

# LAW IN ISOLATION: THE LEGAL HISTORY OF PITCAIRN ISLAND, 1900-2010

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“Mis-ter Chris-tian!” is a bark echoing through the decades, a byword for insubordination, thanks to Charles Laughton’s signature—and quite fanciful—performance as Captain William Bligh, R.N., commander of the Royal Navy’s *Bounty*.<sup>1</sup> Her crew had just enjoyed seven months of leisure

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1. MUTINY ON THE BOUNTY (Metro-Goldwyn-Mayer 1935); *Charles Laughton*, VARIETY, Dec. 19, 1962, at 67, reprinted in 7 VARIETY OBITUARIES, 1905–1986 (1988) (stating that Laughton’s “varying villainy and caustic wit combined to set him up on his own pedestal” and this was the role he was “most closely identified with”). Cf. *Gilmore Girls: I Solemnly Swear* (WB Network television broadcast Jan. 21, 2003) (showing that student council president Paris Geller [Liza Weil], indignant at a meeting called in her absence and channeling Laughton’s Bligh, speaking of “mutinous” behavior by all around and addressing one as “Mr. Christian”). See also BARRY MONUSH, ENCYCLOPEDIA OF HOLLYWOOD FILM ACTORS, FROM THE SILENT ERA TO 1965, at 413 (2003) (“Versatile, inimitable, unforgettable, Charles Laughton was one of the most colorful and exciting of all actors to have graced motion picture screens.”). Bligh carried the rank of lieutenant on the voyage but the Author calls him “Captain Bligh” as the commander of a ship is her “captain” and Bligh is invariably referred to in this way.

and female companionship in Tahiti when Fletcher Christian in April 1789 led a rebellion against lawful authority.<sup>2</sup> The easy Tahitian attitude towards sex was well known in England.<sup>3</sup> The crew was “demoralized by the luxurious climate and their apparently unrestricted intercourse with the natives,” and Captain Bligh wrote the mutineers felt nothing back home could compare to what they had just enjoyed.<sup>4</sup> As “the simplest explanation is probably the correct one,” Bligh’s supposition appears true.<sup>5</sup>

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2. For the best of the scores of books on the mutiny, see CAROLINE ALEXANDER, *THE BOUNTY: THE TRUE STORY OF THE MUTINY ON THE BOUNTY* (2003). Also particularly useful are MANORIAL RESEARCH, WITH NATIONAL MARITIME MUSEUM, *MUTINY ON THE BOUNTY, 1789–1989: AN INTERNATIONAL EXHIBITION TO MARK THE 200TH ANNIVERSARY, 28 APRIL 1989–1 OCT. 1989* (1989) (collection of essays) [hereinafter MANORIAL RESEARCH] and SVEN WALHROOS, *MUTINY AND ROMANCE IN THE SOUTH SEAS: A COMPANION TO THE BOUNTY ADVENTURE* (1989) (consisting of a narrative chronology and an encyclopedia of all people and things connected with the mutiny and Pitcairn.). Cf. *United States v. Colby*, 25 F. Cas. 490, 491 (D. Mass. 1845) (“The law gives to the captain of a ship at sea a power entirely unknown on land. . . . This authority is conferred for the preservation of the lives and property committed to his care, and is often as essential to the safety of the crew, as of the officers and ship. Hence the law has ever required of the seaman prompt and respectful obedience to all lawful orders of the captain. Even though the captain be in the wrong, or gives his orders in a harsh or insolent manner, or punishes without sufficient cause, still the seaman, at sea, must submit to the wrong and wait for redress till his return to port, rather than resort to violence.”).

3. 16 *THE ANNUAL REGISTER, OR A VIEW OF THE HISTORY, POLITICS, AND LITERATURE FOR THE YEAR 1773*, Characters sec. at 7 (London, J. Dodsley 1774) (“Privacy . . . is little wanted among people who have not even the idea of indecency, and who gratify every appetite and passion before witnesses with no more sense of impropriety than we feel when we satisfy our hunger . . . with our family and friends”). Cf. DOUGLAS L. OLIVER, *OCEANIA: THE NATIVE CULTURES OF AUSTRALIA AND THE PACIFIC ISLANDS* 591 (1989) (quoting an Eighteenth Century missionary: “For deception, lasciviousness, fawning eulogy, shameless familiarity with men, and artful concealment of adulterers, I suppose no country can surpass Tahiti. She is the filthy Sodom of the South Seas. On her shores chastity, and virtue have no place”); *id.* at 591 (“Tahitians engaged in sexual intercourse diffusely, energetically, and perdurably, but they did so with gusto, with artistry, and with singular lack of shame.”).

4. *William Bligh*, 2 *DICTIONARY OF NATIONAL BIOGRAPHY* 681 (Leslie Stephen & Sidney Lee eds., 1937); WILLIAM BLIGH, *A VOYAGE TO THE SOUTH SEA, UNDERTAKEN BY COMMAND OF HIS MAJESTY FOR THE PURPOSE OF CONVEYING THE BREAD-FRUIT TREE TO THE WEST INDIES IN HIS MAJESTY’S SHIP THE BOUNTY, COMMANDED BY LIEUTENANT WILLIAM BLIGH, INCLUDING AN ACCOUNT OF THE MUTINY ON BOARD SAID SHIP, AND THE SUBSEQUENT VOYAGE OF PART OF THE CREW, IN THE SHIP’S BOAT, FROM TOFOA, ONE OF THE FRIENDLY ISLANDS, TO TIMOR, A DUTCH SETTLEMENT IN THE EAST INDIES 160–64* (London, George Nicol 1792), *reprinted in* WILLIAM BLIGH ET AL., *A BOOK OF THE ‘BOUNTY’* at 1–188 (George Mackaness ed., 1938) (Everyman’s Library No. 950). This theory is depicted in the film *THE BOUNTY* (Dino de Laurentiis 1984) (starring Anthony Hopkins as Bligh and Mel Gibson as Christian). See also Roy Porter, *Mixed Feelings: The Enlightenment and Sexuality in Eighteenth-Century Britain*, ch. 1, in *SEXUALITY IN EIGHTEENTH-CENTURY BRITAIN* 2–3, 9 (Paul-Gabriel Boucé ed., 1982) (discussing sex for average people in England at the time).

5. *The Simpsons: Grampa v. Sexual Inadequacy* (Fox Television broadcast, Dec. 4, 1994) (Lisa Simpson defining Occam’s Razor). See also *Cipollone v. Hoffmeier*, Hamilton App. No. C-060482, 2007-Ohio-3788, 2007 WL 2141578, 2007 Ohio App. Lexis 3446, ¶ 25 (Ohio Ct. App. 1st Dist. July 27, 2007) (discussing Razor); IAN M. BALL, *PITCAIRN: CHILDREN OF MUTINY* ch. 5 (1973) (“That Old Standby, Sex”).

After returning to Tahiti to pick up women, the mutineers realized they would be hunted down and so searched for a hiding place.<sup>6</sup> The answer was recorded in one of the books in Bligh's cabin in the form of an uninhabited island a thousand miles southeast of Tahiti charted a dozen years before: Pitcairn.<sup>7</sup> Even better for Christian and company, the island's discoverer had miscalculated the island's longitude significantly, an error that meant not even the great Captain Cook had been able to find it.<sup>8</sup> The mutineers arrived in January 1790 on a rock the size of Central Park—hundreds of miles from the nearest inhabited land—and began a new society.<sup>9</sup>

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6. H.E. Maude, *In Search of a Home: From the Mutiny to Pitcairn Island (1789–1790)*, 67 *J. POLYNESIAN SOC'Y* 103 (1953) (N.Z.), *reprinted both in* H.E. MAUDE, *OF ISLANDS AND MEN: STUDIES IN PACIFIC HISTORY* ch. 1 (1968) [hereinafter MAUDE HISTORY] *and* U.S. SMITHSONIAN INSTITUTION, PUB. NO. 4392, ANNUAL REPORT OF THE BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION, SHOWING THE OPERATIONS, EXPENDITURES, AND CONDITION OF THE INSTITUTION FOR THE YEAR ENDED JUNE 30, 1959, at 533 (1960) (U.S. Congressional Serial Set vol. 12291) (AO).

7. 1 JOHN HAWKESWORTH, AN ACCOUNT OF THE VOYAGES UNDERTAKEN BY ORDER OF HIS PRESENT MAJESTY, FOR MAKING DISCOVERIES IN THE SOUTHERN HEMISPHERE, AND SUCCESSFULLY PERFORMED BY COMMODORE BYRON, CAPTAIN WALLIS, CAPTAIN CARTERET, AND CAPTAIN COOK, IN THE DOLPHIN, THE SWALLOW, AND THE ENDEAVOUR, DRAWN UP FROM THE JOURNALS WHICH WERE KEPT BY THE SEVERAL COMMANDERS AND FROM THE PAPERS OF JOSEPH BANKS, ESQ., TO WHICH IS ADDED A VOYAGE TO THE NORTH POLE BY COMMODORE PHIPPS 277–78 (London, W. Strahan & T. Cadell 1775).

