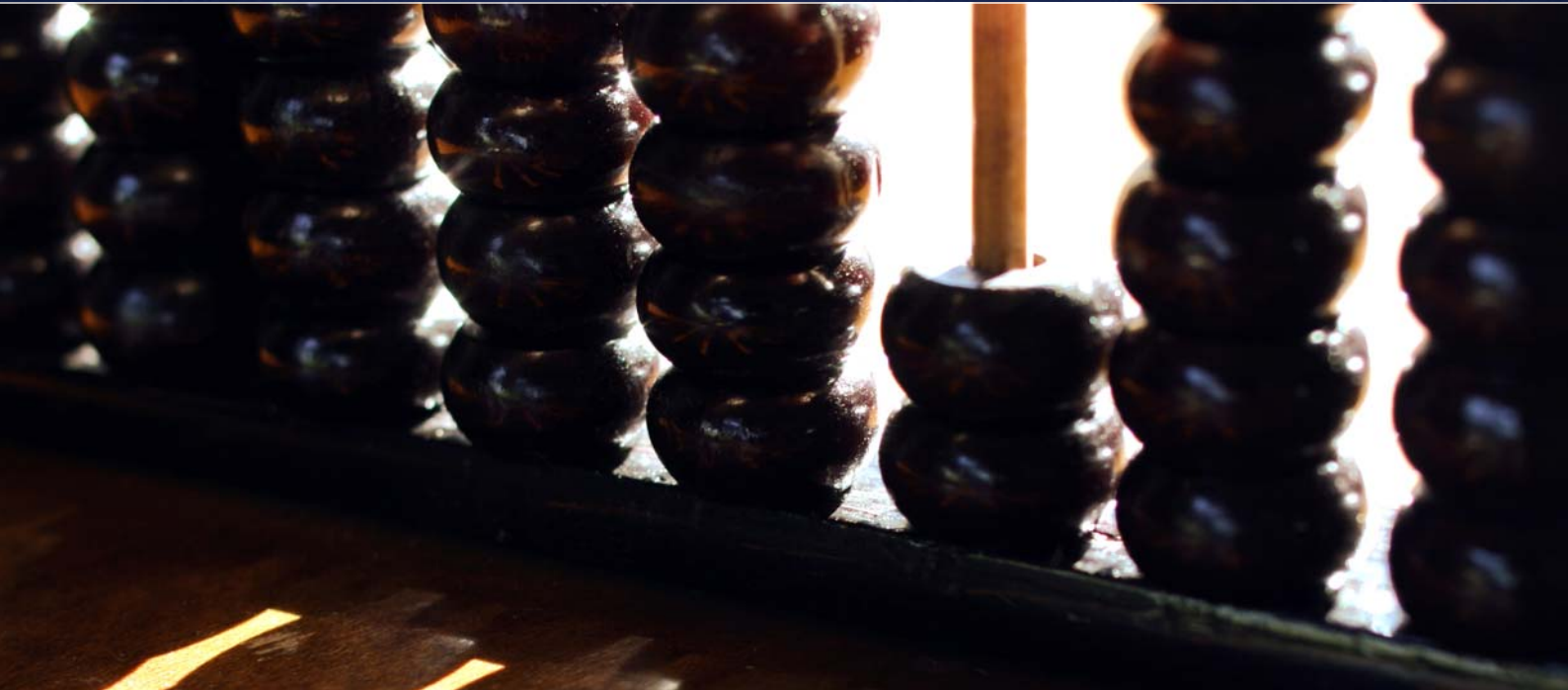




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THE POLITICS OF TAX
New Zealand 1844-45

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The Politics of Tax

New Zealand 1844-45

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ABSTRACT

This paper examines the Politics of Tax in early New Zealand (1844-45). The story of the period's tax laws, both passed and proposed, provide the data, and using a subordinate method adopted from New Institutional Economics (Pollack, 1998), the politics of tax process, that which determined tax policy development under Governor Fitzroy, is highlighted. From the evidence, there was a rule of normative behavior applied to the development of tax policy in early New Zealand and the analytical framework drew this out. The development of tax policy during the study period fits the neoclassical paradigm of rationality, something clearly apparent in the behaviour of all participants in the policy development process. All participants were actively seeking to maximize utility, if not profits, and in the case of the Administration, revenue. On the basis of the analysis conducted in this paper, the final determinant of any tax law(s) is politics, and not first-best economic arguments.

JEL: N, Economic History

Key Words: Institutional change; Politics of Tax; Tax history; Tax law; New Zealand.

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PREFACE

This discussion paper will consider the politics of tax; the interaction of the polity's key players within the institutional framework of New Zealand's Crown Colony Administration, 1844-45. The problem; there is a distinct lack of knowledge concerning the past development of New Zealand taxation. The question therefore is; in the context of early New Zealand, "has, any rule[s] of normative behaviour been applied to the development of tax policy"? (Musgrave, 1959, p. 5)

1. INTRODUCTION

While "some individuals might view the development of tax systems as a process of rational reforms in changing circumstances.... [This however,] does not reflect the actual process [and it does not] reflect the nature of the political process" (James, 2002, p. 107). Understanding the process of tax policy development can be a complex task, and as Peters (1991) informs us, there are many issues to focus on: politics, economics, ethics and administration. To do justice to any of these subject areas would require a thesis; it will not be attempted here. Peters (1991) however, comments that "when talking about tax policy politics is trumps; nothing else will carry much weight unless government is willing to accept [tax policy proposals] and to enact [those policies] into law through the political process" (Peters, 1991, p. 3). Thus, any tax initiative, either a single tax law or a body of tax laws (tax system) is constructed subject to a politics of tax process. To date, there has been no economic inquiry of how a single body of early New Zealand tax laws developed, and certainly none with a politics of tax focus.

This paper has three objectives: First, to fit an analytical structure around the tax policy decisions made during the tenure of New Zealand's second Governor; Robert Fitzroy (1843-46). The second objective is, to establish an explanation for the group behaviour and the conflicts that are reflected in the tussles between Fitzroy and his colleagues, and also by Fitzroy and his taxpayers. Third, there is a subordinate objective: to highlight that what Fitzroy succeeded in achieving in the Colony's tax arena, contributed to saving New Zealand as a British Colony.

For analytical purposes, the work leverages off the transference framework of Nehring and Schui (2005 and 2007): the second structural element of the transference framework is thought to be highly relevant to the discussion; direct communication (the conscious bilateral process in which theories and experiences are verbalized and exchanged)². Immediately, and without extensive theoretical explanation, a connection can be made to the politics of tax methodology of Pollack (1998). For example, Pollack, directs analysis under the following interdependent headings: *preferences* and *bargains*; *pressure* and *influence*; *fiscal illusion*; and the need to *pass tax laws*. The structure of Pollack's work will be discussed in greater detail in Section 2, below.

² A connection to the historical institutional theory of Peters (1991); Pierson (1993); and Steinmo (1998); is well apparent. Theory "explains different tax systems as the slowly evolving result of *interactions of ideas and interests* with social and economic forces, *within existing institutions and political cultures*" (Smith, 2008).

The hypotheses for this paper are quite easily understood and are derived from the work of all the preceding discussion papers. The first hypothesis is that, the politics of tax determined the final form of tax policy in New Zealand between 1844 and 1845. The second hypothesis is that the development of tax policy was influenced and directed by the very factors extensively discussed in the subordinate framework, the politics of tax (Preferences and bargains; pressure and influence; fiscal illusion; and the need to pass tax laws). The third hypothesis is there was a rule of normative behaviour to tax policy development during the study period, and it was the politics of tax. Thus, the foundations of a uniquely New Zealand approach (philosophy) to fiscal policy were laid.

The discussion below is organised in the following way; Section 2 describes the subordinate method and the mechanics of the chapter. Section 3 will outline the historical narrative and weave the four headings of the analytical framework into the discussion. In Section 4 the subordinate hypothesis (number three) will be tested and the conclusion follows in Section 5.

2. ANALYTICAL FRAMEWORK

The analytical method is adopted from the theoretical foundations of the following New Institutional Economists: Peters (1991, pp. 3-13); Pollack (1998, p. 2); and Fauvelle-Aymar (1999, pp. 391-398). The theoretical foundation for the analytical method however, is Pollack (1998). Four key theoretical concepts are derived from the work of the aforementioned authors, and these form the basis of the paper's analytical framework. First, tax policy is the product of *preferences* and *bargains*. Second, the tax policy making process is susceptible to the *pressure* and *influence* of interest groups, and crisis (either internal or external, or both). Third, politicians, bureaucrats, constituents, and citizens all suffer, in some form, from *fiscal illusion*³. Fourth, to raise revenue, it is actually necessary to *pass tax laws*. These four conceptual understandings underpin the analysis of tax policy development and implementation during the study period. A key point to note is that the four headings are not mutually exclusive, and are, strongly interdependent. Thus, the four headings are discussed simultaneously throughout the paper.

