New Zealand's *Regulatory Stewardship* as a guiding philosophy for regulatory reforms

Professor Jeroen van der Heijden
Chair in Regulatory Practice
Victoria University of Wellington

VICTORIA UNIVERSITY OF
WELLINGTON
TE HERENGA WAKA
1897

WELLINGTON SCHOOL OF BUSINESS AND GOVERNMENT

GOVERNMENT
REGULATORY
PRACTICE
INITIATIVE

New Zealand's Regulatory Stewardship *as a guiding philosophy for regulatory reforms.*

State of the Art in Regulatory Governance Research Paper – 2021.09

Professor Jeroen van der Heijden

December 2021

Publications in the State of the Art in Regulatory Governance Research Paper series

- van der Heijden, Jeroen (2019). *Behavioural insights and regulatory practice: A review of the international academic literature. State of the Art in Regulatory Governance Research Paper – 2019.01.* Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative.
- van der Heijden, Jeroen (2019). *Risk governance and risk-based regulation: A review of the international academic literature. State of the Art in Regulatory Governance Research Paper – 2019.02.* Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative.
- van der Heijden, Jeroen (2019). *Regulatory philosophy, theory and practice: Ka mua, ka muri. State of the Art in Regulatory Governance Research Paper – 2019.03.* Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative.
- van der Heijden, Jeroen (2020). *Systems thinking and regulatory governance: A review of the international academic literature. State of the Art in Regulatory Governance Research Paper – 2020.04.* Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative.
- Pelin; Kale, Wendy; Manch, Keith; McGirr, Nick; Mumford, Peter; Raj, Sanjai; and, van der Heijden, Jeroen (2020). *Professionalising regulatory practice: Lessons from the New Zealand G-REG Initiative. State of the Art in Regulatory Governance Research Paper – 2020.05.* Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative.
- van der Heijden, Jeroen (2020). *Responsive regulation in practice: A review of the international academic literature. State of the Art in Regulatory Governance Research Paper – 2020.06.* Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative.
- van der Heijden, Jeroen (2020). *Towards a profession of public regulation: Lessons from the New Zealand G-REG Initiative. State of the Art in Regulatory Governance Research Paper – 2020.07.* Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative.
- van der Heijden, Jeroen (2021). *The politics of regulation: A review of the international academic literature. State of the Art in Regulatory Governance Research Paper – 2021.08.* Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative.
- van der Heijden, Jeroen (2021). *New Zealand's Regulatory Stewardship as a guiding philosophy for regulatory reforms. State of the Art in Regulatory Governance Research Paper – 2021.09.* Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative.

Disclaimer

The Chair in Regulatory Practice in the School of Government, Victoria University of Wellington, is part of the Government Regulatory Practice Initiative (G-REG). G-REG is a network of central and local government regulatory agencies and has been established to lead and contribute to regulatory practice initiatives. It works on actions that improve leadership, culture, regulatory practice and workforce capability in regulatory organisations and systems. The Chair is sponsored by ten agencies within G-REG, the Treasury, and the Victoria University of Wellington.

Through world-leading research on regulatory practice and active engagement with the G-REG community, and by contributing to the training of those involved in regulatory issues, the Chair aims to help improve New Zealand's regulations and their impact on economic and social performance. The Chair defines regulation broadly as the institutions, processes and instruments put in place to steer the behaviour of individuals and collectives towards desirable societal ends.

The State of the Art in Regulatory Governance Research Paper Series seeks to inform those involved in regulatory issues in New Zealand and elsewhere on developments in the regulatory literature. Papers in the series review the international academic literature and distil key insights for an audience of regulatory professionals in government and other sectors.

All opinions expressed in this paper are the author's and are not necessarily shared by G-REG or its supporting agencies, the Treasury, or the Victoria University of Wellington.

To cite this research paper[1]:

van der Heijden, Jeroen (2021). *New Zealand's* Regulatory Stewardship *as a guiding philosophy for regulatory reforms. State of the Art in Regulatory Governance Research Paper – 2021.09.* Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative.

---

[1] The research paper is an early draft of a chapter that in due course will appear in *Global Issues in Public Administration* edited by the Korean Institute of Public Administration (KIPA).

Abstract

In this research paper, the idea of Regulatory Stewardship is approached as a guiding philosophy for regulatory reform and its development and current state is contrasted with other such guiding philosophies. Considering the complexities of regulation, regulators should look at the performance of their regulatory systems in full rather than at the performance of parts of it when pursuing regulatory reforms. Regulatory reforms have long been approached, unintentionally, as zero-sum games in which improvements of some parts of regulatory systems would ask for sacrifices of other parts—typically, increased cost-effectiveness has been traded off against reduced accountability, transparency, equity, or certainty. When looking at the performance of regulatory systems in full, regulators are forced to think about such trade-offs early on. Arguably, the Regulatory Stewardship experience in New Zealand illustrates that changing this mindset is possible despite many challenges.

Contents

1   Introduction

Regulation is central to modern-day public administration and governance. For the purpose of this research paper, regulation is understood as "an *intentional,* and often *structured* and *sustained*, *process* implemented by an individual or collective ('regulator') to *direct* the behaviour of other individuals or collectives ('targets') to achieve a *predefined aim* through a variety of *interventions* ('instruments' and 'strategies') that typically include standard-setting, monitoring, enforcement, and retribution or rewards" (Van der Heijden, forthcoming). The regulator can be a government agency (or individual) or a private or third sector entity, or a combination of these, and so can be the targets of regulation.

Throughout the 20th Century, around the globe, regulatory principles and guiding philosophies have gone through considerable changes (Lee & Park, 2009; Van der Heijden & Hodge, 2021). Some of these sought to make regulation more cost-effective and efficient, and were primarily inspired by 'traditional' Chicago-school economics (Stigler, 1971) and later by New Public Management thinking (Hood, James, Jones, Scott, & Travers, 1998). Others were initially inspired by developing insights about humans' motivations to comply (or not) with regulatory requirements (Van Rooij & Fine, 2021) and later by developments in the behavioural sciences (Thaler & Sunstein, 2021). Whatever their source of inspiration, many of these changes have resulted in reform of parts rather than full-blown system or systems reforms (Van der Heijden, 2020).

