Irreconcilable Differences? The Potential of Big Data and E-governance to Reconcile Neoliberal Ideologies and the Regulatory State

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“Governance of a country is a matter of proper policy and proper administration, in other words, efficiency. It need be different in nature from the government of a business—only in degree.”

~ John Reith

Abstract

Neoliberal ideologies that have characterised much of twentieth century state governance are finding their legacy eroded by the increasing use of regulatory models in national governance architectures. This Note seeks to identify the manner in which such neoliberal ideologies may be reconciled with the emerging regulatory state through an incorporation of data based e-governance methods. The Note thus locates the future of national and international governance architectures in a regulatory framework that looks to data analyses and behavioral incentives to structure regulatory schemes based around the maximisation of technology’s potential to decrease unnecessarily burdensome or expansive regulatory schemes.

1. Introduction

The Neoliberal ideologies that have characterised much of twentieth century state governance are finding their legacy eroded by the increasing use of regulatory state models in national governance architectures. This Note thus seeks to identify the manner in which neoliberal ideologies may be reconciled with the regulatory state. In furtherance of this reconciliation, the Note will seek to locate the future of both national and international governance architectures in a regulatory framework that looks to data analyses and behavioral incentives to structure regulatory schemes based around the maximisation of technology’s potential to decrease unnecessarily burdensome or expansive regulatory schemes.

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incentives to structure technology based regulatory schemes within minimise regulatory over
reach.

The Note begins by outlining the central tenets and lingering legacies of neoliberalism
as noted by Plant as well as the shift of modern governance towards the regulatory state as
articulated by David Levi-Faur. The Note then examines the increasing use of big data and e-
governance in the regulatory state. The Note contends that such developments are, in fact,
reconcilable with neoliberal ideals and that such developments may be exploited in the service
of more efficient governance of a state or nation. The Note concludes by examining e-
governance initiatives currently under way in various nations.

2. Neoliberalism and its Legacies

Neoliberalism first emerged as an economic philosophy among liberal European
scholars in the 1930s as they attempted to trace a ‘Middle Way’ between the conflicting
philosophies of classical liberalism and collectivist central planning. Originally coined in
1938 by Alexander Rustow, the term neoliberal gave birth to a school of political and
economic theory that prioritises price mechanisms, free enterprise, competition and an
impartial state. To be "neoliberal" thus came to mean that one favoured economic and
political policies that allowed for limited state intervention.

While Hayek is frequently identified as one of the definitive articulators of
neoliberalism, notably in his theories of limited state intervention- extending even to a neutral
concept of the rule of law, the majority of scholars associate the theories neoliberalism,
including those of social market economies, with the work of Röpke and Rüstow. More
recently in modern governance and political thought, Boas and Gans-Morse note that
neoliberalism has been used by the political left as a pejorative, blanket term to refer to any or

4 PHILIP MOROWSKI & DIETER PLEHWE, THE ROAD FROM MONT PELÉRIN: THE MAKING OF THE NEOLIBERAL
5 Id at 12–13, 161; OLIVER MARC HARTWICH, NEOLIBERALISM: THE GENESIS OF A POLITICAL SWEARWORD,
(Centre for Independent Studies, 2009) at 19; HANS-WERNER SINN, CASINO CAPITALISM 50 (Oxford University
Press, 2010).
6 MOROWSKI & DIETER PLEHWE, supra note 4, at 13–14.
7 François Denord, From the Colloque Walter Lippmann to the Fifth Republic, in MOROWSKI & DIETER PLEHWE,
supra note 4, at 48.
8 Taylor C. Boas and Jordan Gans-Morse, Neoliberalism: From New Liberal Philosophy to Anti-Liberal Slogan,
44(2) STUDIES IN COMPARATIVE INTERNATIONAL DEVELOPMENT (2009) at 147.
9 PLANT, supra note 2, at 10.
10 WILHELM RÖPKE, ECONOMICS OF THE FREE SOCIETY, (Henry Regnery Company, 1963); ALEXANDER
RÜSTOW, DAS VERSAGEN DES WIRTSCHAFTSLIBERALISMUS (Düsseldorf and Munich,1950) at 78.
all policies that seek deregulation, as well as economic reform policies such as privatization and fiscal austerity\textsuperscript{11} policies which Francis Fox Piven has labeled “hyper-capitalism.”\textsuperscript{12}