Let us start by elaborating on the first structural heading: *preferences* and *bargains*. This heading refers to the tax law preferences of the key participants in the development process, and the subsequent *bargains* they attempt to make, and are ultimately determined, within the adversarial construct of the polity. The political culture of society and of the institution *influences* the participants to the interaction (i.e. are they anti-tax or pro-tax); this can direct *preference* selection and determine the final form of the *bargain*.

³ The following points derive from Sorensen (1992). The argument is that people underestimate the costs of providing public goods, and overestimate the benefits of government programmes. According to this argument the (misinformed) citizen demands greater amounts of public sector goods than if he or she had been completely informed. Democratic competition leads political parties to adjust to the perceived demands of the voters rather than to the true (fully informed) interests of the electorate. Therefore, the supply of public goods and services tends to be greater than the social optimum.

Second, the tax policy-making process is susceptible to *pressure* and *influence*. Each faction (interest group), involved in the political process is expected to attempt to reduce their present and future tax burdens, and often that reduction will be at the expense of the other factions. To achieve this, each will apply whatever *pressure* they can in an attempt to *influence* the political process. A second aspect is also worthy of consideration, viz. Leverage, and specifically, the leverage of *pressure* from macroeconomic events and social factors. *Pressure* from these sources can mean that the participants in the political process are induced to arrive at a *bargain*, sooner rather than later. Equally as valid is the question: do the participants have the ability to effectively leverage *pressure* in order to *influence* the political process? In essence, crisis (real or perceived), applies *pressure* and accentuates the need to act, and thereafter, heavily *influences* the policy process. Thus, assistance is given to the final determination of tax policy i.e. the *bargain* that is finally realised, and that becomes law.

Third, politicians, bureaucrats, constituents, and citizens, all suffer (in some form), from *fiscal illusion*⁴. For the purposes of this paper⁵, it is sufficient to define *fiscal illusion* in the following manner: taxpayers consider that they pay too much tax and get too little in return. Conversely, the ruling authority considers there to be more demands for expenditure than there is revenue, and therefore, new taxes or increased rates of taxation are frequently required to meet the perceived need for public provision.

The interdependent nature of all of the structural headings becomes more obvious as the discussion proceeds. For example, from the second structural element of the transference framework, direct communication, the process of debate can be understood as the verbalisation of *preferences* and the consequent *bargaining* process. At all times, participants in the process are subject to the reality of *fiscal illusion*. Furthermore, the debate is also conducted according to a set of (usually, but not always) unwritten rules (or conventions). The rules of the politics of tax game, we are told by North (1991), are determined by the construct of the institution through which the game is played. Furthermore, those rules of the game effectively recognise the existence of *fiscal illusion*, and informally construct a framework to manage *pressure*, focus *preferences*, and establish the *bargaining* parameters. Thereafter, tax policy can be decided and *tax law passed*.

⁴ Fiscal illusion is a term that describes how people (even participants in the policy determination process) commonly underestimate the cost of public provision. Alternatively, fiscal illusion describes how participants and non-participants in the policy process, often overestimate the benefits to others of government largesse and the cost to themselves, via taxation, of government programmes. According to this view the (misinformed) citizen demands either a greater amount of public sector goods or a retrenchment of government activity and lower taxes, than if he or she had been adequately informed. The down side [to this is, that] in a democracy, competition among interest groups can lead political parties (and politicians) to adjust to the perceived demands of the voters (or powerful minority elites) rather than reacting to the true (fully informed) interests of the electorate. Therefore, the supply of public goods and services tends to be greater than the social optimum, and I might add taxes higher than socially optimal (Sorensen, 1992). The converse can also be true; a lower supply of public goods and services than is socially optimal and lower taxes than is economically efficient.

⁵ The study period is a moment in New Zealand history when democracy was a philosophical convention rather than an established rule; there being neither a parliamentary democracy nor any other form of representative democracy in operation in New Zealand between 1840 and 1852).

The stage is now set to discuss the fourth heading: *passing tax law*. Tax policy (the *passing of tax laws*) is commonly decided after political deliberation, during which, pressure and influence are applied, preferences are expressed and bargains struck, subject to *fiscal illusion* and the need to actually *pass tax law*. The final decision on what direction policy should take is often made by a select group of politicians (political participants who verbalise the preferences of their interest groups within the context of the institution). The tax law that is finally agreed to, and passed, will reflect the operation of compromise, consensus, coalition-building, and partisan politics within the polity by participants of the select decision making group. The decision however, will have been made on the basis that to raise the revenue required for appropriations, a political bargain needs to be struck, and a *tax law* needs to be passed.

Without this end point (the *passing of a tax law*), the political game could potentially go on indefinitely. However, it is accepted that intentionally deliberating over tax policy can be a legitimate political strategy, and in fact, deliberation is the very process of displaying preferences, applying pressure, and attempting to influence the final bargain. Deliberation was also a tactic that was repeatedly employed by Governor Fitzroy's opposition in the Legislative Council in 1844 and again in 1845. A tax law, nonetheless, still needs to be passed.

The political factor which drives the policy process toward *passing a tax law* (the end of the game), is the ruling authority's need to annually pass the Appropriations Bill (expenditure). No organisational institution can continue to undertake expenditure without first raising revenue, and there are really only two ways to fund the public provision: One, implement taxation; or two, use the savings of others. A decision to not *pass tax law* and then to borrow to meet expenditure, is still the same as *passing tax law*. Deficit funding, otherwise known as borrowing, is an intergenerational transfer and merely shifts incidence, therefore it is possible to assert that deficits, and debt funding, represent the indirect passing of a *tax law*. In addition, the decision to not *pass a tax law* and acquiesce to the status quo (the existing tax law), is still considered the passing of a *tax law* by default.

The four mutually supporting structural headings of the politics of tax framework (described above) will adequately explain the process of tax policy development during the tenure of Governor Fitzroy, 1844-46. Consider again the four interdependent observations: preferences and bargains; pressure and influence; *fiscal illusion*; and the fiscal need to *pass tax laws*. If these determinations are found to play an important role in tax policy development, then tax policy is not decided on the basis of first-best economic arguments. Politics determines tax policy development and the final form of any tax law(s).

2. 1. The Assumptions of the Paper

One function of Modern government, according to Bentley (1908 in Olson, 1965, p. 120), is to ensure that the burden of taxation (who pays and how much they pay), does not fall disproportionately on one particular group or another. Not all governments however, can be assumed to adhere to this concept, and the Crown Colony Administration in early New Zealand is not considered to have been a modern government. Furthermore, the underlying argument of the early settlers in New Zealand is hypothesised as been, that they (the settlers)

considered that taxation policy was unfair and applied unequally (*British Parliamentary Papers*, 4: 265-267). Therefore, in order to progress the discussion, the following assumptions are required.

First assumption, that taxation, a coercive process, was applied by Governor Fitzroy on as wide a tax base as was politically possible, and also economically practical. Second assumption, as mentioned above, to raise the revenue required for expenditure purposes in the short term, neither debt funding nor deficit financing were available options; tax laws needed to be passed. The third assumption, “in reality group interests and their behaviour are the primary forces in economic as well as political behaviour” (Olson, 1965, p. 118), and thus, the politicians, and the political institution to which they belonged, are assumed to adhere to this theory of social behaviour.

2. 2. The New Zealand Institution, 1844-45

A small group of seven individuals decided tax policy for early New Zealand and this select group met irregularly in the undemocratic forum of New Zealand’s Legislative Council (Moon, 2000). The Legislative Council was the institution of government in Crown Colony New Zealand, and it contained two distinct groups: first, the Executive (four persons); and the opposition, the unofficial appointees (three persons)⁶. The Executive represented the Crown and bore ultimate responsibility for the wellbeing of all persons resident in the colony. Governor Fitzroy, as the senior appointed official of the Colony’s Administration, is assumed to be the representative of the Executive, and his recorded statements are taken to be the authoritative view of the Administration.

The three unofficial appointees on Council were: Mr Charles Clifford⁷, Mr. William Brown⁸, and Dr. Samuel Martin⁹. Clifford (a New Zealand Company man) represented the interests of the major European political competitor to the Administration, and the southern settlers in general. Brown and Martin, the other two members of the opposition, represented the northern commercial interests, and those of the Auckland settlers. In combination, these three men - the political voice of the major European interest groups - represented a minority

⁶ In 1844 New Zealand, the larger institution of government was the officially appointed Administration; an association bound and directed by the conventions of a bureaucratic tradition, the dictates of Parliament and a qualified democratic legacy that was derived from many centuries of social development.