8. 2 JAMES COOK, THE JOURNALS OF CAPTAIN JAMES COOK IN HIS VOYAGES OF DISCOVERY: THE VOYAGE OF THE *RESOLUTION* AND *ADVENTURE*, 1772–1775, at 189 (J.C. Beaglehole ed., 1965) (Hakluyt Soc'y Works Extra Series No. 35). For the Eighteenth Century problem of fixing a position in the open ocean, see generally, RUPERT T. GOULD, THE MARINE CHRONOMETER: ITS HISTORY AND DEVELOPMENT (1923) (discussing the Eighteenth Century problem of fixing a position at sea); HUMPHREY QUILL, JOHN HARRISON: THE MAN WHO FOUND LONGITUDE (1966); DAVA SOBEL, LONGITUDE: THE TRUE STORY OF A LONE GENIUS WHO SOLVED THE GREATEST SCIENTIFIC PROBLEM OF HIS TIME (1995). In the telefilm of Sobel's book her "lone genius," the Norfolk carpenter John Harrison, is played by Michael Gambon and Commander Rupert T. Gould, R.N., by Jeremy Irons.

9. DAVID SILVERMAN, PITCAIRN ISLAND 34 (1967) (part of an excellent sociological history of the island by an Ohio lawyer). See also ROBERT W. KIRK, PITCAIRN ISLAND, THE *BOUNTY* MUTINEERS AND THEIR DESCENDANTS (2008) (giving a good account of early days); TREVOR LUMMIS, PITCAIRN ISLAND: LIFE AND DEATH IN EDEN (1997) (same). Two popular Nineteenth Century accounts, still useful, are WALTER BRODIE, PITCAIRN'S ISLAND AND THE ISLANDERS IN 1850 (London, Whitaker 3d ed. 1851) (Brodie was a sailor stranded there for a time and his book is vital for reproducing primary source documents), *microformed on* American Culture Series, Reel 80.3 (University Microfilms), *available at* <http://pitcairn.fatefulvoyage.com/Brodie/index.html> (last visited Jan. 4, 2012); THOMAS BOYLES MURRAY, PITCAIRN: THE ISLAND, THE PEOPLE, AND THE PASTOR, TO WHICH IS ADDED A SHORT NOTICE OF THE ORIGINAL SETTLEMENT AND PRESENT CONDITION OF NORFOLK ISLAND (London, Society for Promoting Christian Knowledge, 12th ed. 1860) (Murray was a top official of S.P.C.K. and his book continued to be revised and reprinted as late as 1909). One Pitcairner published a history of the island, which is dated, but provides another useful perspective. ROSALIND AMELIA YOUNG, MUTINY OF THE BOUNTY AND STORY OF PITCAIRN ISLAND, 1790–1894 (Mountain View, Calif., Pacific Press Publishing Ass'n, 5th ed. 1894). See also SPENCER MURRAY, PITCAIRN ISLAND, THE FIRST 200 YEARS (1992).

The early days were filled with bloodshed and nearly every adult male was killed.<sup>10</sup> The lone survivor of the mutiny was John Adams, who Victorian moralists depicted as a South Seas Moses.<sup>11</sup> This ill-lettered tar taught them religion and led the islanders until his death in 1829.<sup>12</sup> By then George Hunn Nobbs, another Briton, had arrived and as their teacher and pastor was for years the guiding force of the community.<sup>13</sup> In 1856 he led the entire population to relocate to Norfolk Island.<sup>14</sup> But soon thereafter a small number returned to their old home and they resurrected the old ways.<sup>15</sup>

Throughout the Nineteenth Century the Royal Navy was the island's protector.<sup>16</sup> Its officers drafted several legal codes for the islanders.<sup>17</sup> Though Britain has dated its claim to the island to 1838, it took a very passive approach to governance of Pitcairn, placing it under formal administration only in 1898.<sup>18</sup> Britain then took action because a murder

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10. KIRK, *supra* note 9, at 61–67.

11. See, e.g., Charles Prestwood Lucas, *Introduction to THE PITCAIRN ISLAND REGISTER BOOK 15–16* (AMS Press 1977) (Charles Prestwood Lucas ed., 1929).

12. See generally NATHAN WELBY FISKE, *ALECK: THE LAST OF THE MUTINEERS, OR, THE HISTORY OF PITCAIRN'S ISLAND* (Amherst, Mass., J.S. & C. Adams, 2d ed. 1843); J.K. Laughton & Andrew Lambert, *John Adams*, in 1 *OXFORD DICTIONARY OF NATIONAL BIOGRAPHY* 237 (H.C.G. Matthew & Brian Harrison eds., 2004).

13. See generally H.E. Maude, *George Hunn Nobbs*, in 2 *AUSTRALIAN DICTIONARY OF BIOGRAPHY* 288 (1967); RAYMOND KEITH NOBBS, *GEORGE HUNN NOBBS, 1799–1884: CHAPLAIN ON PITCAIRN AND NORFOLK ISLAND* (1984).

14. See generally MERVAL HANNAH HOARE, *NORFOLK ISLAND: A REVISED AND ENLARGED HISTORY, 1774–1998* (5th ed. 1999); T.C. Roughley, *Bounty Descendants Live on Remote Norfolk Island*, 118 *NAT'L GEOG. MAG.* 559 (1960); Ed Howard, *Pitcairn and Norfolk: The Saga of Bounty's Children*, 164 *NAT'L GEOG. MAG.* 511 (1983); PETER CLARKE, *HELL AND PARADISE: THE NORFOLK-BOUNTY-PITCAIRN SAGA* ch. 17 (1987).

15. See generally A Native [Rosalind Amelia Young], *The Mutineers of the "Bounty": The Pitcairn Islanders From 1859–80*, in 22 *SCRIBNER'S MAG.* 54 (1881) (describing resettlement).

16. Cf. John Bach, *The Royal Navy in the Pacific Islands*, 3 *J. PAC. HIST.* 3 (1968) (Austl.) (describing role in providing law and order throughout Pacific); John Manning Ward, *Policing the Pacific: The Role of the Royal Navy, 1805–1844*, in *BRITISH POLICY IN THE SOUTH PACIFIC (1786–1893)* 58–71 (Greenwood Press 1976) (1950) (same).

17. See BRODIE, *supra* note 9, at 84–91 (reprinting laws drafted for islanders in 1838 by Capt. Russell Elliott of *H.M.S. Fly*); HARRY L. SHAPIRO, *THE HERITAGE OF THE BOUNTY: THE STORY OF PITCAIRN THROUGH SIX GENERATIONS* 289–91 (1936) (transcribing laws drafted in 1893 by Capt. Eustace Rooke of *H.M.S. Champion*).

18. Press Release No. 15 of 1990, British Foreign & Commw. Office, *reprinted in* 61 *BRIT. Y.B. INT'L L.* 1990, at 503 (1991) (statement issued on two-hundredth anniversary of mutineers settling on Pitcairn traces British claim to 1838 actions of Capt. Russell Elliott, R.N.); Instructions to the High Commissioner, Western Pacific, from Joseph Chamberlain, Colonial Sec'y, 1898 *FJI ROYAL GAZETTE* 215

was committed on the island and colonial officials realized they had no way to prosecute the killer short of bringing him 12,000 miles around the world to stand trial at the Old Bailey.<sup>19</sup>

The Nineteenth Century closed with a sensational crime, and the Twentieth closed with a sensational criminal investigation that ended up before the Judicial Committee of the Privy Council in Downing Street.<sup>20</sup> The investigation sparked a massive burst of legislation for Pitcairn.<sup>21</sup> And in 2010, it helped spur a new constitution for the island.<sup>22</sup>

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(adding Pitcairn to the territories governed by the Western Pacific High Commissioner), *reprinted in R. v. Seven Named Accused*, [2004] PNSC 1, 127 I.L.R. 232, ¶ 109 (Pitcairn Is. Sup. Ct.).

19. Minute of Edward Wingfield, Permanent Undersec'y of State, Colonial Office, Feb. 14, 1898, *in 4 Privy Council Record (PCR)* 4-1628-29 (TNA ADM 1/5618) [hereinafter "Privy Council Record" will be abbreviated "PCR"]; Letter from Richard E. Webster, Att'y-Gen. & Robert B. Finlay, Solicitor-Gen., to Joseph Chamberlain, Colonial Sec'y, Mar. 4, 1898, *reprinted in D.P. O'CONNELL & ANN RIORDAN, OPINIONS ON IMPERIAL CONSTITUTIONAL LAW* 11-3 (1971). For a full legal history of Pitcairn in the Eighteenth and Nineteenth Centuries, see Michael O. Eshleman, *A South Seas State of Nature: The Legal History of Pitcairn Island, 1790-1900*, 29 UCLA PAC. BASIN L.J. (forthcoming 2011).

