

OFFICIAL

Wai 215 #L3

**Whitaker and Russell:
A contextual study of their interests and
influence**

Russell Stone

*A Report Commissioned by the Waitangi Tribunal
February 2001*

TABLE OF CONTENTS

	page
INTRODUCTION	2
CHAPTER ONE: CONTEXT	3
CHAPTER TWO: FREDERICK WHITAKER	7
CHAPTER THREE: THE AUCKLAND DIMENSION	17
CHAPTER FOUR: THOMAS RUSSELL AND HIS CIRCLE	26
CONCLUSION	33

INTRODUCTION

My name is Russell Stone. I am an emeritus professor of history of the University of Auckland where I taught for twenty-five years.

I have written seven full-length books on New Zealand history, the last as yet unpublished but accepted for publication this year.

Among these books are biographies of James Dilworth, and John Logan Campbell, a study of the 19th century Auckland business community, a history of the legal firm of Russell McVeagh McKenzie Bartleet and Company, and the history of the peoples of the Tamaki-Hauraki region before 1841.

I have contributed the biographies of Frederick Whitaker and Thomas Russell to the *Dictionary of New Zealand Biography*, and to the *New Dictionary of National Biography*, (Oxford, England) whose publication is now pending.

CHAPTER ONE

CONTEXT

My commission though broadly stated reduces itself essentially to answering two questions:

1. How far did these two ministers, Frederick Whitaker and Thomas Russell use their posts in the Dommet, and Whitaker-Fox ministries, to influence the policies and legislation that led to the confiscation of Tauranga Moana lands?
2. Were the material and financial interests of the legal practice known as Whitaker & Russell a determining factor in the cession of Tauranga Moana lands?

As the Tribunal has obviously found, these questions are not easily answered. Hard evidence is just not available with regard to crucial points. Even when historians seek far and wide they still encounter wide gaps. That is why the evidence I present is not in the form of a conventional report. There are just too many gaps in the archival record to allow that.

At the heart of the two issues I have listed above lies the uncertain matter of motive, that is embraced in the Latin tag ‘cui bono?’ — ‘to whose advantage’, or more literally, ‘for what good?’ were these decisions made. Very difficult. For more often than not the truth about our motives, even when we are conscious of them, is not disclosed to others.

The second difficulty, as I see it, is that Whitaker and Russell have suffered, in modern parlance, extraordinarily bad press. (Some would say deservedly so.) In the first volume of the *DNZB* in 1990, I wrote that ‘Perhaps it is Whitaker’s fate that his reputation has never passed out of politics into history.’¹ It has equally been the fate of Russell. Posterity has garbed both in demonological trappings.

¹ *Dictionary of NZ Biography*, Wellington, p. 587.

One can easily understand why they have remained suspect. In 1862, when Whitaker and Russell became Ministers of the Crown they ran what was reputed to be the most profitable legal practice in the colony. And this at a time when trading in recently acquired Maori land was a staple of all legal practices in Auckland. Their legal work aside, Whitaker and Russell were in the process of developing large-scale investments in country lands, usually leased and/or bought from Maori owners, or currently under negotiation from them.² The German people have a folk-saying that 'It's just not possible to eat your sausage and to play a flute at the same time.' And critics of Whitaker and Russell have believed that once these two partners became ministers of the Crown there was an insuperable conflict of interest. How could they as ministers, at a time when Maori lands lay at the heart of politics, be even-handed; how could they be indifferent to the material advantage of their firm in coming to the decisions that they made?

That was how they acquired a tainted reputation as men who used political power directly (as ministers), or indirectly (by lobbying for favours when not), in ways that lined their own pockets. This disrepute never went away. It was kept alive

- In the 1870s — by the Piako Swamp scandal, which, it was claimed, 'largely helped to float the Grey Ministry into power' in 1877.³
- In the 1880s — when the threatened collapse of the Bank of New Zealand led to an Audit Committee's report which stated that 'a limited circle' of directors, in which Russell and Whitaker were dominant figures, had by their rash policies, imperilled the solvency of this the largest bank in the colony.⁴
- And then in the 1890s there were two inquiries which brought into question the probity of the two lawyers: the first was the cross-examination of the directors of the NZ Loan & Mercantile Company, in London in 1894, conducted in the High Court (Chancery Division) by the highly critical Mr Justice R.B. Vaughan

² Information on the legal practice based on letterbooks of the firm covering 1867-8 (in the possession of Mr P.A. Buddle) and 1868-9 (recently acquired by Special documents section of the Auckland Public Library, APL).

³ *NZ Times*, 19 Oct. 1880, p. 2.

⁴ For more on these episodes, see Stone, *Makers of Fortune*, Auckland, 1973, pp. 19-20, 169-93; Stone, *The Father and his Gift*, Auckland, 1987, pp. 123-5, 204-19; Stone 'Sinister Auckland Cliques', *NZJH*, Vol. 21, No. 1(Apr.1987), pp.31-34; NZL&MA, Board Minute Books (London and Auckland); and *Financial Times*, London; Apr. 1894.

Williams;⁵ the second was the inquisition that took place in Wellington in 1896 into the affairs of the BNZ conducted by a special committee of the General Assembly of New Zealand.⁶

Some might choose to regard this succession of scandals as proof that history repeats itself. In fact history never does. At least not exactly. What actually happens is that historians repeat one another. And many twentieth-century historians repeated what observers and chroniclers of the previous century said and have reflected back into their interpretation of Whitaker and Russell's role in the 1860s a view of their conduct that was appropriate only to a later period.⁷ In 1883 just after the publication of his *History of New Zealand*, Rusden, self-appointed champion of the Maori people and scourge of the Pakeha landsharks, wrote to his friend Mantell:

Whitaker owes me no love & will love me less as time runs on, for I have a lurking consciousness that the day will come when little will be known of him except what is in my book.⁸

An exaggerated expectation perhaps, but the facts remain that when some modern historians appraise Whitaker and Russell they are in danger of becoming, so to speak, 'hanging judges' like Rusden. And the further danger is that if one concentrates on shortcomings of scapegoats, guilty men may go free. Most, but not all of the evidence submitted to this Tribunal which I have read is free of this demonisation. But my feeling is that where the motives of Whitaker have been called into question he has rarely been given the benefit of the doubt.

A further criticism that I would make of the evidence submitted, particularly where it deals with Whitaker and Russell, is (with respect) a failure to relate the details to the whole picture. Let me explain by repeating a parable delivered recently by Linda Colley, Professor of History at the University of Yale. She was directing her particular criticism at a group she categorised as 'current historians', who choose to focus on

⁵ P. Mennell, *The New Zealand Loan and Mercantile Agency Company Ltd*, London 1894, *passim*.

⁶ AJHR, 1896 I-6, App. 5.

⁷ The people I have in mind here are prejudiced or partisan contemporaries such as Alfred Saunders, William Reeves and G. W. Rusden.

⁸ G. W. Rusden to W.B. D. Mantell, 30 Oct. 1883, vol.1, p. 1 Rusden, Letterbooks, ATL.

specialised, limited areas of history. They resemble those legendary figures, she said, who stumble on an elephant in the dark, an animal they've never seen or heard of before. One seizes upon its trunk, others grasp its tail, still others its tusk. And, she concludes, 'each persists in describing the whole beast in terms of the particular piece of anatomy it has appropriated.'⁹

I recalled this story when I first pondered how I should set about gathering my own evidence for this hearing. Did it not give a lead as to the way I might seek answers to the two most difficult questions? First, how does one explain motives (say of Whitaker) when records are sparse and conclusions disputed? Second, how can one get an overall picture in the face of fragmented evidence? Colley's moral was that you must relate the parts to each other, or as another historian, Eric Hobsbawm has put it, you as researcher must submit to the 'iron discipline of context'. By this he meant that in order to get our answers, we must make use of a variety of sources, some seemingly outside the incident under study, in space or time, though in fact cognate with it.