⁷ He was an early pastoralist, one of the nation’s future large landholders, and the first Speaker of the House of Representatives of New Zealand. Following the early debates, Mr. Clifford’s voice (and thus the voice of the New Zealand Company) was not as prominent as the other two appointed members; the latter two were more inclined to support policies that were friendly to commerce. The reason for this is that Mr. Clifford did not attend the important September sessions of the Legislative Council. Incidentally, immediately after the passage of the Property Rate Bill, and the demise of indirect taxation, all three non-official appointees resigned from the legislative Council (Laing and Simpson, 2007).

⁸ William Brown was a dedicated merchant who, by 1855, had become one of the wealthiest businessmen in Auckland. With the assistance of William Brown, the other unofficial appointee representing the business interests of Auckland, and John Logan Campbell (proprietors), Dr. Martin edited the *Southern Cross*. This newspaper had, traditionally, been opposed to the Administration; however, at least on the issue of income taxation the paper was very supportive of Fitzroy (I remind the reader that this occurred while Brown and Martin were both still members of the Legislative Council). (Stone, 2006).

⁹ Dr Martin was supposedly a radical during the Reform movement of 1832. In 1844 he served as the editor of what had been formerly a very anti-government publication, the *Southern Cross*. Incidentally, Dr. Martin was a large purchaser of land prior to 1841; he had forfeited much of this land to the Crown due to 1) pre-emption and 2) the subsequent regulations concerning the allocation of land purchased prior to the Treaty of Waitangi.

opposition whose input in the policy formation process, prior to any deliberation over policy, is assumed as limited.

Much of the initial policy-formulation process (for tax law), was, by assumption, the responsibility of Fitzroy's appointed officials. The Executive would then attempt to pass these pre-prepared ordinances in the Legislative Council (i.e. *pass tax laws*). While the Council was not a democratic forum, Fitzroy operated his Council in a manner which mimicked the bureaucratic tradition, and the democratic practice of Parliament. This convention-bound approach to institutional organisation would enable the opposition in the legislative Council to show their *preferences* and consistently attempt to *bargain* with the Executive.

2. 3. Passing Tax Law

Let us return to the issue of the passing of tax law. The final decision on the type of tax law any ruling authority passes reflects the ideology of the day, or the type of tax law chosen can reflect the politics of the day. To simplify the argument however, it is assumed that when it came to choosing which type of tax law to pass, Governor Fitzroy and his Council had only three choices: indirect taxes, direct taxes, or a combination of both¹⁰. As Governor Fitzroy was finally to realise, irrespective of ideology, none of the available options for new tax law were going to be publicly acceptable in the short term, other than a minor increase in customs duty in 1844 (*British Parliamentary Papers*, 4: 295). Without external assistance or change of some sort occurring, altering the fiscal status quo in the colony, in the medium term, was going to be politically unachievable. The complete explanation for the colony's anti tax attitude is not necessary to state, or understand at this juncture, and while argument thus far relies on the assumption in Subsection 2.1 (above) an additional factor of some importance is the paper's concept of *fiscal illusion*.

2. 4. Fiscal Illusions

There is a tendency for those who are either subject to taxation, or are about to have their tax burden increased, to underestimate the costs of providing public goods, and overestimate the benefits of government programs; this is called *fiscal illusion* (Sorenson, 1992). According to this view, the (misinformed) citizen's expectations diverge from the fiscal reality. The misinformed tax payer will, thereafter, actively seek to reduce his/her tax burden. Furthermore, in accordance with Young (2009), when taxpayers' are subject to *fiscal illusion*, "a [proposed] tax increase may make taxpayers hostile toward government spending as they are forced to directly deal with its costs. Likewise, tax decreases may lessen the perceived cost of government spending, increasing the quantity, [of public spending, that is] demanded" (Young, 2009, p. 470). The above propositions are relevant to the case of New Zealand in 1844. At that time, taxpayers' *preferences* were clear; they were reluctant to bear the burden of taxation and they would apply *pressure* in order to *influence* the policy development process and to arrive at a *bargain* which suited them.

¹⁰ The key differences between direct and indirect taxation are the following: who pays (incidence); and how much they pay (the tax burden). In the case of indirect taxation, the full incidence does not always fall on the initial taxpayer; only a portion of the burden may fall on the initial taxpayer and to a lesser, or greater degree, the (remaining) burden is passed on to others. In the case of direct taxation, the burden of the levy is directly borne by the designated taxpayer. This simple distinction is often central to any debate on tax policy; New Zealand in 1844-45 was, I assume, no different.

2. 5. Preferences and Bargains

Fitzroy's *preference* was for a fiscal restructure of the New Zealand economy, a restructure which included a fundamental reform of the established, and unresponsive, indirect tax system. Fundamental tax reform along the ideological lines of free trade would mean that in the absence of customs duties, "something else had to make up the [revenue] shortfall and somebody else had to pay" (Hansen, 1990, p. 547). The second tax law passed by Fitzroy in 1844 was to be the foundation for his new system of direct taxation; that tax law was *The Ordinance*¹¹. *The Ordinance* was that something else (tax law); and as a consequence the somebody (those subject to the tax law) would initially comprise small, but powerful interest groups in the emerging colony - merchants, small capitalists, and the landowning classes.

Direct taxation, imposed in the manner of the Mother Country, should have been well known to New Zealand's older settlers, and quite possibly not much liked by them; however, there were still some settler groups showing interest (*British Parliamentary Papers*, 4: 267). Irrespective, some of Fitzroy's European population were born before income tax became a hard reality; meaning, that many had grown up when there was no income tax (the Mother Country repealed the income tax in 1816 and it was not re-enacted until 1842). Furthermore, the response of the New Zealand official cadre to Schedule E of *The Act* is a good example of individual and group behaviour in 1840's New Zealand (see Heagney, 2010e).

A further example of the settlers attitude toward any form of taxation is the fact that the less-complicated and economically sound taxes (in the developing economy context), land taxes, had not been implemented by any Administration prior to Governor Fitzroy's arrival and Fitzroy himself thought it "impossible to raise an adequate land tax" in 1844 (*British Parliamentary Papers*, 4: 295). Therefore, it is logical that proposed new taxation, of a type which increased the burden of taxation and redistributed incidence, was not going to be liked by those who would have had to pay the tax. Thus, opposition by the colony's settlers to tax policy change was guaranteed.

The response of the Maori population to Fitzroy's direct tax system is not quite a moot point: Fiscal reform, in accordance with the ideology of free trade, was initiated, in part, by Maori grievances, one of which was taxation. It is possible to hypothesise that many Maori already enjoyed the benefits of free trade both prior to Fitzroy's arrival in the colony during his tenure. However, the initial repeal of the indirect tax laws (an event which preceded the general repeal and *The Ordinance*), did no more than reinforce that reality. In addition, Fitzroy's initial direct tax law, *The Ordinance*, did specifically exempt Maori from liability. On the basis of Maoris' ability to apply *pressure* and directly *influence* the political process, their *preferences* were acknowledged and a *bargain* was made. Therefore, it is highly likely that Maori were as supportive of Fitzroy's initial tax policy changes as were the merchants of Auckland. As an aside however, further projected tax policy changes, for example, the proposed *Dealer's License* of 1845 would have made Maori interests just as uneasy as it did those of the European settlers.

¹¹ The Ordinance's full title is the *Property Rate Ordinance, 1844*. However, the first tax law passed by Governor Fitzroy was the *Customs Amendment Ordinance, 1844*.

Initially, the European settler population considered Governor Fitzroy's initial tax policy changes (the removal of customs duties and the implementation of property and income tax) just as acceptable as did Maori (*Southern Cross*, 1845, 3, 105: 2). The settlers were however, opposed in general to new and increased taxation (*Southern Cross*, 1844, 5, 354: 2), and here it is necessary to think in terms of expressed *preferences*. The reason for this anti tax attitude was their supposed inability (reluctance) to fully fund of the colonial administration's establishment costs or the Administrations funding of social programmes for Maori i.e. *fiscal illusion*. These fiscal activities, expenditures, were seen by many settlers as a responsibility belonging to the Mother Country (*New Zealand Gazette and Wellington Spectator*, 1844, 5, 355: 4).