20. *R. v. Christian*, [2005] PNSC 1, [2006] 1 L.R.C. 745, 75 BRIT. Y.B. INT'L L. 2004, at 428 (Pitcairn Is. Sup. Ct.), *aff'd* [2006] PNCA 1, [2006] 4 L.R.C. 746 (Pitcairn Is. Ct. App.), *aff'd sub nom. Christian v. The Queen*, [2006] UKPC 47, [2007] 2 A.C. 400, [2007] 1 L.R.C. 726, 130 I.L.R. 696 (appeal taken from Pitcairn Is.). *See generally* MAXWELL BARRETT, *THE LAW LORDS* ch. 5 (2001) (discussing history and role of Judicial Committee, which formerly sat at Number One Downing Street, next door to the Prime Minister). *Id.* at 165. In June 2007, the Author, inspired by Barrett's book, attended oral arguments before the Judicial Committee in *Estate of Palmer v. Cornerstone Investments & Fin. Co.*, [2007] UKPC 49, [2008] 3 L.R.C. 1 (appeal taken from Jam.). Following the creation in 2009 of the United Kingdom Supreme Court, the Judicial Committee joined the Supreme Court at the former Middlesex Guildhall on Parliament Square across from the Palace of Westminster. Constitutional Reform Act, 2005, c. 4, § 23 (U.K.) (creating Supreme Court); Constitutional Reform Act 2005 (Commencement No. 11) Order 2009, S.I. 2009/1604 (U.K.) (bringing law creating Supreme Court into force); Martin Kettle, *It Took 142 Years, But at Last Bagehot Has Got His Way*, *THE GUARDIAN* (London), July 31, 2009, at 31 (commenting on separation of powers the Supreme Court represented); Hugh Pearman, *With Its Present Medieval Heritage and Hideously Garish Carpet, the New Supreme Court Building is Typical English Fudge*, *SUNDAY TIMES* (London), Sept. 20, 2009, at 18 (commenting on Supreme Court's home); Marcus Binney, *Middlesex Guildhall Has Been Blandly and Expensively Neutered to Accommodate the New Supreme Court*, *THE TIMES* (London), Jan. 16, 2010, at 99 (same).

21. *See Chronological Table of Ordinances, in LAWS OF PITCAIRN*, HENDERSON, DUCIE AND OENO ISLANDS xiii-xix (Paul Julian Treadwell comp. 2010), available at <http://government.pn/Laws/index.html> (last visited Jan. 4, 2012) [hereinafter *LAWS OF PITCAIRN*] (providing a table listing all laws enacted from 1952 to 2010 shows few laws passed for decades and then many passed in last fifteen years); U.K. FOREIGN & COMMONWEALTH OFFICE, HUMAN RIGHTS AND DEMOCRACY: THE 2010 FOREIGN & COMMONWEALTH OFFICE REPORT, 2011, Cm. 8017, at 115 (discussing changes to Pitcairn law as a result of the rape investigation).

22. Pitcairn Constitution Order, 2010, S.I. 2010/244 (U.K.), *reprinted in LAWS OF PITCAIRN, supra* note 21, at xxvii; Proclamation Appointing the Day for the Coming Into Force of the Pitcairn Constitution Order 2010, *reprinted in LAWS OF PITCAIRN, supra* note 21, at xxx [hereinafter Proclamation Appointing the Day]. *See generally* Anthony H. Angelo & Ricarda Kessebohm, *The New Constitution of Pitcairn: A Primer*, 7 N.Z. Y.B. INT'L L. 2009, at 285 (2010); Michael O. Eshleman, *The New Pitcairn Islands*

## I. THE WESTERN PACIFIC HIGH COMMISSION, 1898–1952

The British Colonial Secretary in 1898 placed Pitcairn under the purview of the Western Pacific High Commissioner so a murder trial could be conducted on the island.<sup>23</sup> The office of High Commissioner was created in 1877 to bring law and order to the Pacific.<sup>24</sup> The High Commissioner, based in Suva, Fiji, also held the office of Governor of Fiji.<sup>25</sup> Besides Pitcairn, he oversaw a number of islands including the Cooks, the New Hebrides, the Solomons, the Gilberts, the Ellices, and the Unions.<sup>26</sup> The High Commissioner had sole legislative authority over his islands, subject only to his laws being disapproved by the authorities in London.<sup>27</sup> The High Commissioner relocated to Honiara in the Solomons in 1952 and Pitcairn was then removed from his jurisdiction.<sup>28</sup> For the initial decades of his administration, the High Commissioner delegated authority over Pitcairn to the British consuls at Tahiti, who were appointed Deputy Western Pacific High Commissioners.<sup>29</sup>

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*Constitution: Plenty of Strong Yet Empty Words for Britain's Smallest Colony*, 24 PACE INT'L L. REV. (forthcoming 2012).

23. See *Our Fiji Letter*, SYDNEY MORNING HERALD (Sydney, N.S.W.), Oct. 19, 1898, at 4 (NLA) (describing murder trial); *Pitcairn Islander Sentenced to Death*, THE TIMES (London), Nov. 8, 1898, at 4 (same). See also Eshleman, *supra* note 19 (giving account of debate in London on how to prosecute the murderer).

24. Western Pacific Order, 1877, § 7, 68 B.F.S.P. 328, 14 H.C.T. 871, issued pursuant to authority granted by Pacific Islanders Protection Act, 1877, 38 & 39 Vict., c. 51, § 6, superseded by Pacific Order, 1893, § 5, 1893 LONDON GAZETTE 5119, 85 B.F.S.P. 1053, 19 H.C.T. 570, 5 Stat. R. & O., Foreign Jurisdiction sec. at 484 (2d ed. 1904). See also W. ROSS JOHNSTON, SOVEREIGNTY AND PROTECTION: A STUDY OF BRITISH JURISDICTIONAL IMPERIALISM IN THE LATE NINETEENTH CENTURY 83–166 (1973) (Duke University Commonwealth Studies Center No. 41) (discussing the creation of the High Commission); Eshleman, *supra* note 19 (giving short account of same).

25. MARTIN WIGHT, BRITISH COLONIAL CONSTITUTIONS 1947, at 76 (1952).

26. HARRY C. LUKE, FROM A SOUTH SEAS DIARY, 1938–1942, at 9–10 (1945) (Luke was High Commissioner those years).

27. Pacific Order, 1893, § 108 (UK); *British Islands in Western Pacific*, 2 J. SOC'Y COMP. LEGIS., n.s. 113, 113–14 (1900) (Eng.).

28. JERRY DUPONT, THE COMMON LAW ABROAD 1185 (2001).

29. See, e.g., 83 U.K. FOREIGN OFFICE, FOREIGN OFFICE LIST AND DIPLOMATIC AND CONSULAR YEARBOOK FOR 1910, at 356 (1910) (noting Arthur Longford Sholto Rowley, appointed consul at Tahiti in 1908, was also appointed Deputy Commissioner for the Western Pacific in 1909). The text also notes that Robert Teesdale Simons, appointed consul at Tahiti in 1894, was also appointed Deputy Commissioner for the Western Pacific in 1903. *Id.* at 369. 48 WILLIAM HEPWORTH MERCER & ARTHUR ERNEST COLLINS, COLONIAL OFFICE LIST FOR 1919, at 417 (1919) (noting W.J. Williams, consul in the Society Islands, was “Deputy Commissioner, Pitcairn Island”).

## II. CLAIMING ISLANDS: 1902

Consul Robert Teesdale Simons, a Deputy High Commissioner in 1902 instructed the Pitcairners to formally claim three neighbors of Pitcairn.<sup>30</sup> These were Henderson, Ducie, and Oeno—all uninhabited.<sup>31</sup> The British flag had already been raised over Henderson in 1819, a fact apparently unknown to Simons.<sup>32</sup> The president of Pitcairn Island, James Russell McCoy, visited each island, raised the Union Jack, and claimed them for Britain: Henderson on July 6, Oeno on July 10, and Ducie on December 19.<sup>33</sup> This was done out of concern that 1) the islands would be valuable once the Panama Canal was finished in a few years and 2) to keep them out of French hands, the French having already occupied most islands between Fiji and Pitcairn.<sup>34</sup> A British warship, *H.M.S. Leander*, visited the

30. Letter from R.T. Simons to Colonial Sec'y, May 19, 1902, in 4 PCR 4-1740.

31. See generally F. RAYMOND FOSBERG, MARIE SACHET & DAVID R. STODDART, HENDERSON ISLAND (SOUTHEASTERN POLYNESIA): SUMMARY OF CURRENT KNOWLEDGE (1983) (Smithsonian Inst. Atoll Res. Bull. No. 272); MICHAEL DE L. BROOKE, IAN HEPBURN & ROSIE J. TREVELYAN, HENDERSON ISLAND WORLD HERITAGE SITE: MANAGEMENT PLAN (2004), available at [www.ukotcf.org/pdf/Henderson.pdf](http://www.ukotcf.org/pdf/Henderson.pdf) (last visited Jan. 4, 2012); HARALD A. REHDER & JOHN E. RANDALL, DUCIE ATOLL: ITS HISTORY, PHYSIOGRAPHY, AND BIOTA (1975) (Smithsonian Inst. Atoll Res. Bull. No. 183); Harry Yazell, *The (No) Importance of Ducie*, 14 PITCAIRN LOG, Dec. 1986-Feb. 1987, at 12; Steve Pendleton, *Ducie Island: Isolated and Inhospitable*, 25 PAC. MAG., July-Aug. 2000, at 36; Ada M. Christian, *Pitcairners' Holiday Cruise*, 13 PAC. ISLANDS MONTHLY, July 17, 1943, at 41 (Austl.) (Oeno Is.); Harry Yazell, *The Importance of Oeno Island*, 14 PITCAIRN LOG, Sept.-Nov. 1986, at 8; Steve Pendleton, *Party Place: The Story of Oeno Island*, 23 PAC. MAG., Mar.-Apr. 1998, at 60.