⁹ *Times Literary Supplement*, 1 Aug. 1997, p.3.

CHAPTER TWO

FREDERICK WHITAKER

My first step in placing Frederick Whitaker (1812-1891) and Thomas Russell (1830-1904) in context is to look at the legal profession itself. Even allowing for the considerable individual talent of these two men, we cannot understand why they rose to positions of wealth and power at a relatively young age unless we appreciate the great demand for the services of lawyers during the first fifty years of the colony.

In the young colony, even though statutes and legal conventions were taken over *holus bolus* from the mother country, much remained undefined in this novel rapidly changing bi-racial environment. One can easily understand, for instance, how given the ambiguities arising out of the interaction of English land law and Maori customary titles, lawyers had a field day. This illustrated once again the force of Bentham's dictum: 'the power of the lawyer is in the uncertainty of the law.' Moreover, lawyers were much to the fore in the sphere of administration and representative politics. In the 1882 parliament when the first Law Practitioners' Bill came under consideration there were ten lawyers in the House, and nine in the following year.¹⁰ A Dunedin periodical in the early 1860s, the *Saturday Review*, jibed that, over 1863-4, the colony was 'governed by a couple of attorneys'.¹¹ The journalist didn't make clear whether the two he had in mind were Whitaker and Russell, or Fox who led the ministry in the House while Whitaker led it in the Legislative Council.

Conveyancing was, as one might expect, the 'bread and butter' of the average legal practice. But in the early years all was grist to the legal mill. When it came to business in general it was a case of 'Largo al Factotum!'— 'Make way for the jack-of-all-trades!' Lawyers, in modern business management jargon, were the 'facilitators' or

¹⁰ *New Zealand Herald*, 4 May 1883, p.6. There were also lawyers, including Whitaker, in the upper house.

¹¹ Cit. H.B. Morton, *Recollections of early New Zealand*, Auckland, 1925 p.76.

'enablers' of business. Tasks provided today by a variety of different specialists were generally the province of the lawyer, as he acted as private banker, accountant, investment consultant, company promoter, land agent and much else.¹²

Such versatility made lawyers men of considerable influence in business and public affairs. And if they were leaders in the field of common law, as was Whitaker, or to the fore as a financier as was Russell, they could, and did become powers in the land. But if lawyers had power, their standing in the community was scarcely commensurate with it. They were generally regarded with suspicion and envy. The practice of achieving professional qualifications through articling — being a 'drudge in a lawyer's office for five years' remarked one critic — had the effect, some believed, of making the profession a closed corporation. (Thomas Russell at various stages of the 1850s had his three brothers separately articulated to himself). Moreover, lawyers appearing before the Native Land Court had often to work in the company of people of suspect integrity, agents negotiating for Maori land, landbuyers, surveyors, interpreters, and storekeepers who provided rum and rations to Maori on credit. That was why, explained John Sheehan ruefully to the House, members of his profession 'were regarded in the same light as the smallpox and the plague'.¹³ It is clear that much of the ill standing of Whitaker and Russell in this period arose in part out of the close association of their practice with the buying of Maori lands.

Whitaker is a paradoxical figure. On the question of Maori lands he comes down to us today as a rock-ribbed reactionary. During the 1879 election he was reported as having declared that 'any man who gets land out of the hands of natives and cultivates it is a public benefactor'.¹⁴ This was no newly adopted position. For Whitaker this had been an article of faith for thirty years or more. In the early days of the colony he had been the consistent opponent of Crown pre-emption. He regarded it as 'tantamount to shutting up

¹² This section based on Stone, 'An anatomy of the practice of law in nineteenth-century Auckland', *NZJH*, vol.22, no. 2 (Oct. 1988).

¹³ These comments are drawn from the debate over the Law Practitioners' Bill, 1881. When the Grey ministry fell in 1879, its Native Minister, Sheehan became the partner of F.A. Whitaker, son of Frederick Whitaker, whose practice was almost entirely taken up with land speculations in the Waikato, Waipa, and the Bay of Plenty. See NZPD, vol. 39, p.570-1; vol.41, pp.383-4; vol.43 pp.415-28.

the Native Lands' — a recipe for economic stagnation. And yet at the time of his death in 1891, he was acclaimed a statesman.¹⁵ Guy Scholefield, recalling Whitaker's virtually unbroken public career spanning the half-century between the assumption of sovereignty and his death, wrote that 'no figure was more prominent in the political world of New Zealand throughout the greater part of the nineteenth century'.¹⁶

Why this ambiguity? About fifty years ago, H.J. Hanham wrote a thesis that has stood the test of time remarkably well, in which he analysed Auckland's business elite in the mid-nineteenth century. Whitaker and his partner Russell, he wrote, were responsible for 'the forging of the alliance between the squatters and the Bank of New Zealand group', which was so powerful in the affairs of Auckland.¹⁷ Insofar as it is possible to speak of political groups dividing along class-interest lines in that era, that would seem to make Whitaker the very embodiment of conservatism. The Liberal organ, the *Lyttelton Times* harped on the same string in the 1880s. Whitaker, it claimed, 'has planned and directed many schemes of amassing landed wealth. He has a landed partner [Russell] who has been called a perfect "Dragon of Wantly", as a devourer of Maori lands. At the present moment the firm are solicitors to the Bank [BNZ] who hold the Government account'.¹⁸ The common point of both of these strictures is that the association with Russell was considered to be a damning one. The nature of this association is so important that it will be considered separately.

Yet no contemporary impugned Whitaker's private character. His personal and private life seemed beyond reproach. He was devoid of vainglory. On the political stage he adopted a certain taciturn, self-effacing manner.¹⁹ Pember Reeves hit the mark when he wrote that Whitaker's influence was 'often felt rather than seen'.²⁰ Yet even this

¹⁴ *Auckland Evening Star*, 23 Aug. 1879.

¹⁵ See e.g. *Auckland Weekly News*, 10 Dec. 1891.

¹⁶ Introduction to a pen profile in the Alexander Turnbull scrapbook. He was premier twice and attorney general seven times.

¹⁷ H.J. Hanham, 'The Political Structure of Auckland 1853-76', Auckland, 1950.

¹⁸ Cit. in the *NZH*, 3 May 1882.

¹⁹ *Observer*, 16 Oct. 1880, provides an elaborate pen-profile along these lines.

²⁰ W.P. Reeves, *Long White Cloud*, London 1898, p.253.

reticent wariness could count against him. There were those who believed that his authority was derived from wirepulling and backstairs intrigue.

Inevitably the question arises; when Whitaker was in a position of power as Minister of the Crown, did he act disinterestedly? Such a question is particularly relevant to the Tauranga Moana inquiry when it touches upon Whitaker's role in the drafting of legislation concerned with the suppression of rebellion, with confiscation and the establishment of military settlements. Or, again, how are we to view his role and that of his partner Russell, in the prosecution of the war? Did they use their position to promote the common weal as they saw it, or did they, like a number of lawyer-politicians as the youthful David Hamer believed, look on political activity as just a further means of fostering their business interests, as business, as it were, carried on by other means?²¹ Unfortunately, neither of these men has left for posterity private papers or journals of consequence to guide us as to their motives. I have also recently scrutinised letterbooks of the firm of Whitaker & Russell covering 1863-4 and 1867-9, and the private letterbook of Thomas Buddle, senior staff solicitor of the practice from the time that Russell lived abroad. Though interesting of themselves for providing an insight into the complexity of the practice, they do not provide an answer to our question.