Whilst these partial reforms have improved the performance of regulation, at least two issues remain unclear. First, whether and how do the individual reforms add up (at the regulatory system or systems level) to something larger than the sum of its parts? Second, whether are guiding philosophies regulatory reforms preferable to make sure that reforms add up to something larger than the sum of its parts, and what could they look like? This research paper will mainly engage with the second issue but provides some pointers that may bring some clarity to the first also. It does so by first exploring some of the changes to regulation that have occurred around the globe. From there, the research paper will explore how a few governments have approached guiding philosophies for these regulatory reforms. Of these, the approach of *Regulatory Stewardship* in New Zealand is singled out and unpacked in the second half of the research paper.

For clarity, a regulatory system is here envisaged as the whole of rules and norms (both formal and informal), their enforcement (including rewards and sanctions), the institutions that implement them (including regulatory agencies and their staff) and the institutions that are subject to them (including citizens and businesses), and the interplay of these elements. As a descriptive lens, such a systems perspective can help to map the regulatory arrangements for a given regulatory problem; as an analytic lens, a systems perspective can help to explore and interrogate the performance of the whole of regulatory arrangements and their feedback processes (cf., May & Jochim, 2013).

2 A brief overview of dominant regulatory reforms at different parts of regulatory systems

For millennia (and often still), law and regulation have been approached and conceptualised as the same. A ruler (whether a democratically elected government, a hereditary monarch, or a suppressive warlord) would set prescriptive rules (applying to everyone) and a severe penalties (often financial or corporal) for non-compliance (Elias, 2000 [1939]). Such rules would either seek to *restore harm done*, as for instance in the Law of Ethelbert (Anglo-Saxon tribal law from the 7th Century) that lays down a series of 'weregeld' (monetary) penalties for specific injuries caused (Orth, 1991); or the rules would seek to *retaliate harm done*, as for instance in the Codex Hammurabi (Babylonian law from the 18th Century BC) that comprises an extensive set of 'fitting' punishments for a variety of harms ('lex talionis'; Fish, 2008). Such government-led and deterrence-oriented regulation (also known as 'command-and-control') has served humanity well and has allowed us to develop the complex societies that we see around us today (Fukuyama, 2015).

However, command-and-control regulation has proven to be too limited for governing complex modern societies as well as global problems such as climate change, financial stability, and recently the COVID-19 pandemic. To name a few challenges: Increasing complexity requires increasing regulation, often to the point where laypeople and specialists alike do not longer (fully) understand the regulatory requirements they are subject to (Staples, Chambers, & Malone, 2021). Increasing regulation requires increasing administrative and enforcement capacity, sometimes to the point where regulation becomes too much of a (financial) burden for governments (Levi-Faur, 2013). Increasingly, governments are expected to govern with (as opposed to govern over) their subjects, resulting in ongoing forms of co-regulation and joint-development of regulatory regimes (Baldwin, Cave, & Lodge, 2012). Increasingly, also, it is becoming clear that traditional command-and-control regulation does not align well with humans' behavioural postures and compliance motivations (Van Rooij & Fine, 2021).

For these and other reasons, governments have been reforming regulation actively since, at least, the 1950s. The reforms that are undertaken show a shift away from the traditional top-down, intrusive, and government-led command-and-control strategy. These reforms include, but are not limited to, the move from prescriptive towards performance-based and goal-oriented regulation (May, 2003), dynamic regulatory regimes that include sun-set clauses and formalised forms of experimentation (Ranchordas, 2015), increasing use of regulatory impact assessment and benefit-cost analyses in the development and evaluation of regulatory governance (Kirkpatrick & Parker, 2007), the reliance of governments on various forms of self-regulation by—or co-regulation with—the regulated industry (Gunningham & Rees, 1997), and the 'leapfrogging' of transitional regulatory systems in favour of more advanced ones by rapidly developing countries (Cho & Büthe, 2021). Overviewing the regulatory literature, the following three regulatory reforms stand out as having dominance globally:

- From the 1970s onwards, government departments have been challenged to become more cost-effective and efficient—the turn to new public management (Hood, 1995; McLaughlin, Osborne, & Ferlie, 2002). Inspired by risk assessment and risk management tools in the business sector, government departments began to embrace these tools too. It allowed them

to follow a utilitarian approach in order to "allocate regulatory resources in proportion to the risks and interventions they require" (Davies et al., 2010, 963) and "explicitly explain their selective decisions based on the assessment of the risk that the regulated actors (companies or individuals) present" (Macenaite, 2017, 512).

- In the 1980s and 1990s, the growth of command-and-control type regulation was assumed to have burdened the market, and governments were often considered less effective and efficient in the delivery of services such as regulatory governance than market actors (Gunningham & Grabosky, 1998). These critiques led to a range of initiatives to contract out or delegate regulatory tasks to private sector agents, or even to privatise these tasks fully (Hodge, 2000). In addition, because governmental regulators often lack capacity and expertise they had to turn to external, often non-government 'regulatory intermediaries' for rule development, the setting of standards, rule-monitoring, and enforcement (Abbott, Levi-Faur, & Snidal, 2017).

- Since the early 2000s, insights from behavioural economics, cognitive sciences, and psychology that point out that humans often are less 'rational' than is predicted by neoclassical economics—the economic model that underpins much government policy—have entered mainstream debates (Thaler & Sunstein, 2021). Consequently, governments around the world have begun to embrace a more realistic human behaviour model through regulatory interventions informed by behavioural insights (van der Heijden, 2019). These seek to address people's heuristics and biases, such as hyperbolic discounting (when faced with a choice between two possible occasions for receiving a payoff stronger weight is given to the one that will be received sooner even if that one is relatively less profitable) and status quo bias (a preference for the current state of affairs).