This negative characterisation of neoliberalism is most readily traced, in popular consciousness, to the policies of the Reagan-Thatcher era which espouse a loyalty to the Chicago School whose articulation of neoliberalism rejected Keynesian theory and instead emphasising a new classical macroeconomic theory based on the concept of rational expectations.\textsuperscript{13} The School is strongly associated with the work of figures such as Milton Friedman, George Stigler and Gary Becker\textsuperscript{14} and emphasizes government non-intervention and deregulation of markets and is recognised as motivating policies of deregulation and privatisation during the Reagan-Thatcher era.\textsuperscript{15}

This retroactive, popular distaste for the policies of that era has attached itself not merely to the policies employed by the administrations in question but, more broadly, to neoliberal ideologies as a whole. This note, however, defines neoliberalism not as exemplified by the policies of the Reagan-Thatcher era, but rather as it was conceptualised by Rustow as a governance model that prioritises free enterprise, competition and an impartial state.\textsuperscript{16} It is largely as a result of the failure to appreciate this fundamental character of neoliberalism as a theory, rather than as employed in politics which has led, in the intervening administrations, to its decline in dominance.

2.1 Governance Implications of Neoliberal Ideas

The two central governance implications of neoliberal ideology can thus be broadly classified as deregulation and privatisation. One of the most contested features of neoliberalism is its transfer of service provision from the public to the private sector,\textsuperscript{17} pursuant to the belief such a transfer will produce a more efficient government and improve the economic health of the nation.\textsuperscript{18} The definitive neoliberal statement of policies is

\textsuperscript{11}Ibid.
\textsuperscript{12}FRANCES GOLDIN, DEBBY SMITH, MICHAEL SMITH, IMAGINE: LIVING IN A SOCIALIST USA (Harper Perennial, 2014) at 125.
\textsuperscript{13}EMMET ET AL., THE ELGAR COMPANION TO THE CHICAGO SCHOOL OF ECONOMICS (Edward Elgar Publishing Ltd., 2010) at 133.
\textsuperscript{14}Mirowski, supra note 4 at 37.
\textsuperscript{15}Glen Biglaiser, The Internationalization of Chicago’s Economics in Latin America, 50(2) ECONOMIC DEVELOPMENT AND CULTURAL CHANGE (2002).
\textsuperscript{16}MIROWSKI AND PLEHWE ibid a at 13–14.
\textsuperscript{17}JOSEPH NATHAN COHEN, THE IMPACT OF NEOLIBERALISM, POLITICAL INSTITUTIONS AND FINANCIAL AUTONOMY ON ECONOMIC DEVELOPMENT 1980–2003, (Princeton University, 2007).
\textsuperscript{18}Id.
advocated by John Williamson's "Washington Consensus"19 in the form of a list of policy proposals approved by Washington-based international economic organizations (namely the International Monetary Fund and World Bank)20 which stipulates governments should refrain from running large deficits (except for stabilisation processes) and public spending should be redirected from subsidies and other wasteful spending toward broad-based provision of key pro-growth, pro-poor services like primary education, primary health care and infrastructure investment.21

The consensus further advocated liberalisation of trade and markets as well as reform of the tax systems by broadening the tax base and adopting moderate marginal tax rates to encourage innovation and efficiency as well as liberalisation of the "capital account" of the balance of payments.22 Perhaps most notably the consensus argued for the privatisation of state enterprises through the promotion of market provision of goods and services which the government cannot provide as effectively or efficiently as well as the abolition of regulations that impede market entry or restrict competition and legal security for property rights.23

Such principles are justified on the basis that when markets work competitively there is little or no need for regulation- as where problems arise a solution will be reached through enhancing the competitive capabilities of markets.24 Neoliberalism further holds that regulation is inherently directed towards a specific goal and is thus, in direct contrast to neoliberal views of the rule of law as espoused by Hayek and Plant.25 Regulation, by subjecting itself to public choice concerns, and creating a partial rather than neutral governance context also exposes itself to the risk of “going native” as the regulators become increasingly involved in the complex markets and products they seek to steer and in effect assume similar interests to those of the industry they seek to regulate.26

The Banking Crisis of 2008 caused significant economic damage only assuaged through decisive and significant government intervention. Moreover, such a crash might, arguably, have been averted by the existence of moderate preventative regulation and oversight of banking sectors- regulation that was largely absent following the neoliberal

