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Regulatory Stewardship
the challenge of joining a virtue and a mechanism

Abstract

Since 2013, New Zealand's regulatory agencies have had a statutory obligation to carry out regulatory stewardship. They have been expected to adopt a whole-of-system, life cycle view of regulation, and to take a proactive and collaborative approach to the monitoring and care of the regulatory system(s) for which they have responsibilities. In 2021, after eight years, regulatory agencies have not managed to operationalise their shared regulatory stewardship obligations in a coherent and consistent manner. This article explores the challenges they face in operationalising regulatory stewardship, and provides some conceptual clarity that may aid these agencies in collaborating to develop and adopt the whole-of-system, life cycle view of regulation that is envisaged.

Keywords regulatory stewardship, regulatory governance, regulatory reform, regulation of regulation

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For a long time, governments around the world have developed principles and guiding philosophies for the regulation of regulation. Their ambition is to ensure that regulatory agencies across government comply with a set of coherent and consistent criteria when proposing, developing, implementing, reviewing 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, which, when introduced, was touted as a 'bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated' (quoted in Rosenbloom and O'Leary, 1997, p.45). The Administrative Procedure Act 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 rule-making 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 in the early 2000s. Akin to the Administrative Procedure Act, the Better Regulation Agenda 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

To help to create greater conceptual clarity, this article explores the nature of regulatory stewardship in New Zealand. This includes examining the idea of 'stewardship' and considering what it could mean as a principle and guiding philosophy for the regulation of regulation.

Regulatory stewardship in New Zealand

The regulatory reforms since the late 1980s leading up to the introduction of regulatory stewardship in New Zealand have been well documented elsewhere (Gill and Intal, 2016). Regulatory stewardship was formally introduced in New Zealand in 2013 when it became a statutory obligation for government departments. Over time,

regulatory systems'), and to ensure proper implementation of their regulatory systems ('good regulatory 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 (Treasury, 2017).

However, despite this guidance having been provided by the Treasury, it is my experience that regulatory agencies in New Zealand have been struggling to operationalise their regulatory stewardship roles. In my role as professor of regulatory practice at Victoria University of Wellington I have worked closely with regulatory agencies, and it has become evident to me that the struggle of regulatory agencies to operationalise their stewardship obligations and role has at least four overlapping origins.

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' (ibid., p.2). 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, p.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. Arguably, the Treasury had in mind that it would slowly explore with (some) regulatory agencies what regulatory stewardship could look like in practice. In my opinion, however, such an experimental approach is difficult to reconcile with the obligatory nature of regulatory stewardship. Experimental governance may work in exploring the performance or operationalisation of future-but-not-yet-mandatory requirements, but it seems less logical as an approach to rolling out a blanket obligation (Sabel and Zeitlin, 2012).

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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 Administrative Procedure Act, the Better Regulation Agenda, 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 initiatives have, over time, achieved some conceptual clarity. Regulatory stewardship is a relatively novel invention, and many questions remain about what it will ultimately achieve. Perhaps more problematically, there is a lack of conceptual clarity about what regulatory stewardship is, what it could be, and possibly what it should be.

expectations for regulatory stewardship have been developed by the New Zealand Treasury, with the latest guidance dating from April 2017. 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. (Treasury, n.d.)

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

Second, the term 'regulatory system' causes confusion within regulatory agencies. At the outset, the Treasury provides a broad but bounded definition. A regulatory system is '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' (Treasury, 2017, p.1). Things get confusing for regulatory agencies, however, when the Treasury adds that a regulatory system is part of a broader (legal) system and interacts with other regulatory systems, and that multiple regulatory agencies usually have responsibilities within a given regulatory system. Analytically, this very broad conceptualisation of 'regulatory system' is laudable. Practically, however, regulatory agencies wonder about the level at which they must define their regulatory system or systems (for example, the transport system in general, the road transport system, the vehicle roadworthiness system, the vehicle roadworthiness inspector certification system, and so on). Logically, they ask if they are responsible for a whole-of-system approach to regulation which calls for collaboration across regulatory agencies. And logically, too, they ask who is ultimately accountable for regulatory stewardship in a shared regulatory system (for a more extensive discussion, see, for example, Winson, 2017).

Third, the government expects regulatory agencies to work collaboratively on their stewardship responsibilities (Treasury, 2017). However, little progress has been made as regards such collaboration. Within-system engagement between agencies remains the biggest implementation challenge to date.[1] Arguably, it is not possible to achieve the whole-of-system perspective envisaged by the Treasury unless multiple agencies work together. Arguably, also, the Treasury envisages an individual regulatory agency as just *a* steward of a regulatory system (or systems), and never *the* steward of that system (or systems). Whether the lack of collaboration between regulatory agencies is 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 article. It would, however, be a missed opportunity for agencies not to work together more closely in developing their regulatory stewardship strategies. The public at large will be better served by a generic (coherent and consistent), rather than an agency-by-agency, operationalisation of regulatory stewardship.