3   Some guiding philosophies for regulatory reforms

Whilst the regulatory reforms that we have witnessed around the globe since the 1950 are (often) laudable, it is relevant to note that they often have resulted in a layering of new forms of regulation and new regulatory tool on top of existing regulatory requirements. The reforms typically are a fine-tuning of (parts of) existing regulatory systems, rather than an approach to replace these regulatory systems or reform them in full. The risk then is that the regulatory systems that governments (but also citizens and businesses) now must work with are overly complex patchworks of old and new rules, tools, and strategies that lack cohesion and clarity. To overcome exactly that risk, governments around the world have developed principles and guiding philosophies for regulatory reforms—some governments have a longer history of doing so than others. Their ambition is to ensure that regulatory agencies across government comply with a set of coherent and consistent criteria when proposing, developing, implementing, reviewing, reforming, and terminating regulation and regulatory interventions. By way of illustration:

- The United States has a long history in this regard. In the mid-1940s, it introduced the *Administrative Procedure Act* (APA), which, when introduced, was touted as a "bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated" (as quoted in Rosenbloom & O'Leary, 1997, 45). The APA requires regulatory agencies, among others, to keep the public informed of how they are organised, and their procedures and rules; to provide for public participation in the rulemaking process; and to establish and follow uniform (whole-of-government) standards for making and implementing rules.
- On the other side of the Atlantic, the European Commission launched its *Better Regulation Agenda* (BRA) in the early 2000s. Akin to the APA, the BRA is a set of requirements and expectations for regulatory agencies at the EU level. The purpose is to ensure that regulation is developed and implemented openly and transparently, builds on the best available evidence, is backed by stakeholders, and respects the principles of subsidiarity and proportionality.
- Down Under, we have seen similar developments since the early 1990s. Initially, both Australia and New Zealand set off on a trajectory of regulatory reform guided by the principles and underlying philosophy of deregulation and the reduction of red tape and compliance costs. While Australia is still very much following this philosophy in its *Deregulation Agenda*, the focus in New Zealand has shifted to *regulatory stewardship*.

The APA, the BRA, and various deregulation initiatives now have a long enough history for us to see their merit (or the lack thereof) in regulatory practice. Perhaps more importantly, these guiding philosophies have, over time, achieved some conceptual clarity. Regulatory stewardship is a relatively novel invention, however, and many questions remain about what it will ultimately achieve. It is for this reason that regulatory stewardship is singled out for further discussion here.

4 Towards regulatory stewardship in New Zealand

The regulatory reforms since the late 1980s in New Zealand broadly follow the abovementioned timeline and have been well documented elsewhere (Gill & Intal, 2016). As in many other countries, the more recent reforms have focused on reduced regulatory burdens for business and society (the 'Better Regulation, Less Regulation' package in New Zealand introduced in 2009) and to improve the quality of regulation (Regulatory Responsibility Bill of 2006 and the Regulatory Standards Bill of 2011). Effectively, these reforms largely followed the broader deregulation agendas launched in the 1980s. Then, in 2013, the New Zealand government did something out of the ordinary. It tasked the Productivity Commission[1] to carry out an extensive review of New Zealand's regulatory institutions and practices, and it explicitly requested it to "[d]evelop system-wide recommendations on how to improve the operation of regulatory regimes over time".[2] ins, this request was 'out of the ordinary' because the inquiry had to move well beyond asking questions about the financial costs and benefits of regulation in New Zealand, and it had to move well beyond undertaking an economic impact assessment that was the convention in many countries at that time.

In 2014, the Commission issued its report, *Regulatory Institutions and Practices*. To some extent the report was positive about regulation in New Zealand, but it also pointed at "many areas where the capability and performance of the regulatory system in designing and regularly upgrading regulatory regimes falls well short of what it should and can be" (New Zealand Productivity Commission, 2014, 14). The Commission acknowledged that some progress had been made through the abovementioned reform initiatives, but that such improvements were fragmented, often needed a better follow-through, and that "[f]ocus, continuity and a system-wide view of performance weaknesses and potential improvements are required" (ibid). Logically, the Commission advised energetic and focused leadership from Cabinet as the owners of the regulatory system.[3] It advised that more attention would be paid to the organisational design, implementation, and review of regulation. Finally, it advised that stronger encouragement and support would be given to regulators to fulfil their stewardship obligations. Here it should be stressed that Treasury staff actively referred to the regulatory stewardship duty and expectations (see below) when they engaged with the Commission on its inquiry.

While the Commission's report has been indispensable for the institutionalisation of the idea of regulatory stewardship in New Zealand, it is relevant to stress that the idea itself had already been introduced before the report was published—in 2013 when it became a statutory obligation for government departments (the adoption of regulatory stewardship as a statutory obligation did,

---

[1] An independent Crown entity tasked with advising the New Zealand government on how productivity can be improved in a way that supports the overall wellbeing of New Zealanders.

[2] See paragraph 12 of the Terms of Reference provided to the Productivity Commission, https://www.productivity.govt.nz/assets/Documents/133904b85c/Terms-of-reference-v4.pdf (accessed on 1 December 2021).

[3] Please note, the Productivity Commission uses the term 'regulatory system' (singular) to refer to the whole of regulation in New Zealand. Following the definition at the start of this research paper, this should be the whole of regulatory systems (plural) in New Zealand.

however, not mean that government Ministers were actively involved in leading or promoting it).[4] The idea of regulatory stewardship stems from the New Zealand Treasury (the Treasury), a central government agency that has fulfilled the government's regulatory management oversight function since 2008. In this role, the Treasury has been guiding New Zealand's regulatory reforms. Initially, the focus of reforms shifted from a 'compliance cost reduction' strategy, via a strategy that largely focused on the quality and costs of new regulation ('regulatory flow management'), to a strategy that has its focus on the quality of the stock of regulations (Gill & Intal, 2016). In this shift, the terminology changed from 'better regulation' via 'regulatory responsibility' to 'regulatory stewardship'. Arguably, the latter term captures the Treasury's ambition to think about regulatory reform in a holistic, long-term, and whole-of-government manner.