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21 Id.
22 Id.
23 Id.
24 Id.
25 PLANT, supra note 2, at 10.
26 Id. at 262.
deregulatory policies pursued under various political administrations during the 1980s and 90s.27

Equally the case is made, pursuant to neoliberalism, that bankruptcy is a fundamental element of the capitalist economy’s learning mechanisms and that intervention to prevent such learning may in fact distort lessons to be drawn and create a moral hazard. Such arguments are, however, harder to practice than they are to preach as they would involve government inaction in the face of widespread public financial loss and resultant poverty that would be hard to accommodate. Given these policy implications it is thus hardly surprising that neoliberalism’s dominance as a governance theory declined following both the Reagan-Thatcher era and, again, following the 2008 financial crash.

2.2 Decline of Neoliberal Dominance

Critics of neoliberalism include Joseph Stiglitz28 and Richard D. Wolff,29 who argue not only that neoliberalism cannot deliver the liberty it claims as its central tenet but that, as is explained in Daniel Brook's "The Trap", Robert Frank's "Falling Behind" and Chernomas and Hudson's "Social Murder", neoliberalism in fact inevitably leads to high levels of inequality and thus a reduction in liberty for the majority.30

During the 1990s, the Clinton Administration was notable for its embrace of neoliberal ideology through its pursuit of international trade agreements that benefitted the corporate sector while domestically fostering the privatization of public services such as health care,31 and the reduction of welfare subsidies coupled with the implementation of "Workfare." In the wake of the 2008 crisis many critics identified these neoliberal policies as the source of both the deregulation which enabled the behaviour that caused the financial crash as well as the social policy which had fuelled the social inequality which in turn was the root cause of the large amounts of the sub-prime debt which had exacerbated market failures in the United States.32

Critics have thus characterised neoliberal ideology as promoting social injustice pursuant to the "American Model," which generates low wages and high disparities in

27 Davies, supra note 20.
29 RICHARD D WOLFF, DEMOCRACY AT WORK: A CURE FOR CAPITALISM 37 (Haymarket Books 2012).
31 In the form of the HMO.
equality. Economists Howell and Diallo, contend that neoliberal policies have contributed to a US economy in which 30% of workers earn low wages, 35% of the labor force is underemployed with only 40% of the working-age population adequately employed. Indeed, Dean Baker of The Center for Economic Policy Research's in 2006 argued the driving force behind rising inequality in the U.S. was a series of deliberate, neoliberal policy choices including anti-inflationary bias, anti-unionism, and profiteering in the health industry.

Despite such criticisms, other jurisdictions have instituted varying levels of neoliberal policy without evidencing such disparities in equality. For example, the OECD has calculated that only 6% of Swedish workers are beset with wages it considers low, with Swedish wages being lower overall due to their lack of neoliberal policies. However, critics maintain that, under neoliberal models of governance, as public service are increasingly outsourced to private providers the efficiency gained from economies of scale may decline leading to questions of neoliberal policy’s long term viability. Moreover, even if it could be demonstrated neoliberal capitalism increases productivity, it erodes the conditions in which production occurs thus requiring expansion into new areas and is not environmentally sustainable in the long term.

In the face of neoliberalism’s fall from popularity and the criticisms it has faced for its distorting effects its continued employment in governance architectures would seem to be in doubt. However, to the contrary as this Note will now examine, in the modern regulatory state the ascendant breed of regulatory governance practiced in both the United States and United Kingdom, which relys heavily on rational choice models, regulatory minimisation and big data analytics represent, through their deference to individual and market freedom a distinct tolerance for the free market foundations which the neoliberal theory continues to espouse. The regulatory state has sought to utilise big data as well as e-governance, behavior analysis and cost-benefit analysis to generate more efficient governance and in doing so has created national governance architectures which privilege teh neoliberal principals of reguatllory minimisation and economic incentives to promote efficiency at an individual and market level.

34 Id.
3. Towards the Regulatory State and Reconciling Ideological Differences

People require a variety of services and facilities which governments are charged with providing including clean environments, safe food and accessible healthcare yet rarely do citizens associate the efficient and sufficient provision of increasing numbers of such amenities with a shift towards a regulatory state. In reality, regulation is an increasingly unpopular idea in jurisdictions such as the United States, which continues to labour under the lingering ideological, legacies of the neoliberalism that have characterised governance during the previous century. In the US, businesses continue to argue excessive regulatory interference and government oversight represents an attack on free market commerce and their ability to operate profitably. Yet regulatory governance architectures have been growing steadily worldwide as governments increasingly recognise that the sheer number of services and departments required to operate efficient modern states require systems of delegation and oversight not previously necessary.