On one matter there can be no doubt. Whitaker brought to the Domett Ministry on the eve of the New Zealand Wars an administrative and juridical background that was exceptional for any colonial minister of his day and generation. An account of his background is pertinent. Having been admitted as a solicitor and attorney shortly before leaving England, Whitaker was appointed county judge in the young capital in 1842. After two years in this position, the post was abolished. But in the following year he entered the Crown Colony's service again when Governor FitzRoy appointed him as an 'unofficial' member of his legislative council. Then began a fruitful period of co-operation with William Swainson and Chief Justice William Martin — the two great legal authorities in the capital — in framing an improved code of statutes.²² What was remarkable about this collaborative activity was its demonstration of Whitaker's ability to

²¹ *Passim*

²² *Observer*, 16 Oct 1880.

work harmoniously with others who were on the opposite side of the political divide. Does not that also suggest that legislation drafted by Whitaker in 1863 could easily have included intentions that were not those of himself alone or of his speculative partner Russell, as Sinclair once proposed,²³ but of other ministers, even Grey himself, or of a vehement section of the Auckland community? What is not in doubt is that regardless of whose political intentions were embodied in bills framed by Whitaker, he was a superb draftsman able to put in clear unambiguous language exactly the meaning that he wished a statute to convey.

By the early 1860s, Whitaker was able to bring a background of extensive experience to the ministries on which he served during the earlier critical years of the New Zealand Wars. After having already filled a wide variety of public posts during the Crown Colony period, with the introduction of representative institutions in 1853 he had entered the new political arenas of both central and local government. Consequently, he had become by 1861 a unique repository of political know-how. Drawing on Gisborne's first-hand knowledge of Whitaker as a contemporary, W.P. Morrell noted that few conservative ministries were formed in that era without Whitaker having first been called on to serve, if that were at all possible.²⁴ Two factors were at work here. First, able 'conservative' politicians — as Whitaker surely was on Maori land issues — were in short supply in Auckland, and particularly after 1865 when the capital shifted and local notables became reluctant to spend weeks on away from their home-town on parliamentary duties in Wellington. This helps to explain why, on the formation of new ministries in an era when regional balance had to be considered, each new premier was tempted to approach Whitaker first of all. It was a byword that no other Aucklander could hold a candle to this man either as administrator or tactician. That he happened not, at the time of asking, to be a current Member of the House of Representatives was not considered a serious obstacle. He would simply be offered a seat in the upper house. Which brings us to his second great recommendation. Apart from his talents as Attorney General, he came in later life to be particularly valued for his long experience in and domination of the Legislative Council where, it was said, that four-fifths of the chamber

²³ See Keith Sinclair, *A History of New Zealand*, Penguin Books, 1959, p.139.

²⁴ W.P. Morrell, *The Provincial System In New Zealand*, Christchurch, 1964, pp.96-97.

followed his lead without demur. That he was so devoid of political ambition also counted in his favour.

Thus far Whitaker's credentials have been spoken of as those of a conservative politician. Yet it is a further aspect of his ambiguity that during the early political battles of the province he claimed (and with reason) to have a "progressive" platform. In the provincial Auckland elections of the 1850s he consistently opposed the Progress Party, mouthpiece of the merchants and the well to do. During his last years in the political arena he advocated constitutional changes that some colleagues considered 'ultra-radical' such as manhood suffrage, proportional representation and equal electoral districts.²⁵

It must be further appreciated that when, in the 1870s, Whitaker's opponents (of whom ex-governor Sir George Grey was the most vocal) denounced him as a land monopolist, they did not do so as champions of continuing Maori land ownership, but as advocates of closer settlement by poor Pakeha settlers.²⁶ In their denunciation of the 'Piako Swamp scandal', for instance, these opponents were not concerned about the need to reverse the confiscation of Maori lands. Rather, they objected to what they considered to have been a blatant political 'job', by which a huge portion of the Crown estate had been placed in the hands of a developmental syndicate, of which Russell and Whitaker were key members, instead of its having been distributed to 'five hundred happy [Pakeha] families'.²⁷ Nevertheless, nothing more actualised in the public mind the suspicion that these two lawyers were devourers of Maori lands, ready to pursue private ends through political influence, than the stealthy sale of the 86,502 acre Piako swamp by the government of the day, some of whose members were personal friends of the two lawyers. The transfer of this huge block of confiscated land in what would now be called a 'fast-track sale', at an immediate cost to the buyers of 2s. 6d. an acre, seemed such a rank political job that, not surprisingly, it became the subject of a critical parliamentary inquiry in 1875.²⁸ The swamp scandal damaged the reputations of Whitaker and Russell

²⁵ *NZH*, 25 Jun. 1883.

²⁶ *Observer*, 16 Oct. 1880.

²⁷ *Ibid.*

²⁸ *AJHR*, 1875, I-6.

severely, as it did the reputations of the Vogelite ministers who had negotiated the sale. In the years ahead, when Whitaker spoke at political meetings in hostile electorates, hecklers would invariably hiss 'Piako Swamp!'

In spite of Whitaker's vaunted liberal sympathies, modern historians find it difficult if not impossible to defend the arrant ethnocentricity of his advocacy of the wholesale entry of Europeans into Maori lands. He never deviated from his conviction that Maori must be given the right to sell directly to Pakeha buyers. It was a key article of his political credo, as indeed it was for Russell. He consistently opposed Crown pre-emption, convinced that Maori were in possession of a great landed domain far in excess of their real needs, present or future. It was not the duty of the Crown to curb those members of the tribes who were ready to break ranks and sell.

A speech which Whitaker made in Cambridge in 1879 to a sympathetic settler-farmer audience so encapsulates his views upon the Native Lands question (as it was then called) that it merits extended citation.

Another question which I wish to bring before you is one of very great importance ... the purchase of native lands. To the North Island generally this is a question of importance but more especially to this part of the country. [At that point he unfurled a large map of the North Island.] Observe the small quantity, marked green ... bought from the natives by the Europeans ... a very little bit bought here and there. This, then, is the robbery said to have been done to the Maoris. (Applause)

If you look again at the map where Cambridge is situated you will see that all the backcountry is in the hand of Maoris. It is a matter of great importance that these lands should be thrown open for private purchase. I do not wish to deprive the Maoris of all their land. Let them have twice as much or even ten times as much as they require, but let private purchasers be allowed to acquire the remainder of the native lands. I do not believe in letting a Maori say, 'this land should not be sold because I choose to stand on it.' I consider it is essential to the welfare of the North Island, and of this part of the country in particular that the native lands should be thrown open to purchasers.

A great deal has been said about a land fund for the North Island, but I believe this land fund to be a myth. Sir George Grey talks about the land sharks of the North, and they believe him in the South, because they know nothing about it. But let the lands be opened up for private purchase, and the country will progress rapidly. But if Sir George Grey [who as Premier had recently reintroduced Crown

pre-emption during 1877-9] persists in locking up the native lands, and not allowing them to be purchased by private capitalists, it simply means stagnation.²⁹

For Whitaker, the right of European settlers to have free access to Maori lands was, therefore, not only a consistently held political conviction; it was also plain economic good sense. Yet such policies also helped to make him a rich man. As a lawyer he gained from conveyancing fees. And even before Auckland was founded he had begun trading in lands for his own private profit. He had come to New Zealand in the first place as someone with a modest amount of capital, as someone on the make. This was not unusual. Indeed it was characteristic of almost all capitalist settlers in pioneer New Zealand. They thought of themselves as 'gentlemen adventurers'. We would be inclined to call them speculators.

From the moment he arrived in New Zealand Whitaker was into speculation. Shortly after disembarking at the Bay of Islands in February 1840, he set up in partnership with a surveyor, John Kelly. Since there was much land speculation going on in the Bay at the time, the firm prospered, Whitaker handling the legal transactions, Kelly conducting the surveys. Ever with an eye for the main chance, when Hobson shifted the seat of government to Auckland, Whitaker removed himself there too. He took part in the first Crown auction for the sale of the central 'city', buying two sections, one on which he later built a home, the other in the main thoroughfare Shortland Crescent, where he opened his legal offices, with Kelly occupying the adjoining premises.