Over time, expectations for regulatory stewardship have been developed by the Treasury, with the latest guidance dating from April 2017.[5] The Treasury defines regulatory stewardship as:

> a responsibility of government regulatory agencies. It involves them adopting a whole-of-system, lifecycle view of regulation, and taking a proactive, collaborative approach, to the monitoring and care of the regulatory system(s) within which they have policy or operational responsibilities.[6]

Stewardship responsibilities require regulators to keep track of the performance of their regulatory systems (through the "monitoring, review and reporting on existing regulatory systems"), to seek to keep their regulatory systems fit for purpose (through "robust analysis and implementation support for changes to regulatory systems"), and to ensure proper implementation of their regulatory systems ("good regulator practice"). These responsibilities and expectations are, to some extent, laid down by the Treasury. It is relevant here to note that regulatory agencies are expected to do all this actively without requiring their minister's explicit direction or permission (NZ Treasury, 2017).

---

[4] This may puzzle some readers, as it has long puzzled me. Treasury staff explains that the adoption of the regulatory stewardship obligation would likely not have been agreed on by Ministers if they had been asked to assume the responsibility for its implementation and actively lead it.

[5] New guidance will be issued most likely in 2022, but that material is not available to the public at the time of writing this research paper. The best place to find current and future information from the Treasury on regulatory stewardship is: https://www.treasury.govt.nz/information-and-services/regulation (accessed on 21 November 2021).

[6] See https://www.treasury.govt.nz/information-and-services/regulation/regulatory-stewardship (accessed on 19 October 2020).

5   Early experiences with regulatory stewardship in New Zealand

Despite regulatory stewardship having been a statutory obligation since 2013 and despite guidance having been provided by the Treasury, regulatory agencies in New Zealand have been struggling to operationalise their regulatory stewardship roles (Van der Heijden, 2021). This struggle has, in my experience as Chair in Regulatory Practice at the Victoria University of Wellington (a role in which I have worked closely with regulatory agencies and the Treasury), at least two sets of overlapping origins. The first set can roughly be captured as 'implementation difficulties', the second as 'conceptual ambiguity'.

First, the overall regulatory stewardship obligation is akin to performance-based regulation. It stipulates the intent or outcome to be achieved but leaves a large amount of (discretionary) space for regulatory agencies to fill in their stewardship role. The intent or outcome is that regulatory systems are "an asset for New Zealanders, not a liability" (NZ Treasury, 2017, Part A). Regulatory stewardship then "simply means having a proactive duty of care of a [regulatory system that] belongs to, or exists for the benefit of, others" (Ayto, 2014, 27). But, as is so often the case with performance-based regulation, the targets of the regulation (in this case, regulatory agencies) often want to know what minimum requirement they must meet in order to comply (May, 2011). This holds even more strongly when the outcome that is to be achieved is broad and somewhat opaque, as is the case with regulatory stewardship. Also, the government expects regulatory agencies to work collaboratively on their stewardship responsibilities (NZ Treasury, 2017). However, little progress has been made as regards such collaboration in the first years after regulatory stewardship had become a statutory obligation. Arguably, it is not possible to achieve the whole-of-system perspective envisaged by the Treasury unless multiple agencies work together. Whether the (initial) lack of collaboration between regulatory agencies was the result of lack of clarity about their regulatory stewardship obligations or a lack of resourcing and commitment at agency level is beyond the scope of this a research paper.

Second, conceptual confusion has resulted in questions about what stewardship is, what it could be, and what it should be. Yet, the use of the term 'regulatory system' has caused confusion within regulatory agencies also. The Treasury explicitly refers to regulatory systems (plural) when discussing regulatory stewardship. A regulatory system is broadly understood by the Treasury as "a set of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors, that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome" (NZ Treasury, 2017, 1). Phrased differently, a regulatory system comprises the full suite of regulation that applies to a policy area. For example, the Treasury itself is the lead agency for five regulatory systems including the 'overseas investment regulatory system', and the Ministry of Business, Innovation and Employment is the lead agency for seventeen regulatory systems including the 'building regulatory system'. Things get confusing for regulatory agencies, however, when the Treasury adds that a regulatory system is part of a broader (legal) system and is impacted by and impacts on other regulatory systems, and that multiple regulatory agencies usually have responsibilities within a given regulatory system. Practically, regulatory agencies have wondered about the level at which they must define their regulatory system or systems (e.g., the transport system in general, the road transport system, the vehicle roadworthiness system, the vehicle roadworthiness inspector certification system, and so on). Logically, they have asked if they are

responsible for a whole-of-system approach to regulation which calls for collaboration across regulatory agencies. And logically, too, they have asked who is ultimately accountable for regulatory stewardship in a shared regulatory system (for a more extensive discussion, see for example Winson, 2017).

6   Early experiences with regulatory stewardship in New Zealand

The abovementioned challenges require some clarification, however. The Treasury had initially taken a rather 'hands-off' approach to the implementation of regulatory stewardship. It had experienced some backlash in earlier reform initiatives where it had taken a more top-down approach (for example the Best Practice Regulation assessments of 2021 and 2015[7]). The New Zealand government is exceptionally siloed, perhaps even more so than in other countries, and earlier regulatory reform initiatives by the Treasury were sometimes experienced by regulatory agencies as an infringement on their autonomy. In addition, the Treasury has long had a limited capacity for fulfilling its regulatory oversight responsibilities (effectively, a very small team) and its focus has long been on regulatory impact assessments. This means that when regulatory stewardship became a statutory obligation, the Treasury lacked the capacity to actively support regulatory agencies. In addition, most government Ministers were not actively leading or promoting the implementation of regulatory stewardship.