32. See Henry King, *Extract from the Journal of Captain Henry King of the Elizabeth*, 3 EDIN. PHIL. J. 380, 381-82 (1820) (Scot.); H.E. Maude, *Those Henderson Island Mysteries*, 22 PAC. ISLANDS MONTHLY, May 1951, at 62 (Austl.), reprinted in PIM'S PACIFIC: STORIES FROM THE SOUTH SEAS 177-81 (Judy Tudor ed., 1965).

33. 2 HYDROGRAPHIC OFFICE, U.S. NAVY, PUB. NO. 166, PACIFIC ISLANDS (EASTERN GROUP) PILOT 138, 140 (1916); Donald A. McLoughlin, *Law and Order on Pitcairn's Island: An Account of the Development of the System of Government and Laws of Pitcairn Island From 1791 to 1971*, in LAWS OF PITCAIRN, HENDERSON, DUCIE, AND OENO ISLANDS 65 (Donald A. McLoughlin comp., rev. ed. 1974) [hereinafter *McLoughlin Law*], text of *McLoughlin's history* available at <http://library.puc.edu/pitcairn/pitcairn/govt-history.shtml> (last visited Jan. 4, 2012); MERCER & COLLINS, *supra* note 29, at 419. Other sources—see, e.g., Donald A. McLoughlin, *An Account of the Development of the System of Government and Laws on Pitcairn Island in the Twentieth Century*, 11 TRANS. & PROC. FIJI SOC'Y 63, 67 (1971) [hereinafter *McLoughlin Twentieth*]—say they were annexed only in 1938, apparently a reference to the Closed Districts (Pitcairn Group) Regulation 1938, § 2 (W. Pac. High Comm'n) (brought into force by W. Pac. High Comm'n Proclamation No. 5 of 1938, 1938 W. PAC. HIGH COMM'N GAZETTE 44) (“the Pitcairn Group’ means the Islands of Pitcairn, Henderson, Ducie and Oeno”). This regulation lapsed with the Pitcairn Order, 1952. J.B. Claydon, Report [to the Governor of Pitcairn] on Administrative Visit to Pitcairn Island, Jan. 30, 1954, ¶ 63, in 6 PCR 6-2585.

34. *Pacific Islands: Annexed by Great Britain*, THE ADVERTISER (Adelaide, S. Austl.), May 30, 1903, at 9 (NLA); *Annexation of Islands*, BAY OF PLENTY TIMES (N.Z.), June 1, 1903, at 2, available at <http://paperspast.natlib.govt.nz> (last accessed Jan. 4, 2012).

trio in 1937 to reaffirm the claim, leaving on each the British flag and a sign saying they belonged to George VI.<sup>35</sup> It did so because of the new potential for transpacific aviation, the cause of a scramble for Pacific islands in the 1930s.<sup>36</sup> Those islands today give Pitcairn a vast exclusive economic zone in the Pacific.<sup>37</sup>

### III. IN WITH THE OLD: 1904

In 1893 a Royal Navy officer, Eustace Rooke, had written a new code that created a seven-member legislature elected annually with a president, vice-president, secretary, and judge chosen from their number.<sup>38</sup> This lasted until 1904 when Consul Simons called on Pitcairn.<sup>39</sup> Simons found the judges were incompetent and could not get their decisions enforced, while the other officials engaged in rivalries preventing good government.<sup>40</sup> He was highly critical of the Pitcairners:

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35. *Remote Islands: British Ownership Reaffirmed*, SYDNEY MORNING HERALD (Sydney, N.S.W.), Aug. 23, 1937, at 10 (NLA). See also Ada M. Christian, *New Administrative Group: Three Islands Joined With Pitcairn*, 11 PAC. ISLANDS MONTHLY, Jan. 1943, at 11 (Austl.).

36. *Island Bases*, SYDNEY MORNING HERALD (Sydney, N.S.W.), Aug. 24, 1937, at 12 (NLA); *McLoughlin Law*, *supra* note 33, at 66; Harold Butcher, *Ocean Isles Now Valued: Tiny Places in Pacific Desired by Nations As Bases for Airlines*, N.Y. TIMES, Mar. 6, 1938, §12 at 6. See also Beatrice Orent & Pauline Reinsch, *Sovereignty Over Islands in the Pacific*, 35 AM. J. INT'L L. 443, 443, 447 (1941) (discussing claims to islands and aviation); DAVID N. LEFF, *UNCLE SAM'S PACIFIC ISLETS 1-3* (1940) (discussing American government's policy on claiming islands for aviation); EDWIN H. BRYAN, JR., *The Race for Airports, AMERICAN POLYNESIA AND THE HAWAIIAN CHAIN* 31-34 (1942) (same); Felicity Caird, *The Strategic Significance of the Pacific Islands in New Zealand's Defence Policy, 1935-1939*, at 44-66 (1987) (unpublished M.A. thesis, University of Canterbury, available at <http://ir.canterbury.ac.nz/handle/10092/4263> (last visited Jan. 4, 2012)).

37. See Exchange of Notes Constituting an Agreement Concerning the Creation and Delimitation of an Economic Zone Around the Islands of Pitcairn, Henderson, Ducie, and Oeno, Fr.-U.K., Dec. 17, 1992-Jan. 19, 1993, U.K.T.S. No. 67 (1993) (Cm. 2358), 1772 U.N.T.S. 95 (effective Feb. 19, 1993); Convention on Maritime Boundaries, Fr.-U.K., Sept. 4, 1984, U.K.T.S. No. 56 (1984) (Cmnd. 9294), 1367 U.N.T.S. 182; Pitcairn Island Proclamation No. 1 of 1992, *reprinted in* 63 BRIT. Y.B. INT'L L. 1992, at 756 (1993); Pitcairn Island Proclamation No. 1 of 1997, *reprinted in* LAWS OF PITCAIRN, *supra* note 22, at 457-58. The idea of exclusive economic zones was codified in the Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 396, art. 55 (entered into force Nov. 16, 1994).

38. SHAPIRO, *supra* note 17, at 289-91 (reproducing laws).

39. Simons was appointed consul at Tahiti on September 27, 1894. See 1894 LONDON GAZETTE 5567. He was appointed Deputy Commissioner on September 29, 1903. 83 U.K. FOREIGN OFFICE, FOREIGN OFFICE LIST AND DIPLOMATIC AND CONSULAR YEARBOOK FOR 1910, at 369 (1910) [hereinafter 83 FOREIGN OFFICE LIST]. He served until 1908, when he was appointed consul at New Caledonia, but Simons did not take up that appointment because of illness. *Id.* See also 1908 LONDON GAZETTE 6513.

40. U.K. COLONIAL OFFICE, COLONIAL OFFICE MISCELLANEOUS REPORTS NO. 30, PITCAIRN ISLAND: REPORT OF MR. R.T. SIMONS, 1905, [Cd. 2397], at 4, 53 P.P. (1905) 55, MF 111.481 [hereinafter SIMONS REPORT].

With regard to the morals of the islanders in the aggregate, I fear I can say little in their favour. Fornication, adultery, illegitimate children, petty thefts, brawls, bad language, etc., are faults amongst them (happily they do not use intoxicants) and it was disquieting to learn that the laws and regulations dealing with those offences had seldom been enforced. Indeed the general laxity has been so great that abortion, brought about by means of drugs and instruments of local contrivance, was not of infrequent occurrence. I have made provision for the punishment of that and of other crimes in the future.<sup>41</sup>

The new regime came into force May 19, 1904, and was similar to the one before Captain Rooke's reform, consisting of an elected Chief Magistrate, two lawmaking committees—an Internal Committee and an External one—a secretary and treasurer, and two elected assessors to assist the magistrate.<sup>42</sup> The magistrate was forbidden to be a churchman because of concerns about the minister of the day.<sup>43</sup> The Internal and External Committees were to draw up local regulations.<sup>44</sup>

Court was to be held twice a month.<sup>45</sup> The magistrate was to try cases.<sup>46</sup> Where more than a week's imprisonment or a fine larger than £5 was at stake, he was to sit with the assessors. Their vote on guilt was the same as his but the magistrate alone decided the sentence.<sup>47</sup> The code stated "[c]ivil and criminal matters of a serious character for which punishment is not provided for in the local laws and regulations must be dealt with by" the High Commissioner's Court.<sup>48</sup> That tribunal was created with the office of Western Pacific High Commissioner in 1877 and consisted of the High Commissioner, the Judicial Commissioners, and the

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41. *Id.* at 3.

42. *McLoughlin Twentieth*, *supra* note 33, at 65; MAUDE HISTORY, *supra* note 6, at 93; SILVERMAN, *supra* note 9, at 183. *See also* SHAPIRO, *supra* note 17, at 298–301 (reprinting 1904 laws). A facsimile of the Pitcairn Civil Recorder, the handwritten island ledger from which Shapiro made his transcriptions, is at 4 PCR 4-1503–19. The original is located in FCOA, PIT 1/II.

43. SHAPIRO, *supra* note 17, at 298 (reprinting law); SILVERMAN, *supra* note 9, at 183 (stating cause). *Cf.* SIMONS REPORT, *supra* note 40, at 4–5 (discussing islanders' complaints President McCoy was neglecting his governmental duties on Pitcairn while attending to church business and being a celebrity in America).

44. *McLoughlin Twentieth*, *supra* note 33, at 65. The External Committee was merged into the Internal Committee in 1911. *Id.* at 65, n.6.