This reality was addressed first during the 1990s by Ayres and Braithwaite who sought to identify and develop “options to bridge the abyss between deregulatory and pro-regulatory rhetoric.” Over the 22 years since their theories of responsive regulation were first postulated, their regulatory concepts have been widely applied and developed in governance in Western Europe and former commonwealth nations. Although an amount of this success is arguably a result of the ambiguity of the framework that can be manipulated to apply to a broad range of situations a core principle in modern governance is that attention should be diverted to those areas and industries with demonstrably effective self-regulatory systems. Such approaches to regulation, in combination with the behavioural analysis (as used by the OIRA and Nudge Unit outlined below), use of big data and cost benefit analysis increasingly in use by regulators in fact evidence a model of governance that though it is in the service of the regulatory state is far from at odds with the theories of government neutrality and citizen autonomy espoused by neoliberalism.

39 Id.
42 Burford and Adams, supra note 41, at 129.
3.1 Nudges and the Office of Information and Regulatory Affairs

In 2009, President Obama nominated Cass Sunstein as the regulatory czar charged with leading the White House Office of Information and Regulatory Affairs (OIRA). OIRA is the control room for the US regulatory state, overseeing federal regulation of areas including the environment and agriculture, energy, financial stability, national security, health care, discrimination, road safety, education and crime and must approve a significant regulation before US cabinet-level departments issue it with binding force.43

Sunstein, a lawyer and regulatory scholar, gained prominence at an international level following the book he wrote with Richard Thaler in which they proposed regulatory governance be guided by the use of behavioural analysis and choice architectures - a theory of “nudges.”44 Such nudges take the form of simple incentives designed to calibrate and affect behavior minimally enough to maintain freedom of choice while also altering behaviour sufficiently to result in healthier, wealthier, and happier citizens. Examples include using behavioural prods and incentives to close the tax gap currently being employed in the United Kingdom45 as well as efforts to encourage employers to enroll employees automatically in savings plans or children to choose healthier snacks in school cafeterias.46 The approach proved sufficiently popular to result in the creation of a permanent “Behavioral Insights Team (informally referred to as the Nudge Unit) at 10 Downing Street.

It is interesting to note this theory of nudges and a new means of governance in the regulatory state proposed by Thaler and Sunstein and adopted by Sunstein during his tenure at OIRA was been decried by conservatives as a departure from the Chicago School from which he had come as a graduate student47 and by liberals as affording too much deferance to limited regulation and, in fact the reduction of regulation in areas in which Sunstein and OIRA perceived it to be unneeded.48

The theory of nudges recognises the paramountcy of freedom of choice in the democratic state and the need to respect free markets and allows individuals the autonomy to go their own way while also emphasising the propensity for human error and need for subtle guidance at significant junctures- thus arguably holding much in common with the neoliberal
values espoused by Plant and others. The authors argue that in fact nudges are everywhere—
they pervade the context, shaped by private as well as public institutions.

Thus the government by providing nudges itself through its regulatory governance
architectures is, arguable, no more or less interfering in the market than private actors who
provide their own nudges. Moreover, the limited alterations provided by nudges which can
result in significant improvements in efficiency of governance in fact offer the potential for
the regulatory state to become more reconciled with the neoliberal ideologies espoused by
Plant than other methods of governance - a good regulatory state under the model provided by
Thaler and Sunstein - may also be a state with minimal but more insightful and effective
regulation which respects individual autonomy but strives for efficiency.

One of OIRA’s primary goals is to ensure the use of data and evidence, rather than
intuition and interest groups, as the foundations of regulatory governance. Such a reliance on
empirical evidence might appear obvious or indeed previously in place yet in reality the bias
towards intuition over information has and continues to play a significant role in governance.
Sunstein, writing in Foreign Affairs, uses the example of the story Moneyball, Michael Lewis’ the best-selling book, as a relatable example of such tendencies. The story details how Billy Beane, the general manager of Oakland Athletics’ baseball team together with a
statistician, Paul DePodesta, elevated Athletics from humble origins to one of the nation’s
premier teams over the course of a season by using information over intuition and anecdote.
In doing so he fought against criticism from the media as well as his own industry yet created
a model that transformed professional baseball. In the past, regulation has too frequently
been driven by stories of public concern and poll reports, industrial anecdote, individual
lobbying or the desire to insulate actors from accountability—none of which generates good
governance but which may conversely, produce large volumes of ineffective and burdensome
regulation.