Recently, however, relevant developments have helped tackling (some of) the challenges that were experienced in the period 2013-2018. The first is that since 2019 a new Chief Executive has been leading the Treasury *and* that she has been given an explicit mandate to exercise a cross-government leadership role for regulatory stewardship. In this role, she has brought together a group of Chief Executives of seven regulatory agencies (formally, the 'Regulatory Stewardship Chief Executives Group'). This group meets on a quarterly basis to provide advice and support to the Treasury's chief executive in exercising her regulatory system stewardship and assurance leadership role, and to share their experiences with the implementation of regulatory stewardship responsibilities. The group provides a sounding board to reflect on the work that the Treasury does to implement regulatory stewardship, but it also acts as means to increase collaboration across government agencies in both the development and implementation of a whole-of-government understanding of regulatory stewardship. The group further allows these specific regulatory agencies to show (collective) leadership in this area.

A second development is that the Treasury has (slightly) expanded its capacity for implementing regulatory stewardship. It now has a dedicated 'regulatory stewardship team' that supports the new Chief Executive with her mandate, that acts as secretariat to the group of Chief Executives, and that is supporting various regulatory agencies with the implementation of their stewardship obligations. This team is, for example, developing guidance for those regulatory agencies starting their stewardship journey to help them undertake initial assessments of the state or quality of their regulatory systems, surveying government agencies to better understand the extent of their existing regulatory stewardship practice, and developing a process to identify, research and consider how to address systemic issues affecting many regulatory systems. The team has been involved in workshops with regulatory agencies and will roll out pilot program to provide regulatory agencies with guidance on the implementation of regulatory stewardship. One of the central ideas in this pilot is to expose agencies to different ways in which they can implement regulatory stewardship—a starting model, an emerging model, and a mature model.

---

[7] See further: https://www.treasury.govt.nz/information-and-services/regulation/regulatory-stewardship/keeping-regulation-fit-purpose/best-practice-regulation (accessed on 1 December 2021).

A third development is the introduction of the Public Service Act of 2020. The Act replaces the State Sector Act 1988 and sets out, among other, "the shared purpose, principles, and values of the public service and the people working in it" (New Zealand Government, 2020, Section 3). A central aspect of the Act is a set of public service principles that government agencies and staff must adhere to. One of these principles is 'stewardship', which includes the promotion of the public service's long-term capabilities (including its people), its institutional knowledge, its systems and process, its assets, and the legislation administered by agencies (New Zealand Government, 2020, section 12). These requirements reinforce the earlier regulatory stewardship obligation and, perhaps more importantly, underline that regulatory stewardship is not something that will fade over time but is actively pursued by the New Zealand government.

While it is too early at the time of writing this research paper to draw conclusions about the impact of these developments on the implementation of regulatory stewardship in New Zealand, the first indicators are positive.[8] The Treasury has been able to move the notion of regulatory stewardship from its conceptual phase to a more empirical phase, including the piloting of different stewardship models. Some regulatory agencies have begun to map their regulatory systems and have set up regulatory stewardship strategies for their systems, which makes it easier for others to follow their lead. The steering group of Chief Executives is championing the idea of stewardship in their own agencies, and in working together the group is naturally moving towards a less siloed and a more whole-of-government understanding of what regulatory stewardship is and could be for New Zealand.

In sum, after a slow start, the implementation of regulatory stewardship appears to be accelerating in New Zealand. Still, some conceptual confusion remains about what the term means, and when taking a step back, we may even ask: what does the notion of 'stewardship' truly add to regulating regulatory reforms? In what follows, I will briefly review the broader literature to begin answering that question.

---

[8] Unfortunately, the implementation of regulatory stewardship has been disrupted by the COVID-19 pandemic. The Treasury is, however, working with regulatory agencies to capture any relevant lessons on what the pandemic has taught about regulatory stewardship practice. See further: https://www.treasury.govt.nz/information-and-services/regulation/regulatory-stewardship/keeping-regulation-fit-purpose/regulatory-system-reporting (accessed on 23 November 2021). Anecdotal evidence from one regulatory agency indicates that those parts of the agency that were more advanced in their regulatory stewardship development proved much better able to identify, under great urgency, temporary changes that needed to be made to suspend regulatory requirements that people could not reasonably comply with during COVID-19 responses such as lockdowns.

7   Unpacking the idea of 'stewardship' in regulatory stewardship

Stewardship is one of those abstract concepts that we all tend to define slightly differently. There is no fixed understanding of what exactly is meant by stewardship in the academic, policy, and practitioner literature (Albers Mohrman, O'Toole, & Lawler, 2015; Moon, Marsh, Dickinson, & Carey, 2017). With that caution in mind, it safe to say that stewardship broadly implies "the careful management of something that belongs to others" and leaving something "in better condition for use by future generations" (Albers Mohrman et al., 2015, 3). In a similar vein, it is generally accepted that a steward "does not necessarily own the entity that is being taken responsibility for" and does not "necessarily have the right of control over the resources being taken responsibility for" (Moon et al., 2017, 10).

Stewardship in organisation, management, and governance literature
The idea of stewardship frequently recurs in organisation, management, and governance literature. For example, 'stewardship theory' is a theory devised to explain and conceptualise organisational behaviour, and applies to public and private organisations. It holds that leaders of organisations are willing to act in the best interests of their organisations, and are motivated by a need and desire to perform excellently and with honour (Keay, 2017). To nurture stewardship behaviour, the theory recommends that these leaders are provided with rewards that give them intrinsic satisfaction, such as a chance to grow and achieve self-actualisation, rather than with ever-larger financial gains (Davis, Schoorman, & Donaldson, 1997).