45. SHAPIRO, *supra* note 17, at 301.

46. *Id.*

47. *Id.*

48. *Id.*

Deputy Commissioners.<sup>49</sup> Several such cases from Pitcairn, including attempted murder and abortion, were referred over the years.<sup>50</sup> Appeals from the Island Court went to the Deputy High Commissioner.<sup>51</sup>

The first law punished contempt of court.<sup>52</sup> The next five laws dealt with sex. “[S]educing a girl under the age of 14” was punishable by a £20 fine or a month in jail.<sup>53</sup> Adultery and rape had to be referred to the High Commissioner’s Court.<sup>54</sup> Yet the former was still locally triable in addition to punishment by the High Commissioner’s Court—a fine of £5 to £10 could be assessed locally for those “found in adultery or [who] shall associate together in secluded places for the purpose of acting in a manner not consistent with [their] marital vows, or for the purpose of committing carnal offenses.”<sup>55</sup> (Those who helped in the commission were equally liable.)<sup>56</sup> Young people “congregating together in such a manner as to cause scandal or to endanger the morals of the younger” islanders could be fined, as could those who provided places for the congregation.<sup>57</sup> Voyeurism was banned, as it had been under the old code.<sup>58</sup>

The islanders were forbidden to change Simons’s code on their own.<sup>59</sup> They could make local regulations on farming, branding of livestock, and the like.<sup>60</sup> The many detailed laws on livestock in the old code were dropped, but the Internal Committee was allowed to make criminal laws regarding animals.<sup>61</sup> The Nineteenth Century laws on violence, threats, guns, and public works were continued.<sup>62</sup> Inquests on suspicious deaths

49. Western Pacific Order, 1877, § 12 (creation) (U.K.); Pacific Order, 1893, § 13 (continuance) (U.K.); *id.* at § 12 (composition).

50. R. v. Christian, [2005] PNCS 1, [2006] 1 L.R.C. 745, 75 BRIT. Y.B. INT’L L. 2004, at 428, ¶¶ 67, 80 (Pitcairn Is. Sup. Ct.).

51. See *McLoughlin Twentieth*, *supra* note 33, at 69 (stating finding of Island Court was reversed in one case by R.T. Simons, Deputy Western Pacific High Commissioner).

52. SHAPIRO, *supra* note 17, at 301 (reprinting Local Law 1).

53. *Id.* at 301–02 (reprinting Local Law 2).

54. *Id.* at 302 (reprinting Local Law 3).

55. *Id.* at 302 (reprinting Local Law 4).

56. *Id.*

57. SHAPIRO, *supra* note 17, at 302 (reprinting Local Law 5).

58. *Id.* (reprinting Local Law 6).

59. *Id.* at 299.

60. *Id.* The local committee regulations appear in *id.* at 312–17.

61. *Id.* at 304 (reprinting Local Law 12). Such laws were adopted, *see, e.g.*, F.D. Alley, *£50 for a Cat’s Life*, SYDNEY MORNING HERALD (Sydney, N.S.W.), Nov. 20, 1937, at 7 (NLA) (describing Pitcairn law to protect cats). The older laws are described in Eshleman, *supra* note 19.

62. SHAPIRO, *supra* note 17, at 303–05 (reprinting Local Laws 10, 11, 13, 14, and 16).

were required.<sup>63</sup> The ban on immigration, in place since 1882, was not re-enacted, but the islanders were forbidden to deport anyone.<sup>64</sup>

The concern Simons had for abortifacients is also manifested in the code.<sup>65</sup> That brought about the most significant change to the criminal law, Local Law 15: “Abortion is a serious crime and is punishable by a lengthy term of imprisonment.”<sup>66</sup> Prohibition was also enacted for the islanders—but not for resident foreigners.<sup>67</sup> Theft was regulated at length; children who stole could be caned.<sup>68</sup> These laws were amended a few times—such as abolishing the External Committee—but largely endured until 1941.<sup>69</sup> An example of a change was a quarantine law for ships, enacted in 1906.<sup>70</sup>

In the Nineteenth Century, Pitcairn had frequently been visited by American whalers, but after the decline of the whale fishery, it became a backwater so rarely visited that letters could take three years to arrive.<sup>71</sup> One observer in 1914 predicted the island’s imminent demise.<sup>72</sup> However, that summer the Panama Canal opened, which changed the island’s fortunes as it lay on the direct route from Panama to New Zealand.<sup>73</sup> That meant sometimes a ship a week called there, bringing large numbers of people

63. *Id.* at 306 (reprinting Local Law 21).

64. *Id.* at 305 (reprinting Local Law 19).

65. *Id.* at 304.

66. *Id.*

67. SHAPIRO, *supra* note 17, at 305–06 (reprinting Local Law 20).

68. *Id.* (reprinting Local Laws 8 and 9).

69. *Id.* at 306–12 (showing amendments).

70. *McLoughlin Twentieth*, *supra* note 33, at 67.

71. J. Bryant, *A Lonely Isle and a Curious People*, 30 SCOT. GEOG. MAG. 83, 85 (1914). *See also* Arthur A. Delaney, *Pitcairn’s Early Postal History*, 83 AM. PHILATELIST 307, 307 (1969) (quoting 1878 statement on how erratic the mails were); *H.M.S. Condor and the Pitcairn Mail*, MORNING POST (Cairns, Queensl.), Feb. 18, 1902, at 3 (NLA) (stating mail arrived once a year); *Letters Once a Year*, THE EXAMINER (Launceston, Tas.), Jan. 11, 1902, at 2 (NLA) (same). *Contra* Emily M. McCoy, *The Pitcairn Island Miracle in Ethnology*, 57 INDEPENDENT 712, 717 (1904) (Pitcairnese author writing in 1904 saying mails arrived every two months from steamers on San Francisco–New Zealand run). *Cf. Letters from Pitcairn Island*, 18 OVERLAND MONTHLY 294 (1891) (exchange of correspondence showing dates written and received).

72. Bryant, *supra* note 71, at 85. *See also Joy on Pitcairn Island*, N.Y. TIMES, July 8, 1917, § 8, at 8 (noting only three ships a year stopped during World War I).

73. R.W. ROBSON, PACIFIC ISLANDS HANDBOOK 1944, at 125 (N. Am. ed. 1945). Pitcairn is 3,520 nautical miles from Panama, and 3,006 nautical miles from Wellington. CECIL HUNTER RODWELL, REPORT ON A VISIT TO PITCAIRN ISLAND ¶ 1 (1921) (Colonial Office Misc. Rep. 93). Its prime location on shipping routes was long foreseen. *See, e.g., Pitcairn’s Island—Interesting Sketch*, N.Y. DAILY TIMES, Oct. 11, 1852, at 3, reprinting article from PAN. STAR, Sept. 16, 1852 (noting the island is halfway between Panama and Australia). The many calls made possible by the canal weren’t all good news, however. *See, e.g., Pitcairn Island*, [1921] 2 BRIT. MED. J. 760, 761 (stating the worldwide 1918 influenza pandemic killed five Pitcairnians).

eager to buy souvenirs.<sup>74</sup> And it massively improved communications as “[t]he lonely island overnight found itself with the best mail service south of the Equator.”<sup>75</sup>

#### IV. NEILL’S DRAFT: 1937

High Commissioner Cecil Rodwell, visiting in 1921, thought the community of 170 had too many officials and that the number should be pared.<sup>76</sup> He also felt the Pitcairn laws ought to be put on a “more definite basis” than Simons’s code.<sup>77</sup> Fifteen years later, something was done about Rodwell’s suggestion when James Scott Neill, British Consul at Tonga, went to Pitcairn for five weeks.<sup>78</sup> As a Judicial Commissioner, he convened the High Commissioner’s Court to hear a charge of murder—supposedly a woman poisoned her husband with tainted tea—but dismissed the case because there was no evidence at all, only the chatterings of gossips.<sup>79</sup> He suggested to the Colonial Office that the essential form of government was sound.<sup>80</sup> He drafted a new legal code and a code of procedure for the court.<sup>81</sup> Neill observed the Pitcairn magistrate “has never seen a proper Court function and has never received any practical instruction.”<sup>82</sup> The

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74. MAUDE HISTORY, *supra* note 6, at 95–96 (noting visits to buy souvenirs); DONALD A. MCLOUGHLIN, REPORT ON JUDICIAL AND ADMINISTRATIVE VISIT TO PITCAIRN ISLAND ¶¶ 15–16 (Oct. 27, 1958), in 6 PCR 6-2759 (TNA CO 1036/401) [hereinafter MCLOUGHLIN 1958 REPORT] (listing ships regularly calling there in 1958); Irving & Electa Johnson, *Westward Bound in the Yankee*, 81 NAT’L GEOG. MAG. 1, 32 (1942) (noting few actually landed on island but steamers regularly stopped for mail); Marc T. Greene, *Pitcairn Island: Port of Call*, CHRISTIAN SCI. MONITOR WKLY. MAG., June 16, 1945, at 16, 17 (noting liners arrived fortnightly); Luis Marden, *I Found the Bones of the Bounty*, 112 NAT’L GEOG. MAG. 725, 767 (1957) (noting in 1957 a ship arrived about weekly). See also MCLOUGHLIN 1958 REPORT, *supra* note 74, ¶ 27 (a colorful account of getting supplies from a visiting ship).