Fourth, conceptual confusion results in questions about what stewardship is, what it could be and what it should be. In workshops with regulatory agencies, I often argue that, in my opinion, we are witnessing a situation where the 'right' answer was given before the 'right' question was asked. I then immediately provide a quotation

While acknowledging that all four overlapping challenges need to be tackled, I will focus here on only one aspect: namely, the conceptual clarity of the idea of stewardship in regulatory stewardship. In doing so, I am looking at regulatory stewardship not as a 'unique' idea, but as something that is illustrative of a broader

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attributed to J. Robert Oppenheimer (the inventor of the atomic bomb): 'Genius sees the answer before the question.' With this, I mean to say that the broader idea of regulatory stewardship fits perfectly well within the international developments discussed at the start of this article. These all introduce some coherent or holistic form of (whole-of-government) regulation of regulation, as well as a guiding philosophy for regulatory reform. The term 'stewardship' indicates that the New Zealand government has high ambition in this respect – and that is where I think the genius comes in. However, I fear that the lack of conceptual clarity may make us miss the full potential of the idea.

In sum, the notion of regulatory stewardship has high normative appeal. It is an idea that many agree with in principle. Unfortunately, the notion is conceptually ambiguous. It is challenging for regulatory agencies to comply with the performance-based stewardship obligation, and the experimental approach of exploring the idea of regulatory stewardship seems difficult to reconcile with it being a statutory obligation. The system(s)

terminology only further amplifies the challenge of operationalising the stewardship obligations of regulatory agencies. At the same time, regulatory agencies may have been too insular in developing their own regulatory stewardship strategies, and may perhaps not have allocated enough resources to them.

trend of the development of coherent and consistent criteria for proposing, developing, implementing, reviewing and terminating regulation and regulatory interventions that we are witnessing around the world.

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 and Lawler, 2015; Moon et al., 2017). Perhaps we would do better to talk about stewardship (and abstract concepts in the same class, such as accountability, equity, transparency and wellbeing) in the plural. Yet it is customary to discuss stewardship (and these other abstract concepts in the same class) in the singular. There is then a risk that the concept is given too much weight and reality – as if stewardship exists 'out there' as a single, independent entity. The price typically paid by abstract concepts for such reification is that we

humans then (want to) subject them to bounded and unambiguous definitions. However, at the end of the day this is a *forced* concretisation and requires a clarity that does not exist in reality.

With that caution in mind, it is 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, O'Toole and Lawler, 2015, p.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, p.10). This understanding of stewardship resonates with how the term is generally used in a wide range of settings:

- It is central to many spiritual and religious epistemologies and ethics, appearing, for example, in the idea of a shepherd-like figure looking after a flock-like community in Abrahamic religions, or values such as kindness and discernment that are seen as essential to Buddhism (Cossin and Boon Hwee, 2016).
- It also resonates with the epistemologies and ethics of indigenous societies and First Peoples that we find around the world, such as in the Māori notion of kaitiakitanga, the Māori obligation to safeguard and care for the environment for future generations, which to some extent also includes a duty to care for people (Kawharu, 2010).

- It also resonates well with (Western) political and moral philosophy since the Enlightenment (Scruton, 2013). For example, the idea of the 'social contract' (that we all sacrifice some of our individual freedom to a ruling institution to look after and ensure our civil freedom) or Kant's 'categorical imperative' (the golden rule of not doing unto others what you do not want others to do to you) can be considered forms of stewardship.

While these broad understandings indicate that the notion of stewardship relates to a bounded set of values and expectations, the bounded set still needs to be translated to a regulatory context. To aid this translation, the following analysis first explores how the idea of stewardship is operationalised in the broader organisation, management and governance literature. It then considers how the idea is operationalised in the narrower regulatory literature.

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. Contrary to many other organisational theories, 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 and 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, and 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 et al., 2011).

Both these theories focus on the activity[2] side of stewardship. Other theories, however, focus on the structural side of stewardship. This includes institutional and process aspects. For example, theories of '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

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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. Likewise, initiatives such as the Forest Stewardship Council and the Marine Stewardship Council effectively provide organisations with a set of guidelines for putting the idea of stewardship into practice and being held accountable for following these guidelines.

Stewardship in the regulatory literature
Leaving the broader organisation, management and governance literature behind and zooming in on the regulatory literature, it quickly becomes apparent that the concept of 'regulatory stewardship' has not yet made inroads.[3] Yes, there is some 'regulatory stewardship' terminology in this literature, but this is more likely to be the result of simple statistics and chance than the purposeful development of a 'regulatory stewardship theory'. In the thousands of publications published each year, it is bound to happen that every now and then a (regulatory) scholar links the terms 'regulatory' and 'stewardship'. Nevertheless, 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 (in a narrow and broad sense) is an appropriate way for governments and others to ensure the wellbeing of people and their environments (Levi-Faur, 2012), or 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), or 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. After all, a regulatory agency can interpret its 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 its role in a collaborative, service manner and help people and organisations to take responsibility for their own wellbeing. Here I should note that in New Zealand the statutory regulatory stewardship obligation is only about stewardship *of* regulation. I will therefore not engage further with stewardship *through* regulation.