The European community of 1844 comprised only fifteen percent of the colony's entire population and many colonists considered that their share of the total taxation revenue should reflect this. (This anti-tax attitude reflects the presence of the foundational principle for New Zealand taxation: the benefit principle. Furthermore, the European population would decline to support any tax policy changes on the grounds that, in their view, the then existing burden of taxation was already unjustly applied (*New Zealand Gazette and Wellington Spectator*, 1844, 5, 354: 4). In essence *fiscal illusion* ruled the day and the new fiscal approach (the preferences) of Governor Fitzroy, those which suggested new or additional, taxation in the future would not be seen as an acceptable *preference* and thus no *bargain* would be made. The Administration would encounter serious opposition from the European settlers, and they would attempt to *influence* the direction of the colony's fiscal policy by applying *pressure* for change.

2. 6. Pressure and Influence

Fitzroy's total package of tax reforms, including the additional tax laws proposed after the passage of *The Ordinance*, would have constituted a comprehensive direct tax system. The burden of Fitzroy's comprehensive tax system would have been borne by a European population who were against new and increasing taxation. In the very short term, after the introduction of *The Ordinance*, the burden of taxation, as a result of *The Amendment*, (see Heagney, 2010a) would have significantly increased. Furthermore, those in receipt of an especially low income would also have been exposed by the new lower threshold of the tax rate. Similarly, there would have been a heavier burden placed on those at the top by the new, upper threshold. In addition, Fitzroy's next tax proposal, *The Dealers' License* (see Heagney, 2010a), was seen as an unwelcome extension of the tax base. The principal reason for the anti-tax attitude, was because the tax would have made those persons and interest groups (commerce), previously exempted from taxation by the repeal of indirect taxation (customs duties), subject to taxation once again.

To be generous, it is possible to suggest that Fitzroy's preference for tax law was simply intended to broaden the tax base in accordance with horizontal and vertical equity considerations. Here we see a link back to an earlier discussion of Fitzroy's underlying economic principle for the application of taxation: the shift from a simplistic benefit principle to a principle which combined the benefit principle with an ability-to-pay component. In the context of the study period, it is interesting to note that Fitzroy's philosophical approach to taxation (the benefit/ability principle), was also discussed in *The Southern Cross* (1844), the

newspaper which, early in Governor Fitzroy's tenure was supportive of the Administration (*British Parliamentary Papers*, 4: 375-377). This revised (mixed) principle was in accord with the views of the "Manchester Liberals such as Say or Mill" (Musgrave, 1959, p. 91). A conclusion is that *The Ordinance* was conventional, applied, political economy of the period. But for the presence of severe *fiscal illusion*, a perception which was then channelled into concerted opposition to tax reform, Fitzroy may well have succeeded in achieving an advance in the public welfare.

Fitzroy's non-Maori opposition, the representatives of the European land owners and merchants were also Fitzroy's opponents in the Legislative Council. Collectively, on the basis of *fiscal illusion*, the opposition figures would apply pressure for change and thwart (*influence*) the further development of *The Property Rate Amendment* and to *The Dealer's License*. The settler population of New Zealand (due to *fiscal illusion*) quite simply, considered themselves already heavily burdened by taxation and many believed that they did not receive sufficient goods and services from the Administration in return for that taxation.

Opposition to change would ensure that Fitzroy's new tax system, reliant on a single tax law, *The Ordinance*, was rendered ineffective. Fitzroy's Administration would be *pressured* to return to the fiscal status quo ante of August 1844 (*The Customs Amendment Ordinance*). Fitzroy was left with little choice. Thereafter, the development of the colony was constrained, and *influenced*, by a tax system reliant on a single indirect tax; such a tax system which would prove unresponsive to the growing expenditure needs of the colony. The problem, which, it is possible to assert, would affect the manner of national development for years to come, was the following: how could the Administration raise sufficient revenue to meet fiscal purpose with a public attitude which soundly opposed direct taxation and the philosophical tenet of the ability-to-pay principle?

3. FITZROY AGAINST THE TAXPAYER

In Section 3 there were assumed to be three choices when it came to passing tax laws: indirect tax; direct tax; and a balance of the two types of taxation. In 1844, there would be two main options (*preferences*) available to Fitzroy: (1), to increase the rates on existing (indirect) taxes, and (2), to add new (direct) taxes to bolster the public revenue. Neither of these approaches to raising revenue was to the opposition's liking (as mentioned in earlier sections of this paper). If a *bargain* which suited the opposition was unlikely - and given the construct of the institution and the economic condition of the colony, it was - then the opposition were more than willing to debate the matter and filibuster in the Legislative Council¹².

¹² During the debates over expenditure principally, the opposition took the opportunity to (1) express their supporter's *preferences*, and (2) to *influence* the Executive. The opposition used the Appropriations debates in an attempt to *pressure* the Executive into a *bargain* which suited their interest groups. They were to be disappointed however as the Executive held a majority, and Fitzroy had almost autocratic powers. Fitzroy did not need the opposition's votes to pass ordinances in Council; although, from a political standpoint Fitzroy was very aware of the oppositions' ability to impact his Administration and consequently the development and implementation of policy. The opposition well realised their inability to determine tax or any other policy (subject to the papers subject matter, the *passing of tax laws*), therefore, they utilised the debates in Council and other public avenues to express their *preferences* and to direct *pressure* onto the Administration. The opposition's main, and exceedingly powerful ally, was the popular media. Furthermore, the opposition also maintained their personal connections in the Mother Country as these could also be used to *influence* the political process in the colony.

The obvious gap between the Executive and the opposition's *preferences* would require bridging. In the interim, Fitzroy had to confront the realities of managing an Administration without funds. On June 13, 1844, Fitzroy informed the Council that, due to financial difficulties (financial crises create *pressure*; they *influence* the policy process, and the consequent *bargain*), from July onwards of that year, government officials would be paid only part of their salaries. Following the passing of the *Appropriations Ordinance*, Fitzroy then had to display his *preferences* and attempt to pass a revenue ordinance.

The ordinance Fitzroy proposed, *The Customs Amendment Ordinance* (an ad valorem duty of 5%), was an attempt to increase existing indirect taxation. On June 18, 1844, in the Legislative Council, Fitzroy faced a protest (*pressure*) over Fitzroy's clearly expressed *preference* for tax law (*British Parliamentary Papers*, 4: 272-276). Mr Brown attempted to further *influence* the debate by arguing that the settler population was already struggling to pay the existing taxes; to prove his point the people of Auckland (at least the commercial interests) petitioned the government on June 20, 1844, seeking a reduction in taxation (*pressure*).

At this point in the debate on the *Customs Amendment*, Dr Martin raised a tangential argument that there should be no taxation without representation (*pressure* and *preference*). In the absence of self-government, however, Dr. Martin (with the approval of Mr. Brown), returned to two ideological policies of the period's political economy: free trade and direct taxation (by stating these clear *preferences* he was attempting to arrive at a *bargain*). Despite the opposition, Fitzroy proceeded with his first *preference*, an indirect tax law; viz. the *Customs Amendment*. On June 20, 1844, Fitzroy's customs bill was passed and it became, Ordinance, No. 6, Sess III, 8 Vict: (*New Zealand Ordinances*, 1841-53). Fitzroy however, also pass a minor measure of tax relief for business interests (namely, the *Licensing Amendment, 1844*). This minor measure was a direct result of *pressure* and *influence* driving a *bargain*: a *bargain* that was arrived at on the basis of a clearly articulated *preference*.

In summary, as a result of previous decisions, the colony was facing a consequence of needs. Financial crises opened the window of opportunity, and Fitzroy leveraged the *pressure* they created to pass the Administration's first *preference* for tax law, the customs amendment. The *influence* of the business community however, did drive a limited *bargain*, the *Licensing Amendment, 1844*. Nonetheless, further crises in the colony would interrupt the politics of tax process and accelerate (*pressure*) the further development of tax policy in the colony.

3. 1. Crisis

A crisis places *pressure* on legislators, and reduces the need to debate *preferences*. Crisis ensures the likelihood of arriving, in the very short-term, at a *bargain* which is acceptable to interest groups. Aside from the financial crisis facing Fitzroy, there were also fast-developing social problems (crises) to confront. For example, the economically active Maori population, principally in the upper North Island were experiencing economic difficulty (Sinclair, 2000,

p. 80), and localised violence and disorder were the result¹³. Fitzroy's Executive agreed that the cause of the crisis was not the new customs rates, rather the very existence of any customs duties¹⁴. Hence, Fitzroy had the justification for removing customs duties in the north of New Zealand. Subsequently, at the request of European interest groups and the Legislative Council's opposition members (*pressure* led to a new *bargain*), viz. customs duties were repealed throughout the colony.