75. ROBERT J. CASEY, EASTER ISLAND: HOME OF THE SCORNFUL GODS 78 (1931). See also V. LeYoung Ardiff, *Pitcairn Island Postal Affairs*, 51 AM. PHILATELIST 651 (1938); Clyde Carriker & John F. Field, *A Study of Pitcairn Island Life and Postal History, 1920–32* (pts. 1–2), 86 AM. PHILATELIST 607, 683 (1972) (studying Pitcairn correspondence handled by the American postmaster at Cristobal in the Panama Canal Zone).

76. RODWELL, *supra* note 73, ¶ 6.

77. *Id.*

78. See James Scott Neill, *General Administrative Report*, in U.K. COLONIAL OFFICE, COLONIAL OFFICE REP. NO. 155, PITCAIRN ISLAND (1938) [hereinafter *Neill Report*], available in 5 PCR 5-2083–2133; JAMES SCOTT NEILL, TEN YEARS IN TONGA 153–200 (1955) [hereinafter NEILL TONGA] (describing his visit). See also 342 PARL. DEB., H.C. (5th ser.) (1938) 407–08 (U.K.) (giving status of implementing the recommendations in Neill’s report).

79. NEILL TONGA, *supra* note 78, at 173.

80. *Neill Report*, *supra* note 78, at 13.

81. *Id.* at 29–51.

82. *Id.* at 13, 15.

record bears out this ignorance. The government's legal adviser, writing in 1966 of his review of the court records, found its proceedings had "little relation, if any, to those of any Court of Justice known to more sophisticated societies. The system does, however, appear to have worked on the whole as a form of practical, although at times exceedingly rough, justice."<sup>83</sup>

(Some bizarre examples of criminal procedure exist. In a 1950s case, the island policeman, who "only appeared in the case in his capacity as public prosecutor," was convicted of an offense and fined ten shillings.<sup>84</sup> In another case involving the same officer, the court convicted him *in absentia* without summoning him, and then the officer cited himself for contempt of court when he failed to attend the session of court of which he had no notice.)<sup>85</sup>

Neill was generally pleased with the existing laws, which were "interesting for the good sense which prompted them and for the very simplicity of the language in which they [we]re framed. The Pitcairners ha[d] done a good job on their island."<sup>86</sup> Neill submitted a proposed code with his report, a comprehensive codification, and revision of the existing laws.<sup>87</sup> It was not enacted. However, Neill suggested that the people were willing for immigration to be controlled by the High Commissioner, the result being that the High Commissioner declared Pitcairn a closed district, and barred visitors without a permit.<sup>88</sup>

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83. *McLoughlin Twentieth*, *supra* note 33, at 68. McLoughlin's private report in 1958 was much harsher: "the picture I obtained of criminal proceedings was rather disturbing and I consider the many complaints made to me that the Court was a farce were justified." MCLOUGHLIN 1958 REPORT, *supra* note 74, ¶ 75. The irregularities of the court's practice, based on a review of the court records, are detailed in *McLoughlin Twentieth*, *supra* note 33, at 69–73. McLoughlin did try to systematically train the court officers when he visited. MCLOUGHLIN 1958 REPORT, *supra* note 74, ¶ 79. He also left detailed instructions for procedures for investigating, prosecuting, and trying offenses. MCLOUGHLIN 1958 REPORT, *supra* note 74, at Enclosure No. 3. *See also* Notes of Discussions Held at Colonial Secretary's Office, Suva, Fiji, Aug. 7, 1937 at 6, in 5 PCR 5-2148 (original in WPA 2334/37) (James Scott Neill felt "[i]f appeals [from the island court] were allowed almost every case would necessarily quashed since the Chief Magistrate's knowledge of Court procedure was meagre in the extreme."). Extracts from the Register of Summons, 1908–1916, are in 4 PCR 4-1959 (FCOA PIT 1/I-13).

84. MCLOUGHLIN 1958 REPORT, *supra* note 74, ¶ 77.

85. *Id.* ¶ 76. It was a conviction of the same police officer that led to the appeal to the Supreme Court of Fiji in 1951 that resulted in the entirety of the island regulations being invalidated.

86. NEILL TONGA, *supra* note 78, at 185–86.

87. *Id.* at 29–51.

88. *Id.* at 21; Closed Districts (Pitcairn Group) Regulation No. 3 of 1938, § 2 (W. Pac. High Comm'n) (brought into force by W. Pac. High Comm'n Proclamation No. 5 of 1938, 1938 W. PAC. HIGH COMM'N GAZETTE 44).

Britain had traditionally expected each colony to pay its own expenses.<sup>89</sup> The Treasury was so hard-hearted in its skinflint attitudes that it once responded to a request by the Colonial Office for funds for cemeteries abroad by suggesting the dead be buried at sea.<sup>90</sup> Neill examined the island's finances and concluded that the only possible way to pay for a proper government and school was to issue postage stamps.<sup>91</sup> The island economy at the time, and for many years thereafter, was on a subsistence-barter basis.<sup>92</sup> The islanders were even able to barter through the mail with suppliers in the United States.<sup>93</sup> The island's exports have been souvenirs—including baskets and carved wooden curios—sold to those on passing ships and through the mail.<sup>94</sup> So important is this work, there is a government agency for selling souvenirs.<sup>95</sup> Oranges were also once exported—but this trade was cut-off by World War II.<sup>96</sup>

#### V. H.E. MAUDE: 1940–41

Henry Evans “Harry” Maude was born in India in 1906, educated at Jesus College, Cambridge, and entered the colonial service in the Gilbert

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89. BRIAN L. BLAKELEY, *THE COLONIAL OFFICE, 1868–1892*, at 138–42 (1972) (discussing allocating costs to colonies). *See also* ROBERT V. KUBICEK, *THE ADMINISTRATION OF IMPERIALISM: JOSEPH CHAMBERLAIN AT THE COLONIAL OFFICE* 68–91 (1969) (Duke Univ. Commonw. Stud. Ctr. Publication No. 37) (describing Treasury's control over colonial expenditures).

90. BLAKELEY, *supra* note 89, at 145–46. *Cf.* MICKEY'S CHRISTMAS CAROL (Walt Disney Pictures 1983) (Ebenezer Scrooge [Scrooge McDuck (the voice of Alan Young)] happily notes the money he saved on the tombstone of Jacob Marley [Goofy (the voice of Hal Smith)] by burying his late partner at sea).

91. *Neill Report*, *supra* note 78, at 23–25.

92. *See, e.g.*, Ada M. Christian, *Life on Pitcairn Island: An Interesting Example of Modern-Day Socialism*, 18 PAC. ISLANDS MONTHLY, Aug. 25, 1937, at 19 (Austl.). *See generally* Albert V. Moverley, *Pitcairn Island: An Economic Survey*, 4 TRANS. & PROC. FIJI SOC'Y 61 (1950).

93. *See, e.g.*, *Bounty Barter*, 55 TIME, Mar. 20, 1950, at 85 (discussing transactions with a Philadelphia manufacturer).

94. *Neill Report*, *supra* note 78, at 8; SILVERMAN, *supra* note 9, at 103–05; Edwin N. Ferdon, Jr., *Pitcairn Island, 1956*, 48 GEOGRAPHICAL REV. 69, 76–80 (1958) (discussing islanders' income); *A Visit to Pitcairn Island*, SYDNEY MORNING HERALD (Sydney, N.S.W.), Jan. 9, 1905, at 6 (NLA) (describing visit to Pitcairn during which food was traded for curios); Cynthia Fletcher, *Pitcairn Island Emerges From Its Obscurity*, THE ADVERTISER (Adelaide, S. Austl.), Nov. 24, 1951, at 6 (NLA) (baskets).

95. *See* Pitcairn Souvenir Agency Ordinance No. 2 of 1964 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 27) (LLMC).

96. *Neill Report*, *supra* note 78, at 8; *Life on Pitcairn*, CAIRNS POST (Queensl.), Dec. 15, 1938, at 16 (NLA); *McLoughlin Twentieth*, *supra* note 33, at 82. *See also* MANORIAL RESEARCH, *supra* note 2, at 134 (illustrating the first issue of stamps, the lowest denomination of which depicts oranges); F.P. Ward, *Seven Months Mail in One Day*, 45 AUSTRALASIAN RECORD, Nov. 10, 1941, at 4 (Austl.) (discussing difficulties in shipping caused by war).

and Ellice Islands Colony.<sup>97</sup> In July 1940 he was dispatched to Pitcairn by the High Commissioner to bring “the islanders those twin blessings of civilization, a legal code[,] and . . . postage stamps.”<sup>98</sup> Maude, appointed a Deputy High Commissioner for the purpose, spent eight months there—not by design but because the outbreak of hostilities in the Pacific disrupted shipping and stranded him.<sup>99</sup> His initial impression was that “the local government had little control over the people, and law enforcement was conspicuous by its almost total absence.”<sup>100</sup>

Maude used Neill’s 1937 draft in composing the new code.<sup>101</sup> He spent three months working on this and training the islanders in public administration.<sup>102</sup> Maude discussed the code with an elected committee,

97. See generally SUSAN WOODBURN, *WHERE OUR HEARTS STILL LIE: HARRY AND HONOR MAUDE IN THE PACIFIC ISLANDS* (2003). Maude, who died in 2006, after his colonial service, became a distinguished historian of the Pacific. Niel Gunson, *Obituary, Harry Maude: Unimane, Statesman, and Pacific Historian*, 42 J. PAC. HIST. 109 (2007) (Austl.); ROLF DU RIETZ, *THE CAUSES OF THE BOUNTY MUTINY: SOME COMMENTS ON A BOOK BY MADGE DARBY 5* (1965) (Studia Bountyana No. 1) (calling Maude “that unrivalled [sic] authority on the history of Pitcairn Island and on early Pacific history in general.”).