Questions related to the stewardship *of* regulation are more practical. 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?

Building a bridge between a virtue and a mechanism
In sum, the simple term stewardship encapsulates a wide variety of meanings and expectations. 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

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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 periodic reviews.[4]

Third, the idea of stewardship is both outward-looking and inward-looking. As outward-looking, it very clearly touches on

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Figure 1 : Some elements of regulatory stewardship as a mechanism

		Stewardship focus	
		Inward-looking	Outward-looking
Stewardship approach	**Activity**	• Engage staff in essential decisions that involve them; share critical information with staff and share it on time. • Give staff rewards that aid a long-term view of their career path (ideally within the organisation), and leadership rewards that trigger intrinsic satisfaction. • Nurture staff skills and competencies ('good regulatory practice') and train future organisational leaders. • Cultivate a sense of personal responsibility for the long-term wellbeing of the regulatory agency and its contribution to society.	• Engage stakeholders (including other regulatory agencies) in essential decisions that involve them. • Share critical information with stakeholders (including other regulatory agencies) and share it on time. • Be receptive to the diversity of public concerns about the development, implementation, review and termination of regulation. • Increase stakeholder skills, competencies and capacities to comply with regulation.
	Structure	• Have in place clear and transparent internal accountability processes to cultivate a culture of rigorous self-criticism. • Have in place well-articulated organisational values (including an operationalisation of how the agency is a steward of its regulatory system/s). • Have in place a system/s monitoring and evaluation plan; have in place a system/s issues and response log; and create knowledge from past performance and disseminate this within the agency. • Periodically carry out gap analyses/risk assessments.	• Have in place clear and transparent external accountability processes to ensure fundamental procedural fairness, accessibility and responsiveness. • Have in place 'apply and explain' principles about the development, implementation, review and termination of regulation. • Have in place genuine and transparent stakeholder participation processes. • Have in place agreements with other agencies to collaborate on stewardship work.

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).

Rounding up, after unpacking the bounded set of values and expectations associated with the idea of stewardship, 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. Still, it goes without saying that to achieve stewardship as a virtue, some stewardship mechanisms need to be in place. The literature discussed and the analytical distinctions made provide some starting points for thinking about the necessary elements of regulatory

stewardship as a mechanism, as illustrated in Figure 1.

It should be noted that Figure 1 is by no means an exhaustive overview of all elements that are required for regulatory stewardship. Its main aim is to bring some analytical clarity to the broader literature on stewardship.

Conclusion: regulatory stewardship in New Zealand as ideal and reality

Stewardship is service to something larger than ourselves, and that 'something larger' needs to be known before people can commit. (Block, 2013, p.79)

Peter Block, quoted here, has put much thought into what stewardship means as a guiding principle for individuals and organisations. This quotation strikes me, mainly because it drives home a simple

message: you cannot expect others to be stewards if you are not clear about what it means to be a steward. At the same time, there is no point in telling others how to be stewards from a position of authority; stewardship is about serving rather than ruling. If we take stewardship seriously as a guiding philosophy for the regulation of regulation, we can only expect others to become stewards if we are stewards to them. In abstract terms, there is a duality in regulatory stewardship as an obligation of regulatory agencies. In practical terms, the New Zealand Treasury cannot expect regulatory agencies themselves to solve the puzzle of how to live up to their regulatory stewardship obligations, and yet regulatory agencies cannot (and should not) expect the Treasury to tell them how to fulfil their regulatory stewardship obligations. What it means to be a regulatory steward will have to be discovered and decided in collaboration.

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 (see Figure 1). The challenge for the Treasury and regulatory agencies in New Zealand 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 set of principles and guiding philosophies for the (whole-of-government) regulation of regulation.

To conclude, regulatory stewardship in New Zealand 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 the regulation of regulation. Yes, 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. This could include shared approaches to regulatory impact assessment, shared processes for public participation, and shared training of agency staff and leaders.

1 Personal correspondence with a Treasury representative.
2 Academics (myself among them) would probably feel more comfortable talking about 'agency' here as understood in the broader social sciences, but in this article that term may cause confusion with the term 'regulatory agency'.
3 For example, a search for the term 'regulatory stewardship' in all fields of the academic database Web of Science

on 17 October 2020 resulted in a mere four publications in research areas that are normally associated with regulatory literature (policy sciences, social sciences and public administration). This is the academic equivalent of uncharted territory. Even a search using the terms 'regulat* AND steward*' resulted in a mere 39 publications in these research areas, the majority discussing initiatives such as the Forest and Marine Stewardship Councils.
4 Which goes well beyond the very narrow, and arguably new, New Public Management understanding that the Morrison government in Australia has of regulatory stewardship: 'The stewardship approach replicates best practice in business management by ensuring line accountabilities and performance expectations are clear and are attributed to driving improved outcomes' (https://ministers.pmc.gov.au/morton/2020/morrison-governments-deregulation-agenda).

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