Critics, notable neoliberalists object that debates over regulation are in fact debates
over values and not disagreements about evidence- debates which invite the government to
intervene on one side or the other. Of course, in the context of significant and sensitive

49 Id.
50 Id. at p. 53
51 Id.
52 Foreign Affairs, supra note 38.
53 Id.
54 Runtian Jing & John L Graham, Values Versus Regulations: How Culture Plays its Role, JOURNAL OF
debates values often play a significant role, indeed, even in cases benefitting from clear evidence, the same facts may lead two individuals to very different conclusion based on their individual values. OIRA has sought to overcome such debates over values and undue government interference by reframing such conflicts in terms of cost-benefit analyses- an approach frequently employed by neoliberal theorists.55

As practical situations are more likely to reflect complex situations over bright line delineations regulatory approaches must concern themselves with more than overall costs and benefits. This reality was recognised by President Obama in his 2011 executive order on regulation which directed agencies to quantify costs and benefits as accurately as possible while allowing for recourse to be had to considerations of values such as “equity, human dignity, fairness, and distributive impacts” which are evade traditional quantitative analysis.56 Taking account of such considerations may be appropriate as a guard against overstepping the desired quantity of regulation. The US has taken steps to ensure a disciplined approach to consideration of such qualitative matters by promoting accountability by recommending all significant regulations be accompanied by tables displaying; a clear statement of the quantitative and the qualitative costs and benefits of the proposed action; a presentation of such uncertainties as existed and finally, the reasonable alternatives to the action. OIRA further required agencies to include a concise executive summary of new rules, explaining what and why the changes were being perused, an account of the change’s attendant qualitative and quantitative costs and benefits.

Regulatory innovations and governance evolutions such as OIRA are made possible and practicable by availability of big data. Today there is more information available to governments and ordinary citizens than at any previous time in history – an advantage that can be exploited for beneficial governance outcomes through the utilisation of big data.57 As recently as 2000, a quarter of all information stored worldwide was in digital form with the remainder stored on analog media yet as the amount and speed of digitised data has continued to escalate rapidly—doubling roughly every three years—that situation has inverted.58 Today, less than two percent of recorded information in the world is analog in form.59

57 Henceforth BD.
58 Id. at 7-9.
59 Id.
BD can now be put to myriad uses due to the existence of increased computing and analytical capacity, smart algorithms and software that borrows from basic statistics which allow vast quantities of data to be fed through computers in a manner that allows the discernment of patterns from which the probability of certain outcomes may be inferred. At a practical level BD is already being used in governance by public administrations, for example, in 2007, the US Department of Homeland Security launched the FAST (Future Attribute Screening Technology) project, which aimed to identify potential terrorists through the analysis of data covering individuals’ physiological patterns including body language while police forces in Los Angeles have adopted “predictive policing” software, which analyzes the data on previous crimes to identify where and when the next ones will be committed.

Such initiatives as well as those that seek to move longstanding administrative and regulatory systems such as licensing into an online forum are commonly referred to as “e-governance” whose operation and potential benefits this paper will now turn to discuss.

4. E-Governance

While the drawing of scientific inference from BD may seem beyond the scope of expertise of those involved in governance such attitudes may, in fact, result in less methodologically sound regulatory and governance structures - a situation which challenges lawyers and policy makers involved in the design of governance architectures to reform their view of such scientific analysis as an a posteriori form of justification for reasoning or conclusions and rather employ its insights in an actively a priori method in structuring their governance architectures in the regulatory state. The rise of the acceptance of the use of the scientific and behavioural analysis in governance and regulation discussed thus far, is arguably also seen in the rise of e-governance.