Though, as we have seen, as the 1840s went by, Whitaker was much caught up in judicial and administrative affairs, his landed speculations continued. In particular, like so many in the capital, he had extravagant expectations of the mineral wealth of the Gulf islands. He entered into a speculative mining partnership with Theophilus Heale, by which the partners bought land on Great Barrier Island for prospecting purposes and (more famously) opened an adit mine on Kawau Island to work the copper lodes there. His speculations continued in the 1850s. But after he formed his partnership with Thomas Russell in 1861, his business operations no less than his legal activities, became

²⁹ *Waikato Times*, 8 Mar. 1879.

inextricably linked with those of his dynamic young partner. When he retired from politics in 1867, it was common knowledge that he did so to concentrate on their joint practice, and to attend to his own private business interests both of which were said to have suffered on account of Whitaker's engrossment in political affairs. Over the next few years, however, with both partners freed from the distractions of politics, their business investments expanded and prospered. A contemporary newspaper, the *Observer*, reviewing Whitaker's business performance in these years, recorded in the high-flown style then fashionable, that 'he was ever active in every legitimate enterprise, and invested heavily in the Thames goldfields.... He was also interested in extensive agricultural and pastoral operations, and in the timber trade.'³⁰

Just as Whitaker had withdrawn from politics in 1867, in order to concentrate on business, resigning both his superintendency in Auckland and his seat in the Assembly in Wellington, so in 1876 rising concerns about the investments of Whitaker & Russell drove him back once more into politics. A letter which Thomas Buddle, the senior solicitor of Whitaker & Russell, sent in August 1875 to his chief Thomas Russell now living permanently in England, both foreshadowed the return of Whitaker and indicated with what reluctance it would be made.

Mr Whitaker went to Wellington yesterday. He was a long time making up his mind to go, said he hated Wellington, hated travelling in the Steamers, hated being away from home, and above all hated "lobbying" and asking favours of "noodles". However there seemed to be so many things demanding his attention & which without his presence would be bound to go wrong that he was obliged to go. & I think he was right. The Shortland Sawmill leases wanted him there so did Piako,³¹ Hunga Hunga, The Bay of Islands Tramway, the Bank of New Zealand to say nothing of the "Abolition of the Provinces".³²

By 1876 business and politics had become so intertwined that it was not possible for large-scale investors to promote the one without, at the very least, having a watching brief for the other. How can we be certain therefore that Whitaker and Russell, during

³⁰ *Observer*, 16 Oct. 1880.

³¹ This was the year of the special inquiry made by the House into the circumstances of the sale of the property to the swamp syndicate of which Russell and Whitaker were leaders.

³² Thomas Buddle to Thomas Russell, 4 Aug. 1875, Thomas Buddle Letterbook, 1871-5, p.286. The firm's letterbooks indicate that Whitaker was called on for consultancy and other fee'd work while the House was in session.

1862-4, when they were ministers of the Crown in the Dommet and Whitaker-Fox ministries, were not acting disinterestedly on crucial questions but were fostering their private speculative interests? The short answer is we can't. There is no surviving evidence either way. Heinrich Heine said it's often best to leave such moral judgements to God: "C'est son métier". (That's *his* specialty.) It is my view, nevertheless, the Tribunal can, by considering the contextual evidence, justifiably reach conclusions that measure up to the test of probability as to the motivation of Whitaker and Russell when they were in positions of political power in the 1860s.

CHAPTER THREE

THE AUCKLAND DIMENSION

Thus far I have been considering the role and responsibility of individual people as they relate to the Tauranga Moana inquiry. There is the danger, however, that by concentrating on two or three personalities we may be making them scapegoats for others whom we have overlooked, or even for impersonal agents of change, significant in the long run though not immediately discernible.³³

May I illustrate this point by going forward to 2 September 1938.³⁴ On this date the mayor of Auckland, Sir Ernest Davis, convened what he called 'A Maori Centennial Ball'. During the ball he announced that an obelisk was to be erected on the summit of Maungakiekie (One Tree Hill) as a centennial tribute to the Maori people. He then went on to ask his guests to invite Maori from the furthest reaches of the province to attend the ceremonial unveiling in January 1840. Expecting an enthusiastic response, he was taken aback when Sir Apirana Ngata, his guest of honour and a leader of great mana rose, not to lead a supportive haka, but to announce that this particular celebration was meaningless for Maori outside the city of Auckland, and that he for one would not personally urge 'the more remote tribes of the province' to attend. If they were to travel anywhere to celebrate the centenary in 1940, he said, they should go, not to Auckland but to Waitangi.

After the ball Davis wrote a baffled, pained letter to Ngata pressing him to reconsider his stand on the Auckland centennial celebration. Ngata replied explaining why he would not budge.

Quite apart from the One Tree Hill monument as the focus of the Auckland celebration, Auckland City has not occupied a very high place in the esteem of the Maori people, and I will explain why. Historically it was the centre of the events

³³ One has in mind here the structural problem emerging with colonial responsible self-government where there was sometimes confusion as to who had ultimate authority on some particular issue, the ministers of the Crown, the governor, or Downing Street. This was a particularly sensitive issue where control over the army was involved.

³⁴ Information on which this paragraph based is drawn from Folder 313 of the Campbell Trust Papers (MS 52) in the Auckland Museum Library.

which led to the confiscation of Native lands; it became associated with the pressure of European settlement at the expense of Maori communities. I did not say this at the Town Hall, but it was at the back of my question, 'What has Auckland meant to the Maori people?' If you have any doubt about this aspect of the Queen City's reputation in past years, read the leading articles in the N.Z. Herald. We who are on the margins of the Province do not forget these things, and our tribes cannot be expected to get up the necessary enthusiasm on receipt of a formal invitation to come and partake in the celebrations to be held in the Provincial capital. Once again I mention my advice to you as Mayor of Auckland — it is for you to get over the trouble here, the apathy but fortunately not any soreness now, by personally putting your case before our tribes. *You*³⁵ have to hold out the olive branch. It is the Maori way, and a good old way.³⁶

Ngata was simply presenting here a long held Maori view that responsibility for the loss of tribal lands spread far and wide in colonial Auckland. This was something which, by 1938, Aucklanders seemed to have forgotten, but Maori had not. Nor should we today.

In the 1980s, a senior partner in Jackson Russell, one of Auckland's oldest legal practices remarked that during the foundation years of his firm, land speculation seemed to be the 'great industry of the Auckland province'.³⁷ Indeed that activity was as old as the settlement itself. The very first Crown land auction (April 1841) in the infant settlement had drawn in 'a phalanx of land jobbers' expecting to 'reap a golden harvest'.³⁸ And they did. They also set the commercial tone of the settlement. Over the next twenty years the Auckland experience was that great capital gains came to those who, so to speak, got in on the ground floor of the settlement. By acquiring the first Crown Grants, or by quickly buying from those who had, the first shippers were enriched as the community settled about them, raising the value of their cheaply bought land to exceptional heights. This was particularly the windfall experience of those Aucklanders who purchased suburban or country land at the time of the FitzRoy Crown pre-emption waivers.³⁹

³⁵ Italics mine.

³⁶ Ngata to Davis, 20 Sept. 1838, Fol. 313, Campbell Papers, AML.

³⁷ J. H. Rose, *Jackson Russell, A Scrapbook History*, Auckland, 1983, p.19.

³⁸ C. Terry, NZ, *Its Advantages and Prospects*, London. 1842, p.131.

³⁹ A selection of the more successful would include James Williamson, Hugh Coolahan, Edward Costley, Logan Campbell, William Brown, J.C. Firth, Robert Graham, and the sons of General William Taylor.

