

# REGULATORY STEWARDSHIP

*PROFESSOR JEROEN VAN DER HEIJDEN*

- EXPLORING REGULATORY STEWARDSHIP AS AN IDEAL AND AS A PRACTICE
- THREE MAIN STEWARDSHIP CHALLENGES FOR REGULATORS
- REGULATORY STEWARDSHIP AS THE OPTIMAL SUM OF (POSSIBLY) SUB-OPTIMAL PARTS

Jeroen van der Heijden

# 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

Jeroen van der Heijden holds the Chair in Regulatory Practice in the School of Government at Victoria University of Wellington, and is an honorary professor in the School of Regulation and Global Governance (RegNet) at the Australian National University.

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 Rosenblom 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.

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# Kia ora!

Professor Jeroen van der Heijden



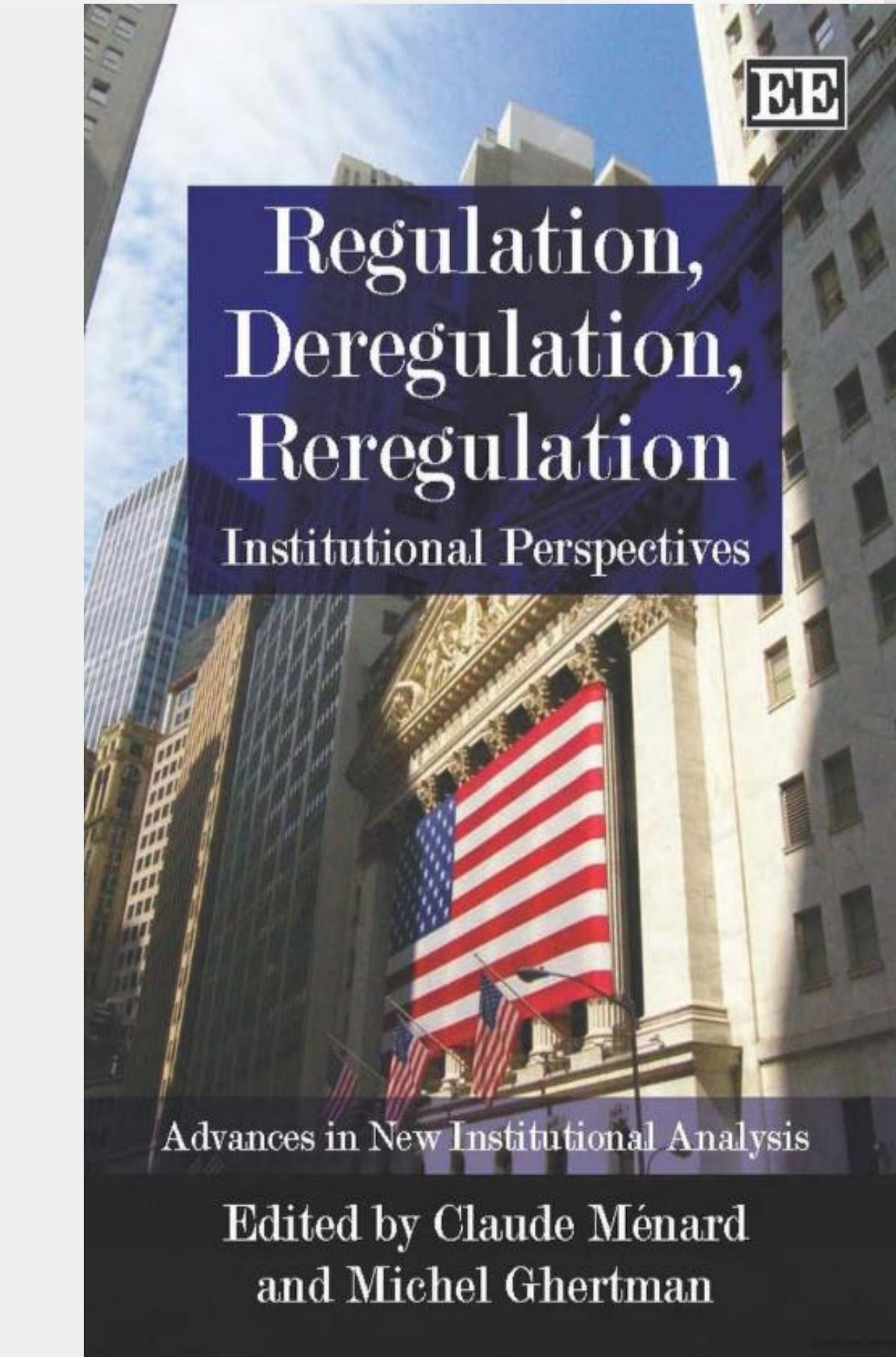
READ AND/OR WATCH:

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# *IS REGULATORY STEWARDSHIP A UNIQUELY AOTEAROA/KIWI IDEA?*

## Administrative Procedure Act (1946)

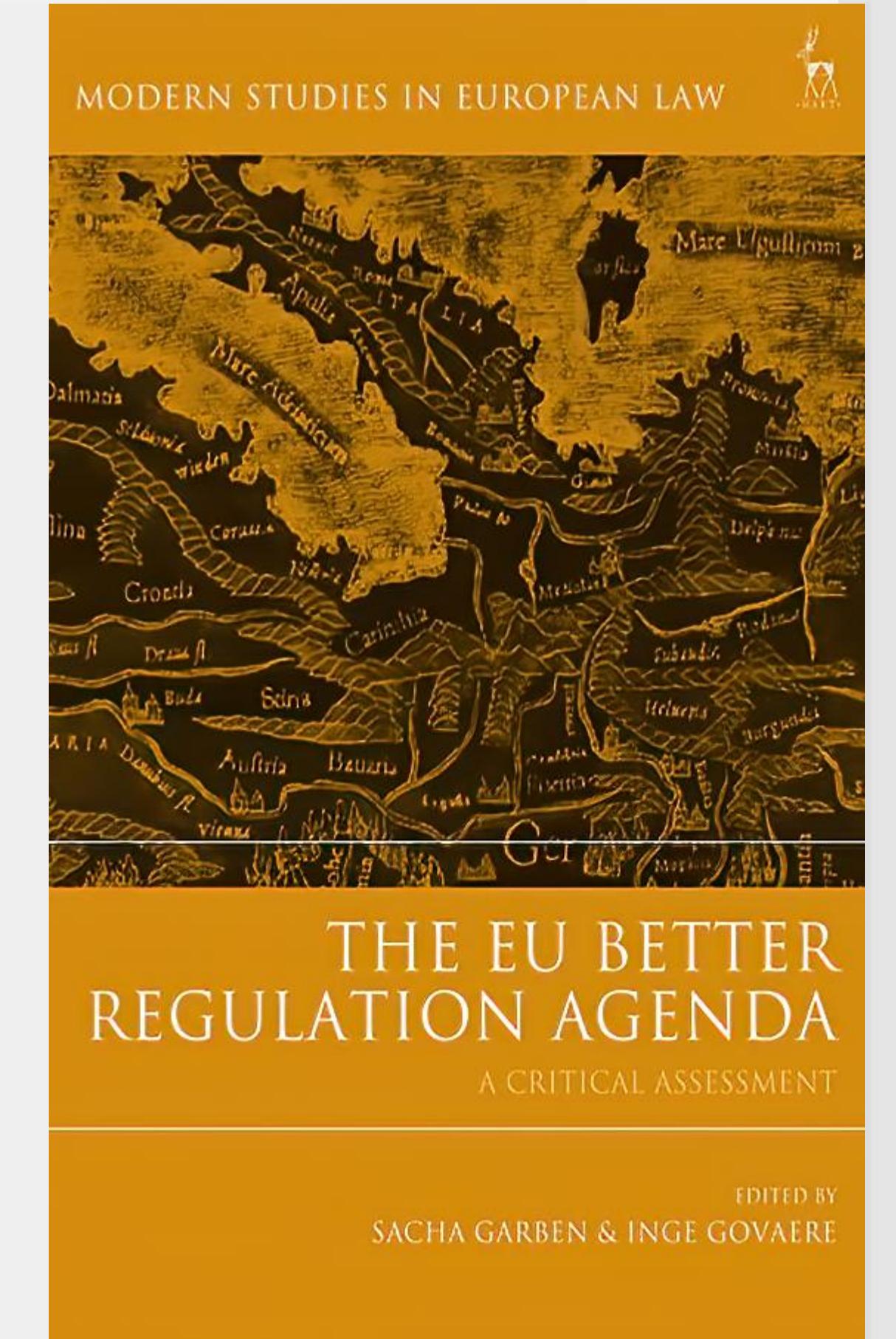
- Keep the public informed
- Public participation in rulemaking
- Uniform standards for the conduct of rulemaking
- Requirements regarding review of agency action