One of the greatest benefits heralded by the dawn of e-governance is that it has dawned in tandem with a period of technological advancement in which the price and time necessary for retrieving information is low due to the available and analysability of BD. Just as scarcity favours corruption, knowledge brings power, making information including laws,
regulations, parliamentary debates and the details of state budgets online makes good governance easier as critics and observers can ask the right questions more freely and make informed choices about the manner in which they vote, lobby and decide what actions they should take to influence government. America's usa.gov, a pioneering example of e-governance offers in excess of 100 online services to citizens as well as vast amounts of government administration and budget details. Indeed the US is adopting e-governance at varying degrees at state as well as federal level. Using a detailed analysis of 1,537 state and federal government websites, a report measuring e-governance in 2008 revealed 89% of state and federal websites offered services fully executable online at significant savings to the taxpayer, compared with 86% in 2007 while 3% of government websites were accessible through personal digital assistants (PDAs), pagers or mobile phones, an increase of 1% annually.65

The advantage of such new technology is that it can transform bureaucracy through integration- just as businesses do not expect customers to deal separately with finance, logistics and sales departments, a new parent should not be required to worry about the way in which tax authorities, social-benefit administrations, health services, education system and the local government may register or use their childs information. E-governance addresses such concerns by introducing a “cohesive multi-channel service” – meaning that whether you use the Internet, telephone, letter or a personal visit, you receive service of equal quality and efficiency.

However, e-governance initiatives have faced problems- primarily public concern over breach of personal privacy as well as greater government control over the manner and amount of information citizens can access as well as the quantity and quality of data it will retain on its citizens- preoccupations with government over-reach, common to neoliberal critiques of regulatory states, conversely such e-governance initiatives also offer a means of creating an efficient state with minimal bureaucratic structures in keeping with neoliberal theories of governance.66

4.1 E-governance in Washington DC

Yet, where correctly and thoughtfully designed and implements e-government can improve efficiency for government and citizens. The municipal administration of Washington DC was once synonymous with government, yet under mayor Adrian Fenty, it has become a model for those seeking to adopt an e-governance model. Its interface at, dc.gov allows citizens to carry out a range of tasks online which previously would have involved the provision of extensive and complex bureaucracy.67

Vivek Kundra, the chief technology officer for the district, outlined several inefficiencies inherited by the new e-governance office on its creation including hundreds of computers bought for district schools which were never used and are now obsolete because inventory managers could not locate where they had been stored in the previous system as well as some 4.6 million unsearchable paper records of District employees stored in different locations, rarely centrally catalogued.68

In contrast under new leadership the administration has adopted a simple spreadsheet system, with tasks requiring action highlighted in yellow and those accomplished in green. Where an action exceeds its deadline it appears in red and a supervisor is automatically notified. Such changes in governance are not expensive- the office requires no large servers and uses free word, spreadsheet and e-mail services provided by Google. Taking account of the extra storage space needed and security the system costs $50 per employee per year.69

Everything—including the millions of records previously languishing in obscurity are now scanned and indexed in the “cloud.” Kundra cites Adam Smith's “invisible hand”: just as in the private sector, technological innovation works only when the market wants it – to justify its existence his e-governance system must demonstrate its value rather than forcing the adoption of their system by administrative fiat- perhaps a reflection of the cost-benefit analysis promulgated by Sunstein during his tenure at the head of OIRA.

However e-governance is not simply about computers- it also involves changing the way governance works. In this regard small bureaucracies are more amenable to reform than larger ones- Kundra's accomplishments are minimal compared with the challenges facing Karen Evans, America's e-governance tsarina at a national level. Such challenges are largely a result of the bigger questions data based governance faces - issues such as privacy, levels of

68 Id.
69 Id.
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consent, storage and use of data and individual identification all become far more significant as the system is integrated at a national, or supranational level.\textsuperscript{70} Though evidence based on the adoption of e-governance initiatives would suggest this governance tool of the regulatory state is more likely to work successfully in economically advanced jurisdictions there is evidence it can succeed elsewhere.

Indeed, this initial impression of economic success as a prerequisite is a result of the process of e-governance implementation and regulatory governance design. Dissembling government operations and affairs into their component parts, questioning the inherent legitimacy of their operations or even existence and reassembling the systems and institutions to better serve and suit citizens is a task which sits uneasily even the most highly educated, well paid and motivated bureaucrats in advanced countries. The struggle involved for less experienced and privileged nations whose bureaucracies are under-developed and relatively under stocked by university graduates may border on impossible.