Trading in land rather than farming it, a mode of investment which sharply marked off the capitalists of early Auckland from their counterparts in the settlements of the Cook Strait or of the South Island, is closely related to Auckland's distinctive economy in the colonial period. Professor Gary Hawke recently drew the attention of the Waitangi Tribunal sitting in Hauraki to what he called the 'mainstream', of New Zealand's economic development. For the period 1850-90 he categorised pastoralism as that mainstream.⁴⁰ To be sure, gold was a significant export for most of these years. But pastoralism was the more reliable export earner, and unlike gold (an exhaustible resource) gave the colony the prospect of sustained economic viability. In that sense in that era wool was king. More than any other province Auckland lay on the margins of this mainstream.⁴¹ The township had developed into an entrepôt, a commercial centre for importing and transshipping goods, where fifty-five traders designated themselves as 'merchants'.⁴² But filling ships with a return cargo, usually timber or gum, was a problem for shipping agents and merchants. For unlike Dunedin or Christchurch or Wellington, the settlement of Auckland had not developed a productive hinterland. The early censuses showed that the province had few sheep and cattle, and very little accessible pastureland on which to graze stock.

As early as the 1850s Aucklanders saw salvation for their province coming from two possible directions:

1. Through the discovery of gold in the Hauraki lands;
2. Through the opening up of Maori lands in the Waikato and the Waipa river-valleys, and in the Bay of Plenty.

⁴⁰ Gary Hawke, 'Economic History Issues', Report to Wai 686, September 2000, pp.5-6.

⁴¹ At the time of the 1861 census Auckland had 67,803 sheep. Comparable figures are: Hawkes Bay (312,459); Wellington (247,940); Nelson-Marlborough (430,203); Canterbury (877,369); Otago (619,853). Source: B.L Evans, *Agricultural and Pastoral Statistics of NZ, 1861-1954*, Wellington, 1956, p.31.

⁴² G. C. Dunstall, 'Colonial Merchant', MA thesis, Auckland, 1970, pp.53-54.

Not surprisingly, when the first gold strikes were made in California, gold became regarded in Auckland as a panacea for all the ills of economic underdevelopment that troubled the settlement. Swainson tells us that excitement over what a comparable goldfield could do for Auckland 'took complete possession of the public mind'.⁴³ With the opening up of further goldfields in Australia in 1851, the immediate concern was to do something about staunching the haemorrhage of the local labour force as young male settlers migrated to overseas diggings.⁴⁴ The *Southern Cross*, spokesman of the Auckland merchants, gave voice to this alarm:

With lands locked up, [a reference to the growing Maori resistance to land sales] California has created a golden drain on the left, and Australia is now entailing a similar drain on the right hand. But we cannot behold ship after ship stripping us of our truest and our staunchest colonists ... without reiterating our cry for *cheap and abundant land*.⁴⁵

But with 'cheap and abundant land' not available, the people of Auckland looked for an alternative salvation attained through gold found within their own provincial boundaries. In 1852 a Gold Reward Committee was set up under the chairmanship of Frederick Whitaker, publicly offering a reward of £500 to the first person who discovered 'a valuable gold field' within the province.⁴⁶ But despite determined exploratory efforts, mainly in the Coromandel area, which continued off and on through the 1850s, a productive goldfield was not opened up. This failure contributed much to the growing conviction among the capitalists of Auckland, that only with the opening of the lands of the Waikato, if needs be by war, could the economic impetus of their province be maintained.

Not that this mood was universal in Auckland. As the prospect of land was approached, feeling in the capital polarised. The extremes of feeling were mirrored in the policies of the two morning newspapers, The *Southern Cross* — soon to become a daily — and the *New-Zealander*. The *Southern Cross*, represented, so its opponent said, the

⁴³ W. Swainson, *Auckland, the Capital of New Zealand*, London, 1853, p.89.

⁴⁴ It has been estimated that of the 2,000 or so New Zealanders, who were drawn to the diggings of California, two-thirds came from Auckland.

⁴⁵ *Southern Cross*, 25 Jun. 1852.

⁴⁶ *New-Zealander*, 18 Sept. 1852, p. 1.

‘war at any price party’.⁴⁷ Owned by the settlement’s two wealthiest merchants,⁴⁸ who also possessed very broad acres, its readership was made up of two unlikely bedfellows: the settlement’s landed leadership, and the chauvinistic common settler. As early as February 1862, the *New-Zealander* told its readers that only a military reckoning with Maori would bring a permanent peace. ‘Our opinion is, and always has been that they must be thrashed first, and then be treated with firmness and justice afterwards.’⁴⁹

The *New-Zealander*, on the other hand, under the editorship of John Williamson, acted as the mouthpiece of the ‘Philo-Maoris’ as the smaller and more diversified group of pro-Maori sympathisers became known. Williamson’s sympathetic attitude towards Kingite Maori during the Waikato campaign so annoyed the paper’s co-owner, the printer W C. Wilson, that he broke up his twenty-year partnership with Williamson and formed a new newspaper, the *New Zealand Herald*. (Its first issue came out on 13 November 1863; it was a middle-aged newspaper from the day it was born.) Those who viewed the approach of war with misgivings — Chief Justice Martin, John Gorst, Bishop Selwyn, William Swanson come to mind — were assailed by the propertied leadership with great bitterness. An early settler recounted how, as war threatened in 1863, J. C. Firth (a capitalist who later acquired a huge block of land from Maori at Matamata on most favourable terms) denounced Selwyn in a public meeting as ‘a monster of iniquity’ and ‘an enemy of his fellow creatures’.⁵⁰ Selwyn’s crime: his efforts to mediate between the contending parties. He was doubly punished, wrote Morton. ‘It was his misfortune to incur the hostility of both [Maori and Pakeha].’

A month after Cameron crossed the Mangatawhiri, James Fulloon (Te Mautaranui) an interpreter in the Native Department wrote of the war hysteria that had gripped the capital.

The public are now crying out already for a war of extermination — they even suggest that all natives & half-castes should be expelled from Town & its suburbs... that nothing whatever shd. be sold to Natives.... I never could believe that a civilised

⁴⁷ Ibid., 30 Apr. 1863, p.7.

⁴⁸ William Brown and Logan Campbell. Shortly after Brown became sole proprietor.

⁴⁹ *Southern Cross*, 4 Feb 1862, p.2.

⁵⁰ Morton, 1925, pp. 46-47.

community could entertain the same bloodthirsty feelings as the Auckland public entertains towards the Natives. I have never witnessed anything like it amongst the Natives.⁵¹

As the 1863 session of parliament, which saw the passage of the crucial confiscation legislation,⁵² drew to a close, Henry Sewell recorded in his journal his impression of the capital at the time. The political atmos [phere]', he wrote, 'is of the very worst kind. Panic, fear, rapacity, political jobbery & intrigue — every vicious influence which can be brought to bear is in full force.... The temper of the people towards the whole Native race is indiscriminately cruel. Then there is the rapacity after Native lands.'⁵³ This Auckland 'atmosphere', no less than the geographical advantages of a more central location for the general assembly, was a significant influence in persuading 'Southrons' like Sewell that the time was ripe to shift the capital to Wellington, away from the insidious influences of Auckland

This new pugnacity in Auckland expressed itself in a demand for imposing harsher terms of surrender upon 'rebel' Maori. Whereas the original intention and justification for the confiscation scheme had been the need to provide funds to meet the cost of the war, confiscation became converted into a licence for the dispossession of Maori who were unwilling to sell their lands, a long-time objective of the Auckland hard-liners. William Brown, owner of the *Southern Cross* now spoke of unconditional surrender as the only acceptable basis for peace. 'The Govt cannot stop short', he told a confidant, 'till the Natives give up their arms, or till sufficient portions of land have been taken & occupied by military settlers in all directions as guarantees against the future.'⁵⁴

This then was the mood of Auckland when late in 1863 the General Assembly met in the old General Assembly building near today's Anzac Avenue to consider and pass the New Zealand Settlements Bill and the Suppression of Rebellion Bill. Putting aside for the time

⁵¹ James Fulloon to T.H. Smith, Confid., 8 Aug. 1863, T. H Smith Letterbook, qMS 1839, ATL. (Information supplied by Dr B. Rigby.)