## *IS REGULATORY STEWARDSHIP A UNIQUELY AOTEAROA/KIWI IDEA?*

### Better regulation agenda (late 1990s onward)

- Transparency in design and evaluating of EU regulation
- Evidence-based reforms
- Collaboration with citizens and stakeholders
- Bring benefits at minimum cost



## *IS REGULATORY STEWARDSHIP A UNIQUELY AOTEAROA/KIWI IDEA?*

**'Regulatory stewardship is 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.'**

*- New Zealand Treasury*



## *IS REGULATORY STEWARDSHIP A UNIQUELY AOTEAROA/KIWI IDEA?*

Regulatory stewardship includes responsibilities for:

- Monitoring, review and reporting on existing regulatory systems.
- Robust analysis and implementation support for changes to regulatory systems.
- Good regulatory practice.



## EXPERIENCES WITH REGULATORY STEWARDSHIP IN AOTEAROA

- Agencies are struggling with ‘performance-based’ model
- A lack of collaboration between agencies
- Conceptual confusion



## WHAT CAN WE LEARN FROM THE BROADER LITERATURE?

### Stewardship in organization, management, and governance literature

- Stewardship theory
- Ethical stewardship
- Codification of stewardship
- Stewardship as a guiding philosophy



## WHAT CAN WE LEARN FROM THE BROADER LITERATURE?

‘Stewardship requires the careful management of something that belongs to others. Stewards must not only make proper current use of that which they hold in trust, but they must also leave it in better condition for use by future generations.’

- *Albers Mohrman, O'Toole, & Lawler*

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**Stewardship** ‘is the willingness to be accountable for the well-being of the larger organization by operating in service, rather than in control, of those around us.’

- *Block*

## THREE STEWARDSHIP CHALLENGES FOR REGULATORS

### 1. Stewardship as an ideal (virtue)

Stewardship as a tool (mechanism)

### 2. A structural aspect to stewardship

An activity aspect to stewardship

### 3. Outward-looking stewardship

Inward-looking stewardship

Jeroen van der Heijden

## 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 their economies. The aim is to ensure that regulatory agencies across government comply with a set of coherent and consistent criteria when proposing, developing, implementing, amending and terminating regulation and regulatory interventions. To way of illustration:

The United States has a long history in this regard. In the mid-1940s it introduced the Administrative Procedure Act, which, it is often claimed, was touted as a 'bill of rights for the hundreds of thousands of Americans whose affairs are controlled or supervised by federal agencies' (O'Leary, 1997, p.45). The Administrative Procedure Act requires regulatory agencies, among other, to keep the public informed of what they are doing, to provide 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.

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Figure 1 : Some elements of regulatory stewardship as a mechanism

		Stewardship focus	
		Inward-looking	Outward-looking
Stewardship approach	Activity	<ul style="list-style-type: none"> <li>Engage staff in essential decisions that involve them; share critical information with staff and share it on time.</li> <li>Give staff rewards that aid a long-term view of their career path (ideally within the organisation), and leadership rewards that trigger intrinsic satisfaction.</li> <li>Nurture staff skills and competencies ('good regulatory practice') and train future organisational leaders.</li> <li>Cultivate a sense of personal responsibility for the long-term wellbeing of the regulatory agency and its contribution to society.</li> </ul>	<ul style="list-style-type: none"> <li>Engage stakeholders (including other regulatory agencies) in essential decisions that involve them.</li> <li>Share critical information with stakeholders (including other regulatory agencies) and share it on time.</li> <li>Be receptive to the diversity of public concerns about the development, implementation, review and termination of regulation.</li> <li>Increase stakeholder skills, competencies and capacities to comply with regulation.</li> </ul>
	Structure	<ul style="list-style-type: none"> <li>Have in place clear and transparent internal accountability processes to cultivate a culture of rigorous self-criticism.</li> <li>Have in place well-articulated organisational values (including an operationalisation of how the agency is a steward of its regulatory system/s).</li> <li>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.</li> <li>Periodically carry out gap analyses/risk assessments.</li> </ul>	<ul style="list-style-type: none"> <li>Have in place clear and transparent external accountability processes to ensure fundamental procedural fairness, accessibility and responsiveness.</li> <li>Have in place 'apply and explain' principles about the development, implementation, review and termination of regulation.</li> <li>Have in place genuine and transparent stakeholder participation processes.</li> <li>Have in place agreements with other agencies to collaborate on stewardship work.</li> </ul>

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QUESTIONS?

# REGULATORY STEWARDSHIP

MORE INFORMATION: [WWW.REGULATORYFRONTLINES.BLOG](http://WWW.REGULATORYFRONTLINES.BLOG)

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