4.2 E-governance in Andhra Pradesh

Mahatma Gandhi, an outspoken critic of Indian officialdom and perhaps sympathetic to neoliberal calls for reduced bureaucracy is quoted on the walls of public offices throughout India:

\begin{quote}
“Who is a customer? The customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption of our work. He is the purpose of it. He is not an outsider in our business, he is part of it. We are not doing him a favour by serving him.”\textsuperscript{71}
\end{quote}

Yet Gandhi’s words have been notable more for the lack of observance they have generated than their change of form. Public administration standards in the country are low, with billions of dollars allocated to subsidies and dole payments – some 85\% of which was estimated as recently as the 1980s not to reach its intended target- a telling example in a system beleaguered by waste and inefficiency.\textsuperscript{72} However, this context is gradually undergoing reform notably through the adoption of e-governance. The southern state of Andhra Pradesh has pioneered e-seva, a network of public internet offices that enable citizens to pay bills and taxes, register to vote and communicate with government easily, online.

\textsuperscript{70} For example, see NHS.
\textsuperscript{71} Quote Investigator, Exploring the Origins of Quotations, \url{http://quoteinvestigator.com/2012/08/02/gandhi-customer/} (last accessed 28 May 2015).
\textsuperscript{72} Id.
Andhra Pradesh, e-seva now processes nearly 110,000 transactions worth $2.8 million a day—an annual increase of 25% a year since the program began, with over 60% of all payments related to public service now made electronically. The regional government has plans to extend its network of e-seva centers from 119 to 4,600. E-governance is spreading incrementally through the Indian subcontinent, transforming public interactions with government as it does so. Train travel has been deregulated and its provision computerised prompting greater internal competition as well as increasing the efficiency of public administration—regulatory reforms which, as in the US example, arguably go some distance towards reconciling the regulatory state with neoliberal ideologies of the previous decades. The federal government is showing increased interest in e-governance initiatives as well with plans to open 100,000 national common service centers—minimal versions of e-seva—across the country by the end of 2008.

5. Conclusion

The ascendant breed of regulatory state as evidenced in OIRA and the Nudge unit represent, through their adoption of rational choice models and prioritisation of deference to individual and trade freedom, a distinct tolerance for the free market foundations which the neoliberal theory of states and governance continues to espouse. By utilising big data as well as e-governance, behavior and cost-benefit analysis to generate more efficient governance the regulatory state has returned to the foundational tenets of neoliberal governance as Rustow articulated them.

As noted by Cass Sunstein, the focus of OIRA in the US has been on regulations which enabled economic growth and job creation such that when high costs are imposed on the private sector, it is not only an abstraction called “business” which pays the costs as well as, ultimately, consumers. The regulatory governance model thus in use is clearly a modern incarnation of neoliberal ideologies—promoting decreased regulatory and legislative burdens and promoting competition as well as efficiency.

However, the regulatory state and neoliberal ideologies remain at odds in certain, other, respects. While e-governance initiatives and regulatory frameworks seek to maximise efficiency and competition they also actively seek, contrary to neoliberal principles, to participate in certain market functions by parceling and distributing public goods. This characteristic, which places neoliberalism and the regulatory state so at odds, is unlikely to

73 Id.
74 Id.
75 CASS R SUNSTEIN, supra note 46, at 8.
change. The political context and practical reality in which modern governance now operates is one in which resources thought at the time of neoliberalism’s birth to be infinite are increasingly finite.

In such a world little margin for error which will not negatively impact significant sections of the public and responsible governance thus, increasingly, requires the regulator state to accommodate the numerous functions, provisions and delegations which modern governance imports. In acting proactively to create and maintain a stable and sustainable environment for its citizens through the use of regulatory, fact based governance modern states necessarily stray from neoliberal principles and deal in those policies that are practically functional rather than ideologically appealing.76

The regulatory state may not be as ideologically svelte as neoliberalism nor as storied in its legacy. Yet it offers a very real potential to achieve beneficial change for citizens without deserting the entrenched notions on which many democracies have been founded and continue to stand by – free trade, limited government intervention and citizen autonomy. Thus, while modern governance approaches such as big data and e-governance cannot wholly reconcile the regulatory state with the neoliberal model offered by Plant and others, they do illustrate that the mutually exclusive dichotomy often used to characterise regulatory and neoliberal governance models is overly simplistic and far from a bright line division.