⁵² NZ Settlements Act, Suppression of Rebellion Act, and NZ Loans Act.

⁵³ Sewell Journal, vol. 2, p. 222 (19 Nov. 1863). Information B. Rigby. Even when allowance is made for Sewell's characteristic hyperbole and for his partisan spirit, his comments on the atmosphere of Auckland seem fair.

⁵⁴ W. Brown to J. L. Campbell, 19 Oct. 1863, Fol. 40, Campbell Pp, AML.

being the initiatives on these matters taken by Governor Grey which are deserving of closer scrutiny, I simply question whether it is historically sound to ascribe to Whitaker, the new Premier, and his wily coadjutor, Thomas Russell, sole or even prime responsibility for this draconian legislation.⁵⁵ It was after all a policy that commanded considerable wholehearted support in the northern province. Certainly it fitted in so neatly with Whitaker's convictions on Maori policy that he was prepared wholeheartedly to support it. Moreover, to see Frederick Whitaker as the agent of others rather than the prime mover of the legislation does not necessarily exculpate him from the charge of breaching the Treaty of Waitangi. It simply allows us to place others who could have, or should have reined him in, in the dock beside him

After the collapse of his ministry in November 1864, Whitaker moved to become a significant figure in opposition. In November 1865 he returned to the Assembly as MHR for the well-heeled constituency of Parnell and became leader of what was a cohesive group that called itself the 'Auckland Phalanx'. The aim of this group was to 'colonialise' the land fund by reversing the so-called compact of 1856, which favoured the South Island provinces. But his leadership of the phalanx was indicative of far more than that. He represented the viewpoint of the propertied class of Auckland, the group that in this chapter I have attempted to bring out of the shadows.

As a postscript to this chapter I would like to add a note on Grey's relationship with the ministers from Auckland and particularly with Whitaker and Russell. As Grey's biographers have rightly pointed out, by mid-1864 Grey became almost irreconcilably estranged from his Auckland ministers and from other like-minded members of the cabinet such as Fox.⁵⁶ The scale of contemplated confiscations repelled Grey and he feared that Maori in the Bay of Plenty and elsewhere would be goaded into rebellion. But it would be mistaken to regard Grey's enduring quarrel with — in the governor's words

⁵⁵ See e.g. Sewell Journal vol.2, pp. 217-8 (15 Nov. 1863) The Suppression of Rebellion Bill 'is a horrible invention of Whitaker....'; p. 221 17 Nov. 1863). 'The policy is Whitaker's policy — to seize all the Native lands south of Auckland from Tauranga on the East Coast to Raglan on the West.... No doubt the Auckland lawyers who have invented this scheme for driving the Natives to desperation have counted [on their rebelling] and then applying to them the confiscation law.' (Ibid.)

— ‘the two partners who comprise one of the leading legal firms of the town of Auckland’,⁵⁷ as beginning in that particular year. Nor did these quarrels of 1864 provide the origin of the seemingly remorseless vendetta which Grey conducted in Parliament through the 1870s and 1880s, against these two lawyers, and the members of the BNZ Board whom he accused of being their cronies. He had fallen out with the Auckland business leadership long, long before 1864. During his first governorship (1845-53) he had permanently antagonised many influential groups in the capital: CMS missionaries, Old Land Claimants, and substantial purchasers of suburban land under the FitzRoy proclamation waiver certificates whose titles he had insisted on being rigorously investigated by a Commissioner. Certainly a reasonable defence can be made for his obduracy on these matters. But little or no defence, Aucklanders believed, could be made for his autocratic ways. And little or no defence, they maintained, could be made for the way in which he attempted to thwart the proposals of colonial opponents by innuendo-charged despatches to Downing Street which, while not positively untruthful, were masterpieces of, in the words of one editor, ‘suppressio veri’ and ‘suggestio falsi’ (concealing the truth and insinuating falsehood).⁵⁸ By the time of his second governorship some Aucklanders saw in ‘Auld Geordie’ the artful autocrat who also nursed populist ambitions as the People’s Champion. One can only say that by 1864, distrust between Grey and Whitaker who was, at that stage, the spokesman of the Auckland business community, was well justified on both sides.

It must also be said that these enmities were not always so deep as they may seem to us today. I should like to end this section, without direct comment, by citing an application for a mortgagee investment to be found in the Whitaker & Russell Letterbook for 1875, the year that Grey appeared to be so much after the blood of the members of Whitaker and Russell’s Piako Swamp syndicate. Thomas Buddle wrote to Thomas Russell in London.

⁵⁶ James Rutherford, *Sir George Grey*, London, 1961, pp. 512-5; a pro-Grey version; and Edmund Bohan, *To Be a Hero*, Auckland, 1998, pp. 221-4.

⁵⁷ Grey’s description of Whitaker and Russell to the Colonial Office; cit. Rutherford, p.513.

⁵⁸ *Southern Cross*, 18 Dec. 1847, p. 2.

Sir George Grey has had a mortgage of £7000 [presumably with the firm] paid off at Napier & I wrote to him to ask if he wanted to invest it. I had a letter today to say he did & I am going to submit Hancock's [property] to him tomorrow for £5000 or £6000. I fancy he will take it. Hancock has put a magnificent [public] house on the corner.⁵⁹

⁵⁹ Hancock and Co. were the main brewers and hotel owners in Auckland. The corner site was on Queen Street.

CHAPTER FOUR

THOMAS RUSSELL AND HIS CIRCLE

Thomas Russell (1830-1904), lawyer, financier and land speculator was probably the outstanding commercial figure in nineteenth-century New Zealand. In the early years, he and his three brothers showed the greatest concentration of legal talent in any one family in the whole colony. Each of these boys founded a practice or partnership in law, which has a continuous line of descent down to the present day. Licensed to practise at the age of twenty-one, Thomas set up as a sole solicitor, making his mark at conveyancing and mortgage financing, activities in which he was helped by the Wesleyan denomination (of whom he was a prominent young lay member) who put trust funds and property work his way. By the later 1850s, he had risen to be a powerful figure in the Auckland business community, as a foremost solicitor, as an activist in the Progress Party (the political arm of the local merchants), and above all as a financial expert. What is unusual about his rise is the moral ascendancy he began to exert, while still in his twenties, over members of the town's commercial elite, most of whom were older, wealthier and more experienced than he. He was obviously a talented innovator, self-assured, plausible, and extraordinarily persuasive. The elite, (just like Whitaker when he became Russell's partner) was happy to submit to this dynamic young man's leadership.

It was largely through Russell's initiative that the New Zealand Insurance Company was formed in June 1859 to provide the fire and marine insurance cover that had been seriously lacking in the colony during the years before.⁶⁰ (Interestingly, the resolution to form the company was moved by William Crush Daldy whose operations as a merchant and shipping agent had led him two years before to underwrite small craft plying coastal waters.)⁶¹ Russell once again was the prime mover in the formation of the Bank of New Zealand in June 1861, and, four years later its associated mortgage company, the New Zealand Loan & Mercantile Agency Co Ltd (NZL&MA). What is

⁶⁰ *Bold Century, the NZ Insurance Company Limited, 1859-1869*. Auckland, 1959, pp. 9-15.