98. Letter from H.E. Maude, Pitcairn Island, to Harry L. Shapiro, American Museum of Natural History, New York, N.Y. Oct. 15, 1940, in 5 PCR 5-2231 (MP MSS 0003, Part 1, Series J, Box 28).

99. Robert Langdon, *Harry Maude: Shy Proconsul, Dedicated Pacific Historian*, in *THE CHANGING PACIFIC: ESSAYS IN HONOR OF H.E. MAUDE* 10–11 (Niel Gunson ed., 1978); WOODBURN, *supra* note 97, at 159–69. Maude’s commission is at 5 PCR 5-2196 (MP MSS 0003, Part 1, Series A, Box 1, File 30).

100. H.E. Maude, *Pitcairn Island: A General Report*, ¶ 2 (June 6, 1941), in 5 PCR 5-2198–2229 [hereinafter *Maude General*].

101. Cf. H.E. Maude, *Notes on Final Revision of the Pitcairn Government Regulations, 1940, May 1942*, in 5 PCR 5-2270 (WPA WPHC 23/II, File 10/2/2, vol. 2, item 46(a)) [hereinafter *Maude Notes on Final Revision*]. This report shows how the Neill draft (*Neill Report*, *supra* note 78, at 29–51) was amended for the enacted regulations. Maude stated changes were made when:

- (a) owing to the legal phraseology employed, the meaning of the regulation was not clear to the Committee and it was consequently desirable to use one or more colloquial expressions;
  - (b) the regulations were not based on any previous law or custom and was regarded as unnecessary or undesirable by the Committee;
  - (c) the Committee were of the unanimous opinion that the regulation, while not included in the draft code, should be included in the draft code, should be inserted as being either in conformity with some existing law or custom or else a definite improvement on present practice.
- No alteration, other than in wording, was made until I was satisfied that it was in accordance with the wishes of the islanders themselves.

*Maude General*, *supra* note 100, ¶ 8. Maude also drafted another report tracing the sources of the code to the prior codes enacted for the island. H.E. Maude, *Pitcairn Island Government Regulations, 1940: Table Showing the Sources from Which the Regulations Are Derived* (May 1942), in 5 PCR 5-2283 (WPA WPHC 23/II, File 10/2/2, vol. 2, item 46(b)).

102. *Maude General*, *supra* note 100, ¶ 4.

and it was then reviewed at mass meetings before every adult signed it.<sup>103</sup> Maude felt this “confer[red] on the regulations the most authoritative sanction possible: the free and unanimous consent of the entire population.”<sup>104</sup> When Maude had been stationed in the Gilbert and Ellice Islands Colony, he had similarly rewritten its laws in consultation with the people, replacing a noxious paternal regime whose legislative intent was of missionary reforming zeal.<sup>105</sup> The new Pitcairn code was approved by the High Commissioner in December 1941, then gazetted, and printed as a booklet.<sup>106</sup>

The government consisted of an Island Council made up of the Island Magistrate, two assessors, the chairman of the Island Committee, and the Island Secretary.<sup>107</sup> Essentially, the system codified by Simons in 1904 was retained.<sup>108</sup> All officers were elected except for the secretary, who was appointed by the High Commissioner.<sup>109</sup> The council was to meet monthly and issue regulations for “good order, prisons, public works, the public boats, education, the control of livestock, drainage, and sanitation,” the latter being two particularly British fixations.<sup>110</sup>

A change came in 1954 by a new ordinance empowering the Governor to appoint an advisory member of the Island Council.<sup>111</sup> Traditionally, this

103. *Id.* ¶¶ 5–7. See also Langdon, *supra* note 99, at 10; WOODBURN, *supra* note 97, at 162; 2 NAVAL INTELLIGENCE DIVISION, U.K. ADMIRALTY, PACIFIC ISLANDS: EASTERN PACIFIC 87 (1943); *Won: A Constitution*, 40 TIME, Aug. 17, 1942, at 32. The original copy of the laws, signed by the islanders, is in the Maude Papers, MSS 0003, Part 1, Series A, Box 1, File 9/1940, reprinted in 5 PCR 5-2234–36.

104. *Maude General*, *supra* note 100, ¶ 12. Nevertheless, the regulations were found by the Chief Justice of Fiji to have no legal sanction. See *below* at section VI.

105. Langdon, *supra* note 99, at 7–8; WOODBURN, *supra* note 97, at 137–40.

106. *Instructions for the Guidance of the Local Government of Pitcairn Island*, 1941 W. PAC. HIGH COMM’N GAZETTE 359, reprinted as PITCAIRN ISLAND GOVERNMENT REGULATIONS 1940 (Suva, Fiji, F.W. Smith, Gov’t Printer 1941), in 5 PCR 5-2237–64 (WPA WPHC 23/IL, File 10/2/2, vol. 2, item 42).

107. Pitcairn Island Government Regulations, 1940, § 4 (W.P.H.C.).

108. *McLoughlin Twentieth*, *supra* note 33, at 68.

109. Pitcairn Island Government Regulations, 1940, §§ 3, 8(3).

110. *Id.* § 7.

111. Pitcairn Island Government (Amendment) Ordinance No. 4 of 1954 (repealed by Local Government Ordinance No. 1 of 1964 (LLMC), reprinted in 6 PCR 6-2648. This was enacted [I]n order to strengthen [the Island Council’s] authority and to make clear the position of an education officer holding the appointment of [an] advisory member. . . . [I]n the past there has been some doubt among the people about the Education Officer’s authority as Government Adviser and it is hoped that this legislation will make his position clear.

Letter from Office of Governor, Suva, to Pitcairn Island Chief Magistrate, Dec. 14, 1954, in 6 PCR 6-2651. Claydon had urged the schoolteacher’s governmental role be put on a legal basis. Claydon, *supra* note 33, ¶ 57.

was the “education officer,” i.e. for example, the schoolteacher.<sup>112</sup> The teacher, appointed from outside, before this law had acted unofficially as government adviser, and was, theoretically, the eyes on the ground of the administration in Fiji.<sup>113</sup> The government’s legal adviser, visiting in 1958, thought this was an unwise combination of roles. “Chosen rather for their capabilities in the schoolroom than in matters administrative, and being accustomed to a position of ascendancy over their pupils, they were not always the most suitable persons to be entrusted with the somewhat difficult and delicate role of an administrative adviser.”<sup>114</sup> Nevertheless, as late as 2004 the teacher was still identified as government adviser.<sup>115</sup>

The island court consisted of a magistrate and two assessors.<sup>116</sup> Its jurisdiction was limited to civil cases of less than £10 and criminal cases where the maximum punishment was three months imprisonment and a £10 fine. More serious cases had to be referred to the High Commissioner’s

112. DAVID SCOTT, *WINDOW INTO DOWNING STREET 171* (2003).

113. Claydon, *supra* note 33, ¶ 56 (“Ever since . . . 1948 there has been an increasing tendency on the part of the Administration to treat the Education Officer as a source of advice on administrative questions and as an intermediary between Suva and local government. The islanders . . . have now come to realize that if they want anything, their requests have a very much more favorable chance of acceptance if a sympathetic covering letter from the Education Officer is sent off. . . . The Chief Magistrate . . . readily seeks the Education Officer’s advice, and generally follows it.”); Ferdon, *supra* note 94, at 80 (“The more direct representative of the government, although he is unofficial, is the schoolteacher, whose position is by appointment out of Fiji. Anything that occurs on the island of interest to Fiji is taken up with, or through, the schoolteacher. Officially, therefore, Pitcairn is run by Pitcairnians, one of whom is appointed by the Fiji government, but in fact the government maintains a ‘blind’ representative on the island whose job depends on Fiji and whose home ties are outside the island.”) *Contra* Christian v. The Queen, [2006] UKPC 47, [2007] 2 A.C. 400, [2007] 1 L.R.C. 726, 130 I.L.R. 696, ¶ 47 (appeal taken from Pitcairn Is.) (opinion of Lord Hope of Craighead) (“The schoolteacher (from New Zealand) doubles as the Government Adviser. But [he] is not viewed by the islanders as being in a position of real authority.”), *quoting* Letter from Karen S. Wolstenholme, Acting Pitcairn Governor, Wellington, to Stephen Paul Evans, Overseas Territories Dept., Foreign & Commw. Office, London, May 1, 2000 (the original letter is in 8 PCR 8-3629); MARKS, *infra* note 220, at 189 (stating “teachers were not heeded . . . unless they told colonial authorities what they wanted to hear”).