In despatches, Fitzroy acknowledges the perilous state of not just some northern Maori (*pressure*), but of the entire colony's economy (*pressure*), and this *influenced* his policy decision. In one of his despatches Fitzroy states his intention (*pressure*) to abolish customs duties. This act, he perceives, will "avert extreme misery and save the colony" ([*Copy of a Despatch from Governor Fitzroy to Lord Stanley*. No.17 September 16, 1844], *British Parliamentary Papers*, 4: 355).

In the place of customs duties, Fitzroy, in a move clearly designed to *influence* the policy development process, indicates another of his *preference* for tax policy. The *preference* was for a proposed tax on all property at a rate of 1% on its current marketable value; returns would be voluntary and made by owner occupiers. In a second despatch (on the same date, September 16, 1844), Fitzroy recognises that his Administration's financial situation is critical (crisis means *pressure*), and thus, a quick *bargain* is sought. In the despatch Fitzroy comments on the lack of funds and currency, and how these problems were compounding the land issue¹⁵ (*British Parliamentary Papers*, 4: 356). At this juncture, Fitzroy clearly begins to focus attention on, (declare his *preferences* for), a major restructuring of the tax system, and he suggests to the Legislative Council the possibility of imposing (Fitzroy's *preference*) a property tax. This tax is the revenue substitute for customs duties (and this is almost the end point of Fitzroy's *bargaining* process).

On September 19, 1844, an emergency meeting of the Council was held. On the agenda of the meeting were two major issues. The first was the critical state of relations with northern Maori (crisis). The second was another crisis, namely, the Colonial bureaucracy; it was "without funds [and] almost without credit" ([Enclosure No. 1, Despatch No. 18], *British Parliamentary Papers*, 4: 358)¹⁶. The economic climate of crisis, lent further support

¹³ The economy of Northern Maori was closely linked to the shipping trade conducted through Kororareka. Trade had reduced over time and the fault was laid at the door of Crown. Principally, the Administration's application of indirect tax policy in the coastal settlement was seen as being responsible for the business downturn (without the shipping, the opportunities for trade were much diminished). A principal reason posited for the decline in trade was that Kororareka became one of the five official ports of entry, and had its own customs post and it was actively engaged in tax gathering. Small matters, like the imposition of taxation on tobacco (a favourite of Maori), in combination with the larger issues, made a real impact on their standard of living.

¹⁴ In retrospect, it is now easy to look at the assembled evidence and say that an increase in the customs duties had very little to do with the loss of economic rent that many in the far north had garnered for many years. The participants in trade also failed to acknowledge the effect of a global depression and a shift in the activities of the seasonal whaling fleet (extract from the *Southern Cross*, September 28, 1844. *British Parliamentary Papers*, 4: 375), and the growing European settlements further south. Whaling ship visits to New Zealand had been declining for some time because new and more profitable whaling grounds had opened further north (Kullberg, 2003).

¹⁵ See Subsection 6.8.1 of Chapter 6 of Heagney (2009a).

¹⁶ A major cause and precipitator of this financial crisis was the defaulting on land payments by the New Zealand Company. While this had occurred the previous February, the failure of the New Zealand Company was leveraged to the problem of the Administration being unable to raise sufficient revenue.

(*pressure and influence*) to the policy debate. *Fiscal illusion* could not hold out against the trump of multiple and severe crises the ultimate driver of tax policy development. The *bargaining* process was circumvented and Fitzroy's new *preferences* were adopted. The revised tax reform package would now become a general property rate, inclusive of income.

At the 4th Session of the New Zealand Legislative Council, the foundational revenue gathering ordinances for Crown Colony New Zealand (customs duties) were repealed. Customs duties were simultaneously replaced with *The Property Rate Ordinance, 1844*. The passing of this ordinance brought to an end the Fitzroy's reliance on a narrowly based, simple indirect taxation to raise ordinary revenue. Future, revenue requirements (for nearly eight months) would be met from the new direct system of taxation; this was referred in earlier papers as, *The Ordinance*¹⁷.

3. 2. Public and Political Responses to Policy Change

The tax package was hailed by an appointed non-official member of the Council, Dr. Martin, as an attempt to impose taxation on just principles (*British Parliamentary Papers*, 4: 375). Just principles or not, in the short term Fitzroy's European taxpayers would respond to it positively. By early 1845 the popular press, or at least some sections of it, had begun to report that *The Ordinance* was a success: it was returning revenue, as expected. In time the southern newspapers would express a different view however, the end of the year (1844), while the public debated the new tax policy initiative and whether or not the policy process had been hijacked by Auckland commercial interests¹⁸, further policy development was underway. If the unofficial appointees to Council had previously directed policy, then imagine their surprise when, after they had resigned from Council, the *Property Rate Amendment Ordinance* and the *Dealers' Licensing Ordinance* were proposed¹⁹!

Of the two proposed ordinances, *The Dealers' Licensing Ordinance* was the more objectionable; it was the last straw for Fitzroy's taxpayers. The interest groups in Auckland, which previously supported direct taxation, would now abandon Fitzroy and begin to exert *pressure* to undo change. As mentioned in Section 7.4.2 of Chapter 7, the reason for outrage was the proposed *Dealers' Licensing Ordinance*. "A more iniquitous tax can hardly be imagined, it strikes at the root of all trade, it attempts to throw the whole weight of taxation on one portion and that an inconsiderable portion in point of numbers of the community" (*New Zealand Spectator and Cook's Strait Guardian*, March 8, 1845, p. 2). European public opinion was firmly against Fitzroy's further proposed changes to tax policy. On behalf of at

¹⁷ *The Ordinance*, as a single tax law was levied on a potential taxable population of 12,000 settlers. If you remove dependents, those not working, those on low incomes and those with little real property and the taxable population is significantly reduced. The initial burden of *The Ordinance* fell on perhaps as few as four thousand individuals. This limited number of taxpayers, in an economically depressed and developing colony, was in my view, an inadequate population to support a system of economic organization for a total population of 92,000 (many of whom required substantial economic assistance).

¹⁸ It is a plausible hypothesis that the removal of customs duties was beneficial to the business sector. The repeal of customs would have reduced their costs. On the other hand if merchants did not reduce prices (pass-through) they increased their profits in the short term.

¹⁹ An interesting question is the following: were Mr. Brown and Dr. Martin really surprised by the new tax proposals? Perhaps they saw events of 1845 coming and resigned out of protest at the two proposed new tax initiatives. This was not unlikely, as I discuss their written protest against the repeal of the property rate later in the paper.

least the southern settlers (if not all settlers), the editor of the *New Zealand Spectator and Cook's Strait Guardian* (March 8, 1845, p. 2) commented as follows: “[T]he most despotic Turkish tyrant that ever reigned would never have attempted this [tax package].”

In the midst of the political turmoil, Fitzroy would inexplicably follow the same political, if not legal procedure that he had used in the previous year to progress his tax initiatives: inclusion of the opponents in the Legislative Council; debate with them on the issues; and finally negotiation (declare *preferences*, apply *pressure* to *influence* the debate and thereafter to drive a *bargain*). Unfortunately, the time for debating *preferences* or attempting to make *bargains* was over; procedure would have to be broken; *pressure* and *influence* would now combine with *fiscal illusion* and continued crises (military and financial) to decide tax policy. Regardless of the public outcry, in early 1845, Fitzroy would again set about (attempt) the process of policy development in his undemocratic forum. The Legislative Council was where the combined effect of *preferences* and *bargains*, *pressure* and *influence*, and *fiscal illusion* would meet the reality of actually having to attempt to *pass* these new *tax laws*. The core elements of the politics of tax would now combine to make it abundantly clear that, irrespective of further financial crisis or escalating military conflict in the north (which required further expenditure), passing the *Amendment to The Ordinance*, and the contentious *Dealers' Licensing Ordinance*, was politically impossible.

The window (or rather windows) of opportunity Fitzroy had used to enable the passage of (1) *The Customs Amendment*, and (2) *The Ordinance*, had closed; further, the supporters of direct taxation had resigned from the Council. To compound matters, the three new opposition members of Council - Frederick Whitaker²⁰, William Donnelly²¹ and Theophilus Heale²², would prove an able opposition to Fitzroy's Executive²³ however, and they had two points on which they could stand united (*British Parliamentary papers*, 5: 189), and which Fitzroy himself would later support (Fitzroy, 1846). First, a case had been made for the colony being

²⁰ Frederick Whitaker (1812-1891) trained as a solicitor and arrived in New Zealand in 1840. Governor Fitzroy appointed him to the Legislative Council in 1845. By the 1850s Whitaker had been drawn heavily into politics and administration, at a time when the two dimensions of business and politics were almost inseparable. Whitaker was described as an unprincipled devourer of Maori lands (in the Waikato) and a stereotypical settler-conservative on some matters. He was also a liberal on other matters, advocating closer settlement of the land and opposing the well-to-do merchant clique. He was known to have advocated manhood suffrage, proportional representation, and more equal electoral districts. He was a large shareholder in the Bank of New Zealand and its president in the 1880s. He was also on the New Zealand boards for the Colonial Sugar Refining Company (New Zealand Sugar Company), the New Zealand and River Plate Land Mortgage Company, and the Equitable Life Assurance Company of New York (Stone, 2007).