⁶¹ Typescript of the 'Memoirs of Captain William C. Daldy', p.16. Document in possession of author.

clear is that in the formation of these institutions, Russell had recruited from the commercial leadership of Auckland a group of like-minded investors whose composition changed little over the next generation.⁶²

Russell entered the General Assembly in 1861, like Whitaker an advocate of policy of making Maori land more freely available to European settlers. Within a year Domett took him into the cabinet at first as a minister without portfolio, but later promoted him to the position of Minister of Defence, a post Russell maintained during the subsequent Fox-Whitaker Ministry. Rutherford judged Russell harshly in his biography of Grey. He cited without qualification Sewell's bitchiest comments on Russell. He quoted from Sewell's Journal his opinion that Russell exercised 'a fatal influence on the Government, with reference to native lands';⁶³ or again, repeated Sewell's supposition that Bell's Native Lands Act, 1862 'would be worth £10,000 a year to Russell before five years were out'.⁶⁴ (In terms of reasonable expectation, or of reality, Sewell's prophecy is absurd, and unworthy of repetition.) Rutherford's comment on Russell's role on the collapse of the Domett Ministry is equally baffling: 'Whitaker and Russell disapproved of Domett's surrender of Waitara, and now that it was war they wanted to get rid of their puppet and assume direction of affairs themselves'.⁶⁵ If Russell had in fact schemed to get rid of the firm's so-called 'puppet' and to promote policies that would enrich Whitaker & Russell it seems that he was able to keep those schemes well concealed from Governor Grey. Grey's impression of Russell at that juncture was laudatory, of a man immersed in his duties as Minister of Defence. In the week that the Domett Ministry was disintegrating, the governor wrote to his Secretary of State: 'I cannot close this dispatch without saying that I think much of the success which has attended the efforts made by the Colony to provide for its own protection, is to be

⁶² This inner group included: Russell, Whitaker, J.L. Campbell, Thomas Henderson, S. Browning J. C. Firth, James Williamson, D.L. Murdoch, W.C. Wilson, G.B. Owen, W.C. Daldy, and members of the Taylor family. On the death of one member, a relative might be recruited in his place. This list is not exhaustive.

⁶³ Rutherford, p. 475.

⁶⁴ *Ibid.*, p. 478.

⁶⁵ *Ibid.*, p. 495.

attributed to the ability, energy and zeal with which Mr Russell has discharged the duties of his office.’⁶⁶

Grey’s misgivings about the policies of Russell and his partner Whitaker obviously did flare up over the ensuing months. Grey became concerned with the determination of these two Auckland ministers to have an uncompromising military reckoning with dissident Maori, including the Tauranga peoples, and to insist on wholesale confiscations as a pre-requisite of peace. But were these policies of the two ministers designed to help their financial interests?

Some of the evidence submitted to the Tribunal implies that Bay of Plenty lands were central to the speculative ambitions of Russell and Whitaker. I have two reasons for doubting that this was so. First, by the mid 1860s and certainly after 1867 the partners were looking at opportunities for investment in activities other than land, and in particular in timber companies and gold. Second, this evidence overlooks the great variety of different regions in which the partners held land, confirming that the western Bay of Plenty was far from central to their interests.

We do not know precisely where the two partners held land in the 1860s. Like a number of wealthy Aucklanders (James Williamson, James Dilworth, and James Farmer obviously come to mind) they bought or leased Maori land, in the Waikato and the Bay of Plenty. Or alternatively they snapped up at fire-sale prices, 50-acre allotments granted to members of the disbanded militia, some of whom would ‘settle for a few pounds, sufficient to pay the passages of grantees back to Australia.’⁶⁷ I have carried out a random check on a land tenure map of the later 1860s for the southern Manukau taking in roughly the West Pukekohe-Waiuku region. It was obvious that these two lawyers held allotments throughout the whole of this area. We obtain a clearer idea of the extent of their global landholdings, from the parliamentary rolls of the 1870s, this being a time when citizens enjoyed the franchise in those electorates where they were freeholders. Both of these

⁶⁶ Grey to Newcastle, 23 Oct. 1863 (No 168), cit Ferguson to Carnarvon, 25 Aug. 1874, Confidential dispatches of governor to Secretary of State; N. Arch.

⁶⁷ Morton, p. 92. Some militiamen restarted their life in the township of Auckland itself.

lawyers qualified through owning property in 10 out of the 13 Auckland Provincial electorates.⁶⁸ Some notion of the breadth of Russell's private land holdings by this time (for he was ultimately far the wealthier of the partners) is provided by two sources. The first is Grey's so-called 'Domesday Survey', *Freeholders of New Zealand, 1882*, which listed Russell as holding properties in 12 different towns or counties worth £22,618, and much more importantly listed his mammoth investments in landed companies with a book value of £660,000.⁶⁹ It took his agent a whole summer (1882-3) to carry out an inspection visit on horseback of Russell's rural properties and stations in the Auckland province alone.⁷⁰

Back to 1860s. The second reason why I believe Whitaker and Russell were not avaricious for Tauranga land or preoccupied with its possibilities is that there is abundant evidence that by the mid-1860s, they considered that the game was afoot in other more profitable directions. Whitaker and Russell saw gates of opportunity opening up in steam shipping, timber mills, and above all in activities related to the gold strikes in Kauaeranga (Thames). Between 1867 and 1872 the goldfields of the Thames were their central concern. Russell's biggest interest became investments in mines, in batteries to process the ore, in the flotation and amalgamation of goldmining companies and in speculating in their shares. Russell did so well that he built up fortune to the point that, by 1874, he was able to retire abroad as an expatriate rentier.

I turn briefly to Russell's post-1874 career, partly because it helps us to see him 'in the round', but more particularly because These later years reveal hitherto undisclosed frailties in his personality and character. As the market in rural land stagnated in New Zealand in the 1880s, Russell was driven to resort to financial shifts that show his

⁶⁸ These figures are based on the 1879 General Assembly electoral rolls. Excluding the Maori seats there were 84 MHRs.

⁶⁹ The two companies were the Waikato Land Association (87,623 acres) and Auckland Agricultural Company. In the 1880s he was a major shareholder in 23 NZ companies, apart from his holdings in overseas companies.

⁷⁰ H. Bullock-Webster, *From the Hudson's Bay Company to New Zealand*, Auckland, 1938, pp.89-174. Bullock-Webster also travelled over Russell's very extensive leasehold territories, which were usually only partly developed though stocked with sheep and cattle. These leasehold runs he often held jointly with others: T. Morrin, James Russell, J.L. Vercoe, John Studholme etc. Until 1883, he also had a half-share as a sleeping partner in the Longbeach estate (15,8233 acres) near Ashburton.

judgment on future trends to be faulty, and his methods to be morally questionable. I believe that it is legitimate to use these later shortcomings to throw light on his motives in undertaking investments in the 1860s.

I would reiterate, however, that the preoccupation of some historians with Russell's shady dealings have led to an understatement of his abilities which were an important element in the great influence he exercised over his contemporaries. His was the initiative behind the provision of financial institutions such as the NZI, BNZ and NZL&MA. On such matters he was ahead of his time, appreciating that investors in Britain were 'on the feed' at a time when colonial New Zealand was in great need of developmental capital. He converted this vision into reality when he promoted the Loan Company in London as a means of raising mortgage debentures that could finance short-term advances to squatters secured by a lien on the season's wool clip, and in addition as an institution for taking over some troublesome long-term mortgage advances of the BNZ — a typical piece of Russell legerdemain. He used the same device of debenture financing in Britain, with less justification to finance his own land companies in the 1880s. His policy (really doing in the private sphere what Vogel's was doing in the public) which was one for making use of readily available nineteenth-century British capital to develop the infrastructure of the colonial economy, has few detractors today. But most historians agree that his sanguine temperament misled him in choosing the right time to invest.

