favored guarantees for the further existence and development of the public media.

To reach a solution, the states would have had to coordinate their policies. Such a practice proved to be too difficult because of the political and economic pressures placed on the states. If the states' decision-making system is blocked in such a way that they cannot make decisions, the states are left to belatedly adopt the DBP's policies. As a result, the DBP began to perform the steering function assigned to the states. The DBP was (and is still) able to pursue such policies because of the states' organizational deficiencies and their lengthy decision-making procedures. The states were simply not able to adapt to the performance imperative now being forced on them.

The Search for Structural Reform

In February 1973, the federal government appointed the Independent Commission for the Development of the Telecommunications System (KtK/1974-76) (Hornet, 1979). In January 1976, the ministry of posts and telegraphs presented their six-volume "Telecommunications Report" to the public. The report recommended that states address the issue of additional programs and their impact on developing the broadcasting infrastructure and advocated developing guidelines for a national broadband cable network with a maximum capacity of 30 TV channels.

International events also changed the telecommunications environment. In January 1977, 100 nations reached an international agreement in Geneva on the location of satellite orbits and the frequencies to be used. On April 29, 1980, the German and French governments signed a contract to construct two DBS satellites: TV -SA T and TDF.

The conservative-governed states intended to let private organizers use the new technologies. States governed by social democrats insisted that the new technologies should be the domain of the public organizations. The formula for a temporary compromise was found in 1978. Based on a recommendation of the minister presidents in 1978, four pilot projects experimented with the new technological and organizational options. (However, the project in Ludwigshafen was the only one in which private organizations initially gained access.)

But the conflict was not resolved. By 1982, the states agreed on only one issue: the federal government's attempts to restrict state competencies should be resisted. In early 1982, the minister presidents asked the broadcasting commission to formulate a report on the system's future development, emphasizing the role and impact of private broadcasting companies. Then, the minister presidents still hoped private and public media corporations would cooperate. During 1983, this proved to be futile. The private firms were not willing to have their potential development restricted by agreements with the public broadcasting corporations.

This affected the consultations of the minister presidents. In 1984, for the first time, the minister presidents unanimously accepted a role for private corporations. One channel on the communication satellite ECS was granted to a German-based consortium. A decision on the use of the satellite capacities of the ECS was absolutely necessary because the it was ready to operate and the Federal Postal Administration and the federal government had invested large sums of money in the project. They were not willing to accept any major delays involving a substantial loss of revenues.

By October 1984, the minister presidents agreed on the first all-embracing strategy for the *Neuordnung des Rundfunkwesens*. The compromise was hailed as a clear victory for the private organizers and a severe defeat for the public broadcasting system. The compromise was based on the coexistence of public and private broadcasting corporations. It granted the operation of private broadcasters, but demanded that they operate under the states' regulatory structure. The public broadcasting system was guaranteed its further existence and development, including future participation in satellite broadcasting. The old structure for financing public broadcasting remained. Programs had to be primarily financed out of fees. Advertising time was not to be extended. Private corporations had few limitations on advertising except not to exceed 20% of the daily broadcasting time. Advertising could now continue 24 hours a day, even on Sundays and holidays. In addition to working out a regulatory compromise, a strategy for using the satellites "Intelsat" and "TV Sat" was developed.

The SPD party executives reluctantly supported this compromise. However, within the SPD, resistance began to grow in the state and federal parliaments. Due to opposition from the public broadcasting system, churches, and trade unions, the SPD finally demanded improvements in the compromise. Specifically, they wanted a guarantee of plurality within the private corporations (*Binnenpluralität*), measures against developing regional monopolies (newspapers and broadcasting), quotas and promoting domestic (cultural) productions, and limitations on advertising.

A new compromise looked promising in the beginning of December 1984. But at the next meeting of the minister presidents, the compromise was lost. Again, fundamental questions concerning the balance between the existence and further development of public broadcasting and the creation of favorable conditions for private organizers could not be answered.

To clarify the SPD's position and avoid further disturbances among party members, the so-called *Diisseldoifer Erklärung* spelled out a new Social Democratic compromise. The main feature of this strategy was the inclusion of new advertising possibilities for public broadcasting. Reacting to this proposal, the conservative minister presidents formulated their own ideas which included participation of private corporations in the fees collected for the public system, participation of the private corporations in newly collected fees, and a constitutional challenge to the extension of advertising in the public system. Then, in a series of talks, the individual minister presidents discussed different possible options. But real solutions were impossible.

The inability of the states to formulate a common regulatory policy proved disadvantageous to the development of a strong, competitive, telecommunications sector. Meanwhile, external pressures grew. Technical innovation continued, with increasing standardization through international treaties. In addition, the EC continued to push for EC-wide telecommunication policies. The decentralized structure had been organized for educational, political, and cultural reasons that increasingly inhibited administrative, economic, and technical performance. Only a new regulatory regime could alter this condition.