²¹ I have been unable to find any information relating to William Donnelly. On that basis I make no assumptions. It is possible that the life and work of William Donnelly is a worthwhile topic for future research and I leave it to others to pursue.

²² Theophilus Heale (1816-1888) was classically educated and a ship's captain at age 24. He did captain the *Aurora*, which brought the first New Zealand Company settlers to New Zealand in January 1840. In 1844 he gave evidence to the Select Committee on New Zealand and in 1845 was called to the Legislative Council of Governor Fitzroy. He was a partner of Frederick Whittaker. The two partners were involved in general business, finance and land speculation. He served the colony as an explorer, a surveyor, and a judge (on the native land court in the 1870's) (*Cyclopedia of New Zealand*, 1897).

²³ As an aside, here is recorded in at least one early newspaper (dated 1844) that even Fitzroy's executive colleagues were, on occasion, found to be unsupportive when matters of taxation were tabled in the Legislative Council. Without a second or even third statement to that effect having been found, this thesis has not pursued that line of enquiry. However, it may explain some of Fitzroy's difficulties in passing ordinances in an institutional environment where he held a majority.

unable to fund its required expenditure (i.e. full colonial expenditure) through colonial taxation (taxation imposed primarily on the settlers). Second, with the arrival of the year's annual Parliamentary Grant, the urgency for new and increased taxation, especially taxation in a form to which public opinion was opposed was unwarranted and thus, they could therefore continue to *pressure* the Administration into a new *bargain*.

Fitzroy's first attempt to drive his proposed taxation ordinances through, under a sense of urgency, was halted on the grounds that it was convention in British colonies to debate expenditure before revenue (*British Parliamentary Papers*, 5: 191). For the second time in little more than a year, the process of fiscal reform had been derailed in this manner. As the focus shifted to expenditure, tax policy reform was delayed while expenditure costs were debated at length and the public opposition to Fitzroy's tax policy (*preferences*) mounted. A popular newspaper of the period, the *New Zealand Spectator and Cook's Strait Guardian*, asserted that the new tax impositions would have been "downright robbery", with even Auckland's *Southern Cross*, formerly a supporter of direct taxation, "aghast at his actions" (as reported in the *New Zealand Spectator and Cook's Strait Guardian*, May 3, 1845, p. 2).

Lacking public and political support, Fitzroy felt unable to pass *The Ordinance's* contingent tax laws of the *Amendment* and the *Dealers' License*. Consequently, he was unable to raise sufficient revenue to meet the Administration's expenditure needs. "Six months' trial have shown that a revenue nearly sufficient for the most economical expenditure on the public account could not - under the peculiar circumstances of the colony - be raised by direct taxation" (*New Zealand Spectator and Cook's Strait Guardian*, March 8, 1845, p. 3). Fitzroy was left with little choice but to repeal *The Ordinance* and to re-instate the customs duty.

The politics of tax - which Fitzroy appears to have used to his advantage in 1844 - had effectively controlled Fitzroy's course of action in 1845. Against the background of a written protest by Dr. Martin, William Brown and Charles Clifford (the original Council members involved in the development and implementation of *The Ordinance*) a repeal Bill was tabled in the Legislative Council (*The New Zealand Spectator and Cook's Strait Guardian*, May 31, 1845, p. 2). Even at that juncture (April 1845), the new unofficial members of Council sought to hinder the development of tax policy as they engaged in debate on the appropriate rate level attached to the tabled *Customs Ordinance*.

At the Fifth Session of the Legislative Council, on April 8, 1845, however, *The Ordinance* was repealed (the *Property Rate Repeal Ordinance, 1845*). *The Ordinance* had lasted seven months. Section 1 repealed *The Ordinance* and re-instated the Customs Duties. Section 2 made the arrears of the property rate recoverable (this became a future bone of contention). Section 3 provided for the commencement of customs duties at the new and increased rates of the previous year, June 20, 1844 (the extra 5% ad valorem tax). This amounted to the *passing* of *tax law*.

Thus, nearly two years of debate over taxation had come full circle; tax policy was back at the point of departure. The end point in the politics of tax game was, effectively, the status quo of early 1844. Why this occurred can, no doubt, be related to the underlying argument of the period, namely, how was the establishment of the colony going to be funded, and also,

who was going to control and direct progress in the colony. In more simplistic terms however, as the chosen battle ground was taxation, the final resting place of taxation policy in 1845 New Zealand is easily explained. In early colonial New Zealand, both Maori and European wanted the benefits of an organised and efficient society however, neither Maori nor the European settlers wanted to adhere to social contract theory and relinquish control, and while “[all] citizens want the goods and services.... [And economic structures].... that modern states [organised society] can provide.... they would rather that someone else pays (Leiberman, 2001, p. 93). In short neither Maori nor the European settlers wanted to accept any of Crown colony New Zealand’s associated development costs, viz. taxation. This attitude toward taxation, and fiscal policy in general would, in my view, become the cornerstone of early colonial politics, and something which would constrain economic progress in the colony for many years into the future.

4. FITZROY: SAVIOUR, MARTYR OR BOTH?

In summary, during the study period economic need was the rationale and successive crises offered the opportunity for a major restructuring of the colonial tax system. It is stated by Peters (1991, p. 12) that “due to their unpopularity, changes to tax policies require windows of opportunity and, in taxation as in politics, timing counts for a great deal”. It is observable that, in the context of 1844 New Zealand, Peters may well be right²⁴. Large scale tax policy changes do require advance preparation and, the colonial newspapers of the period (1844-45) do report Fitzroy’s interest in free trade and his interest in levying a system of direct taxation in the colony in place of customs duties. Furthermore, there is evidence that a property and income tax (direct taxation) was to be the preferred option (*preference*) of the Administration prior even to the arrival in the colony of Robert Fitzroy.

A colonial newspaper, the *Southern Cross*, claimed that Fitzroy had come out to New Zealand with these existing *preferences*. His intention was to impose a system of direct taxation that included an income tax. In order to do so, timing was everything. Fitzroy, apparently, had simply waited for an excuse to implement these taxes (push for a *bargain*). The newspaper also claimed that Lord Stanley, of the Colonial Office, had sanctioned the property rate and income tax in April 1843, seventeen months previously (*British Parliamentary Papers*, 4: 373). This demonstrated three things. First, the external *influence* on Fitzroy’s Administration was great; external actors exerted real *pressure*. Second, it showed that representatives of the settler population, and the general readership of their newspapers, had some knowledge of Fitzroy’s intentions (*preferences*); further, they were not keen on the possible *bargain* that Fitzroy had in mind. Third, it is evidence that the economic restructuring undertaken by Fitzroy was not in response to fiscal crisis *per se*; it does appear that it may have been predetermined, a planned restructuring of the colony’s economy. Crisis, however real (and in 1844 New Zealand, it was), was used as the leverage

²⁴ In addition, it is possible to argue, that the dual coincidence of an external crisis and internal crisis were compounded by the continuation of domestic difficulties. In combination these economic difficulties did divert attention away from the co-joint reality of *fiscal illusion* and thereafter, the mentioned economic events *influenced* the policy development process, and exerted the necessary *pressure* needed to force changes to tax policy.

instrument and public pretext for economic change. Furthermore, *as per* the transference framework of earlier work by this author, crisis also initiated the transmission of the then existing political economy of the Mother Country to New Zealand; free trade and direct taxation.

The starting point of what is assumed to be Lord Stanley's planned restructure of the colony's economy is his perceived (by the colonist), official sanctioning of change in 1843. This could be construed as the *pressure* of an external *influence* on New Zealand tax policy. Following the official sanction, the next step was the appointment in 1844 of a new Chief Executive (Fitzroy). The third step was a function of institutional change; while the *pressures* on the institution did not change, the membership did. There was a new Legislative Council, with all unofficial appointees personally selected by Fitzroy. Within the construct of the new polity, Fitzroy slowly negotiated with (*influenced*), the disparate interest groups and furthered the debate (worked towards a *bargain*) on fiscal reform (taxation) over a period of time (eight months).