More to the point of this paper was the way Russell used legitimate financial devices to prop up his unproductive land companies, 'unproductive' in the sense that they did not generate sufficient income to service the huge indebtedness for which they were acting as the security. (This flew in the face of the old economic adage that you can't take meat and milk from the same beast, at least simultaneously, a self-evident truth that Russell forgot, or found it convenient to forget.) And from the standpoint of the land companies and the Loan Company, which Russell entangled in their affairs, his operations were getting close to the classic type of fraud by which debenture holders are

kept happy with interest paid on their deposits, imagining that interest is paid from the earnings of the firm when it is in fact being paid from fresh loans.

Though Russell was never charged before a court of justice, we must sit in judgment on him. Falconer Larkworthy, who had close business dealings with him for over thirty years, called him the most self-regarding man he ever knew. This ambiguous, complex man was unique in colonial New Zealand. To see his like we must move, I believe to the late 19th century United States to the so-called Gilded Age, to the business condottieri of that era, entrepreneurs who believed in the private ownership of profits and the socialisation of losses. Russell was indeed of that ilk. He was extraordinarily adept at calling on others to come to his rescue, and at shuffling losses, and responsibility for his failures, onto the shoulders of others. But whether this lack of probity shown by Russell in later years should be used to question his motives in the 1860s is for the Tribunal to decide.

At this point it is appropriate that I should say something about the so-called 'limited circle'. Aware of the enduring attraction to some of conspiracy theories, I must express misgivings about extrapolating back to the 1860s this notion of a limited circle of predatory investors working together as a pack. The term 'limited circle' was first publicly used in 1888, when a special audit committee of the BNZ, set up to explain the parlous position of the bank, reported that 'the real control of the Bank's policy appears to have been for many years in the hands of a limited circle', all of whom happened to be Aucklanders.⁷¹ The question then arises: for how 'many years' had the group existed, and who were its members? It would be tempting but mistaken to speak of this group said by the audit committee to be headed by D.L. Murdoch, general manager of the BNZ, but for many years dominated by Russell, as a stable clique of investors, who aided and abetted one another. It was with the formation of the NZI, BNZ, NZL&MA, South British Insurance Company, and the proliferation of mining, timber, and associated companies that the notion of an inner circle of unprincipled Auckland capitalists with a penchant for insider trading came into being. Certainly the same names recur on the controlling

⁷¹ Stone, *Makers of Fortune*, Auckland, 1973, p.169.

boards of Auckland's financial institutions and large companies time and time again. Logan Campbell explained to a friend in 1877 how he became part of the charmed circle. He had become, he said,

more and more such a tangible part of the place [Auckland], its interests, commercial & political — the Bank of New Zealand, the Loan Coy, the NZ Insurance Coy ... a host of mining companies all absorb not only much time but much brain work. Fact is [as] you are aware the number of men with brains & holding a social position is so awfully limited that it is simply lamentable to look around & behold the vacuity.⁷²

Campbell stressed the dearth of talent available to fill the new directorships. This was true enough. But another significant factor was the command of wealth. The deeds of settlement and articles of association of the new financial institutions laid down a considerable shareholding as a condition of eligibility for directorships or auditorships. The pool to be drawn on was doubly diminished, therefore, by an insufficiency of people with both talent and capital. Nevertheless, though there was a uniformity of membership in the financial institutions, there is no indication that there was any 'networking' or colluding, at least in the earlier years. This can be illustrated from the case of Daldy, a businessman well known to the Tribunal. Daldy was a significant shareholder in both the NZI (director) and the BNZ (auditor), and a senior trustee of the Auckland Savings Bank. But that was far from making him in the 1860s, as one witness worded it, a 'client of Russell's' (whatever that might mean it), or even of the firm, which he was not. Indeed, in December 1867, the firm of Whitaker & Russell threatened to proceed against Daldy on behalf of a Mr Ogilvie, unless an immediate payment were made for a property at 'Kopanga, Thames' that Daldy had agreed to buy.⁷³ The idea that the firm colluded with Daldy to buy Matakana Island seems very unlikely.

⁷² Campbell to Robert Waterston, 30 Jul. 1877, Campbell Papers, AML.

⁷³ Whitaker & Russell to W. C. Daldy, 24 Dec. 1867, Letterbook, Feb. 1867-Apr. 1868, p.498.

CONCLUSION

The conclusions now presented relate to the two issues I presented in the beginning of this report: First, to what extent did Whitaker and Russell use their ministerial posts in the Domett and Whitaker-Fox ministries to influence the policies and legislation that are the particular concern of this Tauranga inquiry? (This also extends to Whitaker's relationship with the Governor once he became Superintendent of Auckland and Agent in Auckland of the General Government.) Second, were the material interests of the partners a determining factor in Crown land policies in the Tauranga area?

(1) Obstacles in the way of convincing answers to these questions are:

(a) Dearth of evidence outside of what already exists in official records; the surviving records of the firm of Whitaker & Russell are almost entirely concerned with the inner workings of the firm and say virtually nothing about the private business of the two partners; (b) The interpretations of past historians tend to be based on contemporary, partisan hearsay, and are inclined therefore to be tendentious.

(2) I have suggested that the gaps in our knowledge of the motivation of the two men are best filled by drawing on contextual evidence coming from other times and places better documented than the 1860s, providing that the information is not anachronistic or is in important respects analogous.

(3) We should evaluate the performance of these two men as a whole not allowing their speculative activities unduly to colour our judgement; e.g. Whitaker is universally regarded as the outstanding Attorney General of the 19th century, and Russell the foremost commercial figure for the colony over the same period.

(4) I submit that we should take more seriously into account the pervasive mood of war hysteria in Auckland in the crucial 1863-4 period. Responsibility for hard line policies stretched beyond Whitaker, Fox and Russell alone and through the general community of

the capital. By concentrating attention on ministers we may also allow Governor Grey and others to escape warranted censure.

(5) Thomas Russell had the easier conscience of the two partners. Inquiries into his business activities in later years indicate that he was unusually self-regarding, prone to shuffle responsibility for his business miscalculations on to the shoulders of others, and to use his domination of fellow-directors to agree to decisions that were to his advantage not to that of the companies that they had an obligation to safeguard. Over the crucial 1862-4 period, however, Russell was a decisive and efficient Minister of Defence, and there is no evidence that he exerted unusual influence on his cabinet colleagues. Nor in the vital months of 1866 when Whitaker as Superintendent co-operated with Grey to bring the Tauranga impasse to a conclusion, is there any record of Russell having stepped out of his chosen sphere of private business to influence Whitaker's decisions. However, he was an archetypal colonist 'on the make', with no understanding of or sympathy for traditional Maori society. He regarded land in Maori lands as a commodity to be bought or sold.

(6) Whitaker, too, was an unabashed believer in the superiority of western civilization, and equated progress for Maori with their being integrated within western society. He regarded those colonists who bought land from Maori and 'developed' it as benefactors of the colony. Yet it must be recognized that in certain respects he could so forget his political beliefs and investment interests as to act in a disinterested professional manner. This came out in the Opinions he delivered as learned counsel, in his work as Attorney General, and his actions as co-operator with those who, as I worded it earlier, were 'on the other side of the political divide'. His probity as speculator, especially when caught up in Thomas Russell's schemes, is much open to question. It would be difficult, however, to impugn his integrity as Attorney General.

(7) Finally something must be said about the so-called 'Limited Circle', often assumed to be gathered about Russell in the 1860s. True, Russell dominated New Zealand's early financial institutions, and the major gold-mining companies on the Thames 1868-72. The limited circle, of which he (and later D.L. Murdoch, General Manager of the BNZ) was

the centre, came into being not as a result of a conspiracy of the rich and powerful, but simply because of the dearth of requisite wealth and directorial talent available in the small colonial community that was Auckland in the 1860s. (Later the group, admittedly, acquired more sinister overtones.) I have come across no evidence that an inner circle colluded in acquiring confiscated or ceded Maori land in the 1860s or early 1870s. The records also indicate that Daldy, and Whitaker and Russell acted independently in their alleged 'purchases' of Matakana Island.