The Ruling of the Federal Constitutional Court

The problem-solving capacity of the Federal Constitutional Court with regard to broadcasting proved to be remarkable in the past. In virtually no other country has the development of the broadcasting system been so intensively shaped by court decisions as in the FRG. For decades, the court preserved a German (and European) tradition of public broadcasting. It has repeatedly supported the idea that the media are a "public good" in the sense that they inform, educate, and represent varied and unique cultural norms. Prior to 1986, the court had expressed the position that the media performed a necessary and important function in a free and open society, a role too important to be left to the market. Thus, the 1986 and 1987 decisions were the last in a series of important rulings.

On November 4, 1986, the Federal Constitutional Court (FCC) legitimated the emerging regime in telecommunications. An SPD faction in the federal parliament appealed to the court to declare the new media law of Lower Saxony unconstitutional to set a precedent for other state broadcasting laws. Thus, the SPD intended to have the court build barriers against a thorough commercialization of broadcasting. But in its final ruling, the SPD did not get all it hoped for.

The court did not declare the law as a whole unconstitutional. Instead, the court revised some of its previous opinions. Parts of the law were ruled unconstitutional. But more important than this verdict was the justification for the decision. The court held that broadcasting is a special case that cannot be subject to pure market calculations. The court stated that the interests of minorities, cultural standards, and balanced information cannot be guaranteed within a purely market-oriented system. On the other hand, the court recognized the political and economic pressures to introduce private broadcasting corporations.

Had the court's precedent been maintained, it would have concluded that the private broadcasters would not be permitted to operate. However, the court was asked to make a ruling in a climate in which private broadcasters had already established a foothold; their existence could no longer be denied. In its decision, the court stuck to some of its essential positions from previous rulings, but it finally could not close its eyes when confronted with the new technological, economic, and political realities.

The proposed solution proposed was to construct a dual system. The proposal included a public system with the traditional standards and control requirements and a private system under some public control, but far less regulated than the public sector. Private programs have only to fulfill minimum standards for balanced information. Media monopolies are discouraged, but the private broadcasters' amortization of invested capital is encouraged. In this case, the court obviously considered foreign experiences that showed how difficult it is to regulate private broadcasting.

In its ruling, the court established guarantees for the survival of the public media. Only if the public media survived would the private media be "constitutionally" permitted. The market criteria that directs private broadcasting is only allowed to operate as long as the public broadcasting corporations are able to fulfill their role for *politische Willensbildung* (forming the political will) which is its *klassischen Auftrag* (classical task). In theory, this connection means that if the public system falls, the private one will, too.

The court ruling represented a fundamental shift in the basic logic behind broadcasting regulations. The German (as well as other European countries') broadcasting system was constructed to serve a public constituency with programming that, in principle, sought to enhance the normative ideal of creating an "informed electorate." The federal court, seeking to balance this principle with broadcasting industry performance pressures, essentially ended this commitment. The public system's existence may be guaranteed, but commitment to the nonnative principle that directed broadcasting regulation has been negated.

Structures of the New Regulatory Regime

At the next conference of the minister presidents, a working group reported on the different possible interpretations of the FCC's ruling and worked out options for decision making. Following an initiative of the Social Democrats that was based on this report, they reached a compromise in March 1987. It guaranteed the further existence and development of the public system, a balanced distribution of satellite channels, income for public corporations by regularly raised fees, and a precise definition of what happens with the collected fees.

To regulate the private system, a whole new bureaucracy had to be developed, financed by fees collected from public radio and TV users. The observers believed this created the most extended media bureaucracy of all democratic states. Instead of guaranteeing competition in the private sector, the German media now contains both private and public monopolies.

Federal policies further eroded the power of the Länder over telecommunications. The Federal Postal Administration was reorganized in 1989. The newly created Deutsche Bundespost Telecom is supposed to work as a market-oriented enterprise. Therefore, its decisions can only be very indirectly influenced by the Länder. In addition, there were a number of federal initiatives at the EC level. On the EC level, the federal government (but not the Länder) can influence the decision-making process. Also, the federal government's 1989 directive, "Television without Frontiers" (against the protests of the Länder) furthered the shift in decision making. Finally, after reunification, the restructuring of the East German broadcasting system provided an opportunity for the federal government to expand its sphere of influence at the expenses of the states (both old and new). The fate of broadcasting from now on was to be decided with the explicit and active participation of the federal government.

On August 3, 1991, the new state treaty on broadcasting for unified Germany was prepared with the active participation of the federal government. The Länders' ability to regulate programming has correspondingly declined. Emerging administrative structures formalize that transferred decision-making power.