In a similar vein, 'ethical stewardship' is a theory devised to explain and conceptualise the relationship between organisations and their staff, and organisations and their stakeholders, who include direct beneficiaries and parties that are indirectly affected by the organisation (Caldwell, Hayes, & Long, 2010). Central to the theory is the need for organisations to create trust by engaging staff and stakeholders in important decisions that involve them, and sharing critical information that may affect them. Honouring the duties owed by organisations to their staff and stakeholders is expected to nurture and strengthen their long-term commitment, which itself contributes to the long-term success of the organisation (Caldwell, Truong, Linh, & Tuan, 2011).

Both these theories focus on the activity side of stewardship. Other theories, however, focus on the structural side of stewardship. This includes institutional and process aspects. For example, theories on 'corporate stewardship' hold that the type of virtuous organisational practices and values discussed above should be thoroughly institutionalised in the organisational culture, rather than being dependent on the personality of individual leaders (O'Toole, 2015). Such institutionalisation may be achieved through training future organisational leaders, and having in place well-articulated organisational values and clear and transparent internal accountability processes.

In the slipstream of theories that focus on the structural aspects of stewardship, there is an ever-expanding codification of stewardship expectations and an ever-expanding set of frameworks for embedding stewardship in organisational structures. For example, the *UK Stewardship Code 2020* is a voluntary code for asset owners and managers and the service providers that support them. It sets out expectations about how these individuals should manage and oversee the capital entrusted to

them by their beneficiaries and clients, as well as 'apply and explain' principles that will help them to put the idea of stewardship into practice and to explain to stakeholders how they do this.

Stewardship in the regulatory literature

The concept of 'regulatory stewardship' has not yet made inroads in the regulatory literature, but it is worth having a look at the various parts of the regulatory literature that engage with the broader notion of stewardship as defined earlier. Regulatory scholars have, for a long time, been interested in whether and how regulation is an appropriate way for governments and others to ensure the wellbeing of people and their environments (Levi-Faur, 2012)—whether regulation is a way to operationalise "the careful management of something that belongs to others". These scholars have also been interested for a long time in how regulatory interventions, regulatory regimes, and regulatory systems can best be updated and be made and kept fit for purpose, resilient, anticipatory, and future-proof (Drahos, 2017)—how regulatory reform can "leave it in better condition for use by future generations". In sum, regulatory scholarship makes an analytical distinction between stewardship *through* regulation (and regulatory systems) and stewardship *of* regulation (and regulatory systems).

This distinction between stewardship *through* regulation and stewardship *of* regulation may help to bring some further analytical clarity in our thinking about regulatory stewardship. Questions related to stewardship *through* regulation are largely normative. They are about the type of regulator a regulatory agency wants to be. Whilst the terms' steward' and 'stewardship' are not generally used in the regulatory literature, associated concepts and terms are. These include 'paternalist', 'guardian', 'trustee', 'caretaker', and 'facilitator' (see also, Block, 2013; IMD, 2015). After all, a regulator can interpret its stewardship role in an authoritative paternalistic manner and claim that it knows best how to look after the interests of current and future people and organisations. But it can just as well interpret it in a collaborative service manner and help people and organisations to take responsibility for their own wellbeing.

Questions related to the stewardship *of* regulation are more practical (and here I should note that in New Zealand the statutory regulatory stewardship obligation is only about stewardship *of* regulation). For example, what type of monitoring and review of regulation gives us sufficient insight into its performance? How often and when does regulation need to be updated, and when are sunset clauses necessary? To what extent and how are targets of regulation and other stakeholders involved in regulatory development and implementation? What expertise and skills are required for regulatory staff across the regulatory sector, and how can these be provided? How are trade-offs made between competing public values such ass effectiveness, efficiency, accountability, and equity when reforming regulatory systems?

Summing up

In sum, the 'simple' term stewardship encapsulates a wide variety of meanings and expectations, with implications for regulatory governance:

- First, the idea of stewardship is both a virtue and a mechanism. As a virtue, it touches on values such as looking after the interests of others, taking care of what is given in trust, serving others, and looking after the interests of future generations. As a mechanism, it touches on practical issues such as being accountable for one's actions, being honest about one's

behaviour, not taking unnecessary risks with what is given in trust, and keeping in mind short-term and long-term outcomes.

- Second, the idea of stewardship is about both activity and structure. As activity, it touches on the motivations of human and organisational behaviour. It raises questions, for example, about how we nurture organisational leaders, staff, and stakeholders to see the prosperity of their organisations and the environments they serve and influence as more important than their personal interests. As structure, it touches on the processes and institutions that we have in place to put stewardship into practice. This resonates very much with the idea of stewardship as a mechanism that includes accountability processes, transparency requirements, risk reduction strategies, and periodical reviews.

- Third, the idea of stewardship is both outward-looking and inward-looking. As outward-looking, it very clearly touches on the central understanding that stewardship is about holding something in trust for another, whether this is a current other or a future other. As inward-looking, it touches on the responsibility and obligations of collectives and organisations (including regulatory agencies) to serve the wellbeing of those that make up these collectives and organisations (such as the staff of regulatory agencies). It is this aspect that makes New Zealand's approach to regulate regulatory reforms different from, for example, the *Administrative Procedure Act* in the United States or the *Better Regulation Agenda* in Europe (discussed earlier in this research paper).

Finally, in the context of regulation, the idea relates to both the stewardship of regulation and stewardship through regulation. The stewardship of regulation relates to the role of regulatory agencies to look after the quality of their regulation and staff and keep them fit-for-purpose. The notion of stewardship through regulation asks regulatory agencies to think about the type of steward they want to be through the regulatory instruments, regimes, and systems they are responsible for.