Much *pressure* was placed on the Legislative Council members, as Fitzroy developed the concept of a property and income tax. Over time, between January 1844 and September 1844 there were four conceptual stages in the development of tax law as *preferences* were enunciated and *bargains* negotiated. First, a land tax was proposed. Second, a property tax of one per-cent was suggested as an alternative. This second initiative evolved from a mere suggestion into stage three: a firm proposal to implement a tax law which impacted upon all property owners. While not clearly defined at that stage, it did give a clear indication of the economic trade-off required for the implementation of the period's dominant ideology, free trade. Fitzroy then moved to step four: a fiscal initiative that extended the imposition to both property and income. He then used the emergency in the north to gain final political acceptance of his proposal. While somewhat less than a thorough *bargaining* approach, nonetheless a *bargain* was made. Multiple fiscal crises (*pressure*) in the colony finally gave rise to; in other words, *influenced* major economic policy change and *the passage* of *tax law*. The question which needs to be addressed in the remainder of the paper is: Why?

4. 1. The Economic Requisites

Let us briefly summarise what we have seen. Localised economic necessity obviously played a major part in the determination of New Zealand economic policy. From the record, as detailed in previous discussion papers, it is obvious that the Colony's economic condition was critical; the development framework established in 1840 was not delivering the desired economic outcomes. Economic policy change however, on such a major scale, must also have been driven by imperial interests. It is quite plausible therefore, that policy change was under serious discussion prior to Fitzroy's departure for New Zealand.

Poor economic outcomes in the Colonies resulted in political *pressure* at home. The *pressure* was felt in Parliament, and it began a policy development process which culminated in the

sanctioning of major policy change²⁵. Thereafter, a new Governor and Council undertook major economic restructuring in an economy where the European population was decidedly opposed both to fiscal change and to imperial control of their futures. To achieve the assumed objective of major policy change, Fitzroy adopted the following strategies: in the context of emergency, he undertook inclusion, negotiation, and withstood the rigours of political competition (*preferences, bargains and pressure*). Thereafter, Fitzroy was able to plead economic necessity (multiple crises) as a reason for short-circuiting the *bargaining* process. Thereafter, opposition evaporated (due to the *pressure* of untoward economic events) and a policy decision was made: *The Ordinance was passed into law*.

Fitzroy had few other choices available; New Zealand (a small colony in the process of establishment), was caught up in the throes of an international economic depression, the local economy of the colony was in tatters and, there was also the always possible, impending cultural conflict to contend with. Only Fitzroy's timely imposition of debentures and concurrent economic restructuring saved the colony, and the settler population from more serious suffering. Furthermore, Fitzroy's acquiescence to Maori in Wairau early in 1844, and again in the north in late 1844 was an attempt to postpone the inevitable conflict between Maori and European. It is not without good reason that Governor Fitzroy is remembered as the man who lost Kororareka but saved New Zealand (Thomson, 1859, p.123)²⁶.

²⁵ There was also the external *pressure* created by the establishment of a Select Committee on New Zealand in the British Parliament in April 1844. The following sentence is the title page of the Select Committee's published work. "*In April 1844 a Select Committee on New Zealand was "appointed to inquire into the state of New Zealand; and into the proceedings of the New Zealand Company", and to report the Minutes of Evidence, and their Opinion thereon to The House, and to whom Two Petitions were referred*" (*British Parliamentary Papers*, 2: 3). I also suggest that the establishment of the Committee and their possible conclusions would have been something Fitzroy was likely to have realised, or had communicated to him, at the very least when briefed by the Colonial Office prior to departure for New Zealand. It is also known that he received an update on the Select Committee's progress/findings in August of 1844, well before the passage of *the Ordinance* (*British Parliamentary Papers*, 4: 145).

²⁶ See the *Encyclopedia of New Zealand* (1966). Before 1840 Kororareka was the largest European settlement in New Zealand. Originally a watering base for the whaling ships which visited the Bay of Islands, it had developed by the 1820s into an important whaling, sealing, and mercantile centre. Trading posts were well established by the 1830s and supplied stores to visiting ships. On 29 January 1840 Hobson arrived at Kororareka. After he had negotiated the Treaty of Waitangi, he established his seat of government a few miles away at Okiato, which he renamed Russell. A few months later, when the seat of government was removed to Auckland, Russell was destroyed by fire, and, as Kororareka was part of the Port of Russell, it gradually assumed the latter's name. In January 1844 this change was ratified when Governor Fitzroy decreed that Kororareka should be a part of the town of Russell (Bay of Islands). In the early 1840s when the price of whale oil fell, Kororareka's prosperity declined. Fewer ships called and the local Maoris, influenced by settler malcontents, became convinced that the British Flag was responsible for all their troubles. Accordingly, on 5 June 1844, The Maori leader Heke, cut down the flagstaff on Maiki Hill, near Kororareka. On 10 March 1845 his men sacked and burned most of Kororareka. In affect this was the demise of Kororareka. Responsibility for the matter was laid at the feet of Governor Fitzroy. It has been suggested that due to Fitzroy's supposed indecisive and illogical decision making and administration, the sacking of Kororareka occurred (McKlintock, 1958, p. 184). It is worthwhile to note that Fitzroy perceived that his administrative approach had managed the possibility of widespread racial tension, something which had escalated since the Wairau incident of the previous year. Fitzroy's approach to possible internal warfare had in fact ameliorated the rise of large scale racial conflict in the colony (Fitzroy, 1846) Fitzroy's approach therefore, it can be said, in conjunction with his economic policies, did save the colony but not Kororareka. The settlement never re-gained its previous position (in any sense) and modern Russell now stands on the site of Kororareka, but it is not the site of Russell (Okiato), Hobson's first capital.

It is also worth recalling that New Zealand, at the time, was not a parliamentary democracy, nor a representative democracy. While convention may have dictated that the officially appointed Administration adopted a civilised and democratic approach, New Zealand was on the edge of the Empire and twelve thousand settlers (all looking for a free lunch) were at the mercy of seventy eight thousand Maori who were not inclined to simply acquiesce to settler demands. Governor Fitzroy needed to lead and to find sound economic solutions to the colony's serious economic problems.

5. CONCLUSION

This discussion paper had three separate objectives. First, it sought to fit an analytical structure around the tax policy decisions made during the tenure of Governor Fitzroy. Second, it tried to establish an explanation for the group behaviour and conflict which is reflected in the tussles between Fitzroy, his political opposition within the institution of the Legislative Council, and with his taxpayers. Third, the paper had, what might be called, a subordinate objective: to show that what Fitzroy succeeded in achieving in the Colony's tax arena, contributed to saving New Zealand as a British Colony.

The first objective was, the finding an analytical structure to explain the development of tax policy during the study period, and this has being successfully achieved. The paper has adopted from the work of Pollack (1998), an analytical framework consisting of four structural headings: *preferences and bargains; pressure and influence; fiscal illusion; and the need to pass tax laws*. The first section of the work, Section 2, explained the framework, and connected the economic overview with the chapter's assumptive material. Thereafter, from Section 3 through to Section 4, the interdependent structural headings of the subordinate framework were productively integrated into the historical narrative. *Preferences and bargains; pressure and influence; fiscal illusion; and the need to pass tax laws* became central to explaining the story of early New Zealand tax policy development. To conclude, the four structural elements of the politics of tax analytical framework do assist in the difficult task of explaining the development of tax law during the study period.

Subject to, and concurrent with the above analytical process, a start was made on the second objective of the chapter: the establishment of a plausible explanation for group behaviour and conflict during the development of early New Zealand taxation. Using the theoretical politics of tax framework the discussion shed light on the relevant policy-making institution and the participants (the polity) who effectively decided tax policy. These were the Executive of the Legislative Council, and Governor Fitzroy in particular. Also demonstrated in the paper was the very important role which the opposition (unofficial appointees to Council) and the mass media played in influencing the development of tax policy in that undemocratic period in New Zealand. Adopting the politics of tax framework directed the discussion and, did highlight the necessary information which was contained in the process of verbalisation, exchange and group behaviour.

Closely connected to the three analytical sections of the discussion paper was the premise that, if the determinations of the structural framework are found to play an important role in

tax policy development, then tax policy, which this paper has argued is an exercise in political economy²⁷, is not decided purely on the basis of first-best economic arguments. Nevertheless, the development of tax policy during the study period does appear to fit the neoclassical paradigm of rationality, something which is perceived to be clearly apparent in the behaviour of all participants in the policy development process during the period under study. All participants were actively seeking to maximize utility, if not profits, and in the case of the Administration, revenue. Furthermore, the independent actions of the participants' in the political process did appear to be reasonably well informed. However, on the basis of the analysis conducted herein and in previous work by this author, the final determinant of any tax law(s) does appear to be politics, and not first-best economic arguments.