The Search Concluded: Liberal Ideology, Market Pressure, or Party Politics

The 1980s, the decade during which the new electronic media were heavily debated, were not directed by any coherent media policy. Even though high-level commissions studied the state of affairs, they could not make broad recommendations. To do so would have placed them in the middle of the confrontation between the leading parties (CDU versus SPD) and economic interests (business versus trade unions). In many ways, the lengthy process that finally led to the state treaty has been similar to other structural reforms. But this case has its peculiarities, too. More than in other cases (and partly due to the long time that was needed to find a compromise), policy priorities were not set by the states but by the Federal Postal Administration, the courts, and economically powerful interest groups. In the absence of a broad consensus on the part of the states, these alternative actors took the initiative.

Originally, media policies were considered to be affairs for the states because they primarily dealt with "culture." Media regulations were directed according to substantive public values such as "balanced information" and exposing people to diverse opinions and lifestyles. There was also concern about the negative effects of advertising in TV and radio. Generally, however, education had always been considered the primary role of the media.

This changed drastically in Germany since the 1986 ruling. Broadcasting regulation problems are no longer cultural, but economic. Here is the rationale for transferring state legislative powers to

the federal government. The states, themselves, participated in this development. In the different new state media laws, few "cultural" elements remain. The state ministers of culture and education have had little influence on the state treaty. This fact proves that other interests (political and economic) were behind the change. This might be fatal for state influence. With the primary issues of regulation now "economic" and with the federal government possessing legislative powers in that area, the states' power to regulate broadcasting has been effectively diminished. It is unlikely that the states will ever have the opportunity to recapture that power.

Conclusion

As we have attempted to show, in the German telecommunications system, deregulation did not mean an end to regulatory oversight, but rather the formation of a new regulatory regime in which the dominant power to make policy was moved from the Länder to the federal administration. This transformation resulted from the internationalization of telecommunication markets, the development of new technologies, and European Union pressures for standardization and technical development. All of these represent "performance" pressures to which the federal government felt a need to respond. This pressure found fertile soil in the CDU/CSU which perceived mistreatment at the hands of what it considered *Rotfunk* (Red broadcasting).

The shift in regulatory power has been achieved by transforming the discourse that dominated broadcasting in the post-WWII decades. Focusing on the performance potential of "infrastructure," the federal government has eroded state controls over broadcasting. The result has been a paradigmatic shift in the norms that govern broadcast media. In the past, discussions about the broadcasting system were never dominated by economic considerations and market arguments. Now, broadcasting has a performance value that is directed according to international and domestic market concerns, technical development, and administrative effectiveness.

Therefore, we conclude that "deregulation" is not associated with liberal ideology, the substantive end of the minimal state, or even a strict market ideology. Deregulation means adopting performance-oriented goals. Efficiency, competence, and output become the motivating force behind policy. In that sense, specific structural changes that occur are incidental to adopting the performance goals. For this reason, the German case dispels the idea that deregulation implies anything specific of a structural nature. Structure follows the material dictates of technology, productivity, administrative domain, and marketability.

The new regulatory structure manifests a new ideology, new strategic aims of the main participants, new instruments to be deployed, and new policy making/options coalitions. This changed environment (of which the telecommunications field is one example) represents a significant departure from some of the traditional assumptions regarding German politics. For example, there is a remarkable lack of corporatist intermediation in the new telecommunications regime. There has also been a radical departure from the substantive political value of decentralization as a dominating feature of German politics. The development of a new policy regime has resulted in the generation of new policy networks. While up to the late 1970s, the closed policy network had some features of corporatism, the policy network in the 1980s has become fragmented with a plurality of organized and unorganized actors. This new network is broadly politicized in both public and private broadcasting. Furthermore, this politicization is not balanced by parliamentary means, but largely amounts to back-room influence peddling. The number of local and regional broadcasting units is steadily increasing, but these new actors are confronted with a complex regulatory structure. Besides the old laws and regulations, a whole new body of broadcasting law (solely oriented towards new broadcasting corporations) has been developed. But on the regulatory level, the initiative is with the federal government. It still strengthens its position as policy initiator and implementer. In the long run, the regulatory powers of the states will be further weakened.

Deregulation never meant an end to regulation, but a different regulatory structure. From the market's perspective, this new structure should be more permeable and open to competition. But to suggest that it "must" be less hierarchical, less command-based, and more flexible is to fall victim to the rhetoric of deregulation, not reality. The significant changes in the role of the market that are taking place in telecommunications are not founded simply on ideological shifts and a newfound faith in the so-called "free market," not even in the US.

Every change carries both anticipated and unanticipated outcomes. Such will be the case in Germany. Entertainment and market share constitute fundamentally different norms around which to organize and develop programming. To put it simply, the logic governing market programming must cause it to seek out the consumer on his/her level. This is a strategy that descends rather than ascends. There can be little doubt that German culture will change as a result of this process. The future will judge whether this change was for the better.

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