8   Discussion: regulatory stewardship in New Zealand as ideal and reality

The introduction of the idea of regulatory stewardship in New Zealand can be understood as a logical development in the history of regulatory reforms globally: a shift away from ever more fragmented and detailed reforms to a focus on the regulatory system or systems level, *and* a shift away from only considering the quantity and costs of regulation. Yet, it asks for a tremendous change in how regulatory agencies and their staff operate and set priorities. Such a major change will likely take time to yield results, which may partly explain why the implementation of regulatory stewardship in New Zealand has only recently begun to pick up speed—and even when it is fully implemented, it will be difficult to assess its exact effects (which is a typical problem with 'measuring' the impact or performance of regulation). At the same time, arguably, it has been a smart move to introduce regulatory stewardship as a 'magic concept' that is intentionally kept a little vague but therefore is rhetorically valuable precisely because they have positive connotations, broad scope, and, crucially, great flexibility (Pollitt & Hupe, 2011).

From the history of regulatory stewardship in New Zealand and from the brief review of the stewardship literature presented earlier, we can now safely conclude that it is hard to define exactly what regulatory stewardship is, let alone what it takes to be a regulatory steward. Regulatory stewardship is an ideal and a reality. As an ideal, it fits well with international initiatives to put in place some uniform (whole-of-government) principles and guiding philosophies for regulatory reforms. The idea of regulatory stewardship might be a little more ambitious than the content of the *Administrative Procedure Act* in the United States or the *Better Regulation Agenda* in Europe, but overall there are many overlaps between these initiatives. As a reality, regulatory agencies do not have to be overwhelmed by their regulatory stewardship obligations. All regulatory agencies are in the same boat, and many are struggling to get it right. A practical way forward is to embrace the struggle together and explore which of the elements of regulatory stewardship can be developed (and perhaps be owned) jointly—and indeed, this is what regulatory agencies in New Zealand are currently working on, supported by the Treasury.

It logically follows that there is no one-size-fits-all approach to regulatory stewardship. At the same time, it is not the case that anything goes when we seek to operationalise it. In abstract terms stewardship is, at its core, a set of values that relate to caring for something that is given in trust, nurturing what is given in trust for the wellbeing of others, and returning what is given in trust in better shape for future generations. In practical terms, as a mechanism, stewardship can be thought of as a collection of elements that create a bridge between an 'inward-looking' and an 'outward-looking' stewardship focus with an 'activity' and 'structure' approach to stewardship. The challenge for the Treasury and regulatory agencies in New Zealand (and for regulators in other countries that may wish to follow the New Zealand example) will be to come to a bounded set of these elements that is broad enough to allow regulatory agencies to tailor their own operationalisation of regulatory stewardship, but that at the same time is narrow enough to be meaningful as an overarching, whole-of-government set of principles (i.e., a guiding philosophy) for proposing, developing, implementing, reviewing, reforming, and terminating regulation and regulatory interventions.

9   Conclusion

The idea of regulatory stewardship with its focus on regulatory systems may be an idea whose time has logically come. Awareness has been rising that major societal problems, such as climate change and the COVID-19 pandemic, require holistic regulatory responses rather piecemeal ones. Awareness has also been rising that our traditional understanding of regulation needs considerable updating. As discussed earlier, much contemporary regulation builds on assumptions that people make rational decisions (from a neo-classical economics point of view) and respond to regulatory incentives in a predictable manner (the idea that people can be deterred to do the 'right' thing). Yet, these assumptions have been drastically undermined by insights from behavioural sciences over the last decades. Finally, awareness has been rising that many of the regulatory reforms of last decades have resulted in complex regulatory systems in which old and new elements exist side by side, which, combined with their specific institutional cultures and legacies, often yield unexpected results.

These insights logically challenge regulators to look at the performance of their regulatory systems in full, rather than at the performance of parts of it—and that is indeed what regulatory stewardship is calling for. This all asks for a change of mindset, and a moving away from optimizing parts of regulatory systems (such as the regulatory tools or enforcement strategies used) to improving their whole. This normative shift has practical implications. Regulatory reforms have long been approached, unintentionally, as zero-sum games in which improvements of some parts of regulatory systems would ask for sacrifices of other parts—typically, increased cost-effectiveness has been traded off against reduced accountability, transparency, equity, or certainty. When looking at the performance of regulatory systems in full, regulators are forced to think about such trade-offs early on.

To conclude, well-functioning regulatory systems are likely the result of a configuration of parts that are all 'less optimal' than what is technically (or theoretically) possible—and not the result of a configuration of some technically optimal parts and many suboptimal ones (because their optimality has been traded off). When approaching regulatory reforms with that mindset, they do not longer have to be zero-sum games but can provide opportunities for win-win outcomes at the systems level. The regulatory stewardship experience in New Zealand illustrates that changing this mindset is possible. It is a guiding philosophy for regulatory reforms that is needed to take on the complex challenges of the 21st Century.

References

Abbott, K. W., Levi-Faur, D., & Snidal, D. (2017). Introducing Regulatory Intermediaries. *Annals of the American Academy of Political and Social Science, 670*(1), 6-13.

Albers Mohrman, S., O'Toole, J., & Lawler, E. E. (2015). Achieving sustainable effectiveness. In S. Albers Mohrman, J. O'Toole, & E. E. Lawler (Eds.), *Corporate stewardship* (pp. 2-13). Sheffield: Greenleaf Publishing.

Ayto, J. (2014). Why Departments Need to be Regulatory Stewards. *Policy Quarterly, 10*(23-27).

Baldwin, R., Cave, M., & Lodge, M. (2012). *Understanding Regulation - second edition*. Oxford: Oxford University Press.

Block, P. (2013). *Stewardship: Choosing Service Over Self-Interest - Second Edition*. San Francisco: Berrett-Koehler Publishers.

Caldwell, C., Hayes, L., & Long, D. T. (2010). Leadership, Trustworthiness, and Ethical Stewardship. *Journal of Business Ethics, 96*(4), 497-512.

Caldwell, C., Truong, D., Linh, P., & Tuan, A. (2011). Strategic Human Resource Management as Ethical Stewardship. *Journal of Business Ethics, 98*(1), 171-182.