The third objective of the paper was to highlight the fiscal policy achievements of Governor Fitzroy during his tenure in Crown colony New Zealand. While this paper has focused on the politics of tax, previous work (discussion papers) by the same author have formed a strong backdrop to the paper's narrative. Thus, in combination, the third purpose this work has been achieved. Governor Fitzroy's contribution to fiscal policy and the economic history of New Zealand, even in the narrow context of taxation, is large. His tax policies did not set the precise direction of future fiscal policy in the colony but, Fitzroy's failed attempts at free trade and direct taxation did decide who, ultimately, would govern New Zealand and, who would pay for future progress in the colony. Furthermore these momentous decisions can be hypothesised as having set the foundations a national fiscal philosophy; a philosophical position which is further hypothesised, as still existing today.

Let us return now to the three hypotheses of the paper. The first was that the politics of tax did decide the final form that tax policy in New Zealand would take by the end of the study period. This hypothesis is found to have being corroborated. The second hypothesis was that the development of tax policy was influenced and directed by the four structural headings of the analytical framework: *preferences and bargains; pressure and influence; fiscal illusion and the need to pass tax laws*. The four structural headings of the framework are found to have much merit. It is only with flexibility that the methods of New Institutional Economics provide that new insights can be gained from old information and thus the work agrees with the hypothesis. The third hypothesis questioned whether the development of tax policy, during the period, was subject to a rule of normative behaviour? This paper has shown that tax policy *was* influenced by the politics of tax during the study period. Further, this approach to the development of tax law, during the study period, did lay the foundation for a uniquely New Zealand approach to fiscal policy after 1845.

From the work undertaken herein, it is possible to assert that the historical narrative has successfully delivered a coherent story of tax policy development during the early Crown Colony period. The subordinate method of the paper, the politics of tax, has enabled the

²⁷ The statement that taxation policy is an argument in political economy is not intended to convey the opinion that this is something new or in contrast to popular contemporary views. The intention is to disabuse practicing economists who perceive that the neoclassical approach contains the answers to how tax policy is decided. For example; there is an increasing mountain of economic analysis which describes in detail matters such as the optimal tax policy for economic growth. However, little of their findings are ever implemented. The question therefore, is why do economists persist in continuing the practice? I refer the reader to Drazen (2000) for a full understanding of the position taken in the body of work undertaken by this author.

conduct of those persons (public figures) who deliberated over tax policy during the study period, and the conduct of the general public, to come to light. This examination has determined the rules of normative behaviour which directed tax policy development during the study period. Furthermore, the politics of tax, framework has added value by suggesting a central theme to focus upon when examining not just past tax policy development but, perhaps, also the development of future tax policy: the ongoing politics of tax. The politics of tax process is commented upon by Adams (1928, in Pollack, 1998, p. 2); the *politics of tax*, he observes, “is first of all a hard game in which, he who trusts wholly to economics, reason, and justice, will in the end retire beaten and disillusioned”. This, state of beaten-disillusionment was, quite possibly, the reality for Robert Fitzroy.

Fitzroy’s tangible legacy to New Zealand tax history, *The Ordinance*, was repealed in April 1845 and New Zealand’s first experiment with free trade was abandoned. Further, Governor Fitzroy was replaced by Governor Grey in 1846. Sir George Grey would oversee the rest of the Crown Colony period - a time when both Maori and European wanted the benefits of government and organized society but none of the associated costs. This attitude to fiscal matters would restrain progress in the colony for years to come but, that story must be left for future research.

REFERENCES

- Adams, T. (1928). Ideal and Idealism in Taxation. *American Economic Review*, 18: 1-8.
- Bentley, A. (1908). *The Process of Government*. Chicago: University of Chicago Press.
- British Parliamentary Papers*. (1970). Colonies: New Zealand, Vol. 1-8, Sessions. 1837-52. Shannon: Irish University press.
- Cyclopedia of New Zealand: Industrial, Descriptive, Historical, Biographical Facts, Figures, Illustrations*. (1897). Christchurch: Cyclopedia Company.
- Drazen, A. (2000). *Political Economy in Macroeconomics*, Princeton: Princeton University Press.
- Fauvelle-Aymar, C. (1999). The Political and Tax Capacity of Government in Developing Countries. *Kyklos*, 52: 391-413.
- James, S. (2002). The Future International Tax Environment. In, *The International Tax System*, Hasseldine, J. & Lymer, J. (Eds.). London: Kluwer Academic.
- Kullberg, G. & Kullberg, P. (2003). *Charles E. Nelson: A White Tohunga: The Biography of a Remarkable Navigator, Entrepreneur and Humanitarian: Sweden & New Zealand, 1829-1909*, In Hansen, L. (Ed.). London: I K Foundation.
- Lieberman, E. (2001a). Taxation Data as Indicators of State-Society relations: Possibilities and Pitfalls in Cross-National Research., *Studies in Comparative International Development*, 36: 89-115.
- Lieberman, E. (2001b). National Political Community and the Politics of Income Taxation in Brazil and South Africa in the Twentieth Century, *Politics and Society*, 29: 515-555.
- Musgrave, R. (1959). *The Theory of Public Finance*. London: McGraw Hill.
- Nehring, H. & Schui, F. (2005). The Transfer of Ideas about Taxation since 1750, AHF-Information, Nr. 106 vom 30.09. *Centre for Research in the Arts, Social Sciences and Humanities (CRASSH) Cambridge*, September, 16 - 18. Retrieved August 31, 2006 from: http://www-histecon.kings.cam.ac.uk/research/taxation_ideas.htm
- Nehring, H. & Schui, F. (2007). *Global Debates about Taxation*. London: Palgrave McMillan.
- New Zealand Gazette and Wellington Spectator*. (1844). Retrieved December 4, 2008 from: <http://paperspast.natlib.govt.nz/cgi-bin/paperspast>.
- Olson, M. (1965). *The Logic of Collective Action; Public Goods and the Theory of Groups*. London, Harvard University Press.
- Peters, G. (1991), Comparative Politics. In *The Politics of Taxation*. Peele, G. (Ed.). Cambridge: Blackwell Publishers.

- Pierson, P. (1993). When effect becomes Cause: Policy Feedback and Political Change. *World Politics*, 45: 595-628.
- Pierson, P. (2004). *Politics in Time: History, Institutions, and Social Analysis*. Princeton: Princeton University Press.
- Pollack, S. (1998), *The Politics of Taxation; Who Pays What, When, How*. Retrieved October 3, 2006 from: <http://www.buec.udel.edu/pollacks>,
- Smith, J. (2008). *Taxation Reform and Politics: A Review*. Retrieved November 12, 2008 from: <http://www.australianreview.net/digest/2008/05/smith.html>.
- Sorensen, R. (1992). Fiscal Illusions: Nothing but Fiscal Illusions. *European Journal of Political Science*, 22: 279-305.
- Southern Cross* (Auckland) February 8, 1850: 3, in *British Parliamentary Papers* (1970). Colonies New Zealand. Shannon: Irish University Press.
- Southern Cross* (Auckland) (1845). Retrieved December 4, 2008 from: <http://paperspast.natlib.govt.nz/cgi-bin/paperspast>.
- Steinmo, S. (1993). *Taxation and Democracy: Swedish, British, and American Approaches to Financing the Modern State*. New Haven: Yale University Press.
- Stone, R. (2006). Brown William, 1809/10?-1898. *Dictionary of New Zealand Biography*. Retrieved August 17, 2006 from: <http://www.dnzb.govt.nz>.
- Stone, R. (2007). Whitaker, Frederick 1812 - 1891. *Dictionary of New Zealand Biography*. Retrieved June 22, 2007 from: <http://www.dnzb.govt.nz/>.
- The New Zealand Gazette & Wellington Spectator*. (1843). The Income Tax, Vol. III, January 7. Retrieved June 13, 2008 from: <http://paperspast.natlib.govt.nz/cgi-bin/paperspast>.
- The New Zealand Spectator & Cooks Strait Guardian*. (1845). Editorial. Vol. I, March 8. Retrieved June 13, 2008 from: <http://paperspast.natlib.govt.nz/cgi-bin/paperspast>
- The New Zealand Ordinances*. (1871). *Ordinances of the Legislative Council of New Zealand and of the Legislative Council of the Province of New Munster: 1841-53, inclusive*. Wellington, Government Printer.
- Thomson, A. (1859). *The Story of New Zealand: Past and Present-Savage and Cultivated*. London: Praeger.
- Young, A. (2009). Tax Spend or Fiscal Illusion. *Cato Journal*, 29: 469-485.

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