Cho, M., & Büthe, T. (2021). From rule-taker to rule-promoting regulatory state: South Korea in the nearly-global competition regime. *Regulation & Governance, 15*(3), 513-543.

Davies, G. J., Kendall, G., Soane, E., Li, J., Charnley, F., & Pollard, S. J. T. (2010). Regulators as 'agents'. *Journal of Risk Research, 13*(8), 951-982.

Davis, J., Schoorman, F. D., & Donaldson, L. (1997). Towards a Stewardship Theory of Management. *The Academy of Management Review, 22*(1), 20-47.

Drahos, P. (Ed.) (2017). *Regulatory Theory*. Canberra: ANU Press.

Elias, N. (2000 [1939]). *The civilizing process*. Oxford: Blackwell.

Fish, M. J. (2008). An Eye for an Eye. *Oxford Journal of Legal Studies, 28*(1), 57-71.

Fukuyama, F. (2015). *Political Order and Political Decay*. New York: Farrar, Straus, and Giroux.

Gill, D., & Intal, P. (2016). *The Development of Regulatory Management Systems in East Asia*. Jakarta: Economic Research Institute for ASEAN and East Asia.

Gunningham, N., & Grabosky, P. (1998). *Smart Regulation*. Oxford: Oxford University Press.

Gunningham, N., & Rees, J. V. (1997). Special issue on self-regulation. *Law & Policy, 19*(4), 363-565.

Hodge, G. A. (2000). *Privatization*. Boulder: Westview Press.

Hood, C. (1995). The "new public management" in the 1980s. *Accounting, organizations and society., 20*(2-3), 93-109.

Hood, C., James, O., Jones, G., Scott, C., & Travers, T. (1998). Regulation Inside Government. *Public Money and Management, 18*(2), 61-68.

IMD. (2015). *Effective Stewardship - Summary of Literature*. Lausanne: International Institute for Management Development and Stewardship Asia Centre.

Keay, A. (2017). Stewardship Theory. *International Journal of Law and Management, 59*(6), 1292.

Kirkpatrick, C., & Parker, D. (Eds.). (2007). *Regulatory Impact Assessment.* Cheltenham: Edward Elgar.

Lee, Y., & Park, T. (2009). Civil Participation in the Making of a New Regulatory State in Korea: 1998-2008. *Korea Observer, 40*(3), 461-493.

Levi-Faur, D. (2012). *The Oxford Handbook of Governance*. Oxford: Oxford University Press.

Levi-Faur, D. (2013). The Odyssey of the Regulatory State. *Law & Policy, 35*(1/2), 29-50.

Macenaite, M. (2017). The "Riskification" of European Data Protection Law through a two-fold Shift. *European Journal of Risk Regulation, 8*(3), 506-540.

May, P. (2003). Performance-Based Regulation and Regulatory Regimes. *Law & Policy, 25*(4), 381-401.

May, P. (2011). Performance-based regulation. In D. Levi-Faur (Ed.), *Handbook on the Politics of Regulation* (pp. 373-384). Cheltenham: Edward Elgar.

May, P., & Jochim, A. (2013). Policy Regime Perspective. *Policy Studies Journal, 41*(3), 426-452.

McLaughlin, K., Osborne, S., & Ferlie, E. (2002). *New Public Management*. New York: Routledge.

Moon, K., Marsh, D., Dickinson, H., & Carey, G. (2017). *Is all stewardship equal?* Canberra: UNSW Public Service Research Group.

New Zealand Government. (2020). *Public Service Act*. Wellington: New Zealand Government.

New Zealand Productivity Commission. (2014). *Regulatory institutions and practices*. Wellington: The New Zealand Productivity Commission.

NZ Treasury. (2017). *Government Expectations for Good Regulatory Practice*. Wellington: New Zealand Treasury.

O'Toole, J. (2015). Corporate stewardship. In S. Albers Mohrman, J. O'Toole, & E. E. Lawler (Eds.), *Corporate stewardship* (pp. 14-35). Sheffield: Greenleaf Publishing.

Orth, J. V. (1991). Thinking about law historically. *North Carolina Law Review, 70*(1), 287-296.

Pollitt, C., & Hupe, P. (2011). Talking about Government. *Public Management Review, 12*(5), 641-658.

Ranchordas, S. (2015). Sunset Clauses and Experimental Regulations. *Statute Law Review, 36*(1), 28-45.

Rosenbloom, D. H., & O'Leary, R. (1997). *Public Administration and Law*. New York: Marcel Dekker.

Staples, A., Chambers, D., & Malone, T. (2021). How many regulators does it take to get a beer? *Regulation & Governance, early view*, 1-14. doi:10.111/rego.12403

Stigler, G. J. (1971). The Theory of Economic Regulation. *Bell Journal of Economics and Management Science, 2*(Spring), 3-21.

Thaler, R., & Sunstein, C. (2021). *Nudge: The final edition*. London: Penguin.

van der Heijden, J. (2019). *Behavioural insights and regulatory practice*. Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative (G-REG).

Van der Heijden, J. (2020). *Systems thinking and regulatory governance*. Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative (G-REG).

Van der Heijden, J. (2021). Regulatory stewardship. *Policy Quarterly, 17*(1), 57-63.

Van der Heijden, J. (forthcoming). The Politics of Regulation. In F. Sager, A. Ladner, & A. Bastianen (Eds.), *Handbook on The Politics of Public Administration*. Cheltenham: Edward Elgar.

Van der Heijden, J., & Hodge, G. (2021). Ten Global Trends in Regulation. In H. Sullivan, H. Dickinson, & H. Henderson (Eds.), *The Palgrave Handbook of the Public Servant* (pp. 741-759). London: Palgrave.

Van Rooij, B., & Fine, A. (2021). *The Behavioral Code*. Boston: Beacon Press.

Winson, S. (2017). Regulatory Stewardship. *Policy Quarterly, 13*(4), 3-9.