114. *McLoughlin Twentieth*, *supra* note 33, at 80. McLoughlin’s language in his 1958 private report to the High Commissioner was much stronger. He faulted past teachers—naming them—for abusing their position to push their “pet theories” even though they “had little experience of dealing with adult problems or of practical affairs” and claimed they “interfere[d] in matters of which they have no knowledge and [tried] to put into practice impractical theories.” MCLOUGHLIN 1958 REPORT, *supra* note 74, ¶ 28. He gave a specific example of the adviser involving himself in the running of the post office and causing a £30,000 discrepancy in the accounts because of faulty bookkeeping. *Id.* ¶ 42. McLoughlin accused advisers of committing other misconduct. *Id.* ¶¶ 112–19.

115. U.N. G.A., Special Comm. on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, *Pitcairn*, ¶ 38, U.N. Doc. A/AC.109/2004/2 (Mar. 23, 2004) [hereinafter 2004 DECOLONIZATION REPORT].

116. Pitcairn Island Government Regulations, 1940, § 14.

Court in Fiji.<sup>117</sup> Appeals from the Island Court went to the Supreme Court of Fiji.<sup>118</sup>

The Criminal Code contained a wide range of offenses: contempt of court, perjury, escape from prison, abusive or threatening language, profane or obscene language, making false reports, assault, disorderly conduct, indecent behavior, adultery, cohabitation, theft, receiving stolen property, conversion, neglect of illegitimate children, causing fires, damage to property, damaging Polynesian rock carvings, trespass, polluting the drinking water, harming noddy birds, having an unlicensed gun, carelessly firing a gun, harboring sick goats, fishing with dynamite, importing or making liquor, and breaking ships' quarantine.<sup>119</sup> A remarkable law fines registered voters who fail to cast a ballot.<sup>120</sup> Another punished those who cried "sail ho!" when no ship was in sight.<sup>121</sup> The common law crimes of murder and rape of an adult woman were not codified.<sup>122</sup>

While on Pitcairn, Maude convened the High Commissioner's Court for the Western Pacific. Maude heard two cases. One was a charge of assault—the accused plead guilty and was fined £5. The second was a charge of obstructing police business—that defendant was convicted and given two weeks at hard labor.<sup>123</sup>

117. *Id.* §§ 15–16.

118. *Id.* § 21(4).

119. *Id.* §§ 56–104.

120. *Id.* § 94. *Accord* Summary Offences Ordinance No. 15 of 2000, § 21 (codified in LAWS OF PITCAIRN, *supra* note 21 c. 5); Commonwealth Electoral Act 1918, § 245(1) (Austl.) ("It shall be the duty of every elector to vote at each election.").

121. *Id.* § 98. *Cf.* CASEY, *supra* note 75, at 79–80 (describing vividly how "sail ho!" stopped all other activity on island).

122. *Compare* Pitcairn Island Government Regulations, 1940, § 65 ("unlawful carnal knowledge" a crime only when victim is under fourteen) *with* Justice Ordinance No. 1 of 1966, § 88 (LLMC) ("Any male person who shall have carnal knowledge of any female child of or over the age of twelve years shall be guilty of an offense and liable to imprisonment for a hundred days.").

123. *In re* Elmer Smith, W. Pac. High Comm'r Ct. (Feb. 9, 1941), *in* 5 PCR 5-2358–63; *In re* Morris Christian, W. Pac. High Comm'r Ct. (Feb. 3, 1941), *in* 5 PCR 5-2364–70 (Both in the Maude Papers, MSS 0003, Part 1, Series A, Box 1, File 16/1941). In the latter case, Maude in his sentence observed "the Court has taken into account the fact that the accused, Morris Christian, appears to be of an excitable and unbalanced temperament and recommends that he should be examined by a qualified medical specialist on opportunity occurring." Maude in a report on the case harshly referred to the defendant as "a half-witted kleptomaniac" and claimed he was to blame for "a large part of the trouble in this island." Maude compiled a list of twenty-one convictions in the Island Court of Morris Christian, all minor charges such as petty theft and swearing. Letter from H.E. Maude, Deputy Western Pacific High Commissioner, Pitcairn Island, to H.H. Vaskess, W. Pac. High Comm'n, Suva, Fiji, Feb. 15, 1941, *in* 5 PCR 5-2374–79 (WPA WPHC 23/1 MP 1816/1941). Claydon and McLoughlin were instead sympathetic toward the man, McLoughlin opining he should never have been convicted of anything because of his mental capacity "he [was] not capable of forming the necessary intention" for stealing. Claydon, *supra* note 33, ¶¶ 141–42; MCLOUGHLIN 1958

The post office Maude opened was a great success.<sup>124</sup> From 1926 to 1940 the New Zealand postal authorities operated a post office on Pitcairn using New Zealand stamps. Before then, letters were franked “Posted at Pitcairn Island: No Stamps Available.”<sup>125</sup> During the first six months they were offered, £12,760 worth of Pitcairn Islands—plural—stamps were sold.<sup>126</sup> Stamp sales paid all public expenses for decades.<sup>127</sup> They paid entirely for the island schoolhouse.<sup>128</sup> This self-sufficiency ended recently when the accumulated surpluses were exhausted.<sup>129</sup>

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REPORT, *supra* note 74, ¶ 62 (xxvi). A warm obituary of him appears at 26 PITCAIRN MISCELLANY, Sept. 1984, at 1 (Pitcairn Is.), in 8 PCR 8-3489.

124. Arthur A. Delaney, *History of Pitcairn Island Post Office*, 83 AM. PHILATELIST 405, 405 (1969) (noting orders for first-day covers of first stamps were so large it took two weeks to cancel them all); SPENCER MURRAY, *supra* note 9, at 127 (describing elaborate procedures for destroying unsold stamps, an indication of the importance of protecting philatelic market). See also SCOTT, *supra* note 112, at 176 (describing enthusiastically his role as Pitcairn Governor in approving stamp issues).

125. Arthur A. Delaney, *Pitcairn’s Early Postal History*, 83 AM. PHILATELIST 307 (1969). See generally Carriker & Field, *supra* note 75.

126. *Maude General*, *supra* note 100, ¶ 35. Harry Luke, Western Pacific High Commissioner when the first stamps were issued, stated the plural “islands” was done at his insistence because of the outlying trio of islands. HARRY C. LUKE, ISLANDS OF THE SOUTH PACIFIC 90 (1962). For Pitcairn stamps, see generally VERNON N. KISLING, JR., PITCAIRN ISLANDS SPECIALIZED STAMP CATALOG (3d ed. 2010).

127. Arne Falk Rønne, *Pitcairn’s New Mutineers?*, 28 GEOGRAPHICAL MAG. 669, 674–76 (1966) (Eng.) (quoting postmaster of island). See also Janet Kinnane, *People of Pitcairn*, 16 OCEANS, Sept.–Oct. 1983, at 42, 47 (“Philatelists keep Pitcairn solvent”); Dea Birkett, *Fletcher Christian’s Children*, N.Y. TIMES, Dec. 8, 1991, § 6 (Magazine) at 66, 70 (stating stamps finance government); PITCAIRN GOVERNMENT, A GUIDE TO PITCAIRN 47 (1st ed. 1963) (showing government income and expenses 1957–1962, including postage sales).

128. Ernest Schubert, *A School from Postage Stamps*, 40 PAC. ISLANDS MONTHLY, June 1960, at 41 (Austl.), reprinted in PIM’S PACIFIC, *supra* note 32, at 35–37. Schubert was the Pitcairn teacher in 1958 to 1959. His most comprehensive report on Pitcairn during his time there is Biennial Report, Colony of Pitcairn Island, 1958 and 1959, in 6 PCR 6-2894–2932.

129. SILVERMAN, *supra* note 9, at 103–07 (self-supporting); OFFICE OF GOVERNOR OF PITCAIRN ET AL., PITCAIRN ISLANDS SINGLE PROGRAMMING DOCUMENT 19–21 (2003) [hereinafter PITCAIRN SINGLE PROGRAMMING DOCUMENT] (discussing island finances and presenting a financial statement for public accounts showing stamp revenue and depletion of surplus), available at [http://ec.europa.eu/development/icenter/repository/print\\_pit\\_spd\\_en.pdf](http://ec.europa.eu/development/icenter/repository/print_pit_spd_en.pdf) (last visited Jan. 4, 2012); Leslie Edwin Jacques, *No Man Is an Island*, 52 N.Z. MGMT., Mar. 2005, at 16 (stating surpluses exhausted; author was island commissioner). Cf. MCLOUGHLIN 1958 REPORT, *supra* note 74, ¶ 29 (“The present [1958] Pitcairn economy is an unreal one relying for on stamps sales for revenue.”); D.P.J. Wood, *The Smaller Territories: Some Political Considerations*, in PROBLEMS OF SMALLER TERRITORIES 33 (Burton Benedict ed., 1967) (University of London Inst. on Commonw. Stud., Commonw. Papers No. 10) (stating stamps “merely satisfy the whims of rich men and small boys. They are fragile foundations for economic and political advancement.”); Joel Slemrod, *Why Is Elvis on Burkina Faso Postage Stamps? Cross-Country Evidence on the Commercialization of Sovereignty*, 5 J. EMPIRICAL LEGAL STUD. 683 (2008) (examining “stamp-pandering” nations selling their sovereignty).

In the late 1940s the High Commissioner and his staff argued that Pitcairn should be given by Britain to New Zealand. Since 1) Pitcairn had no natural connection to any of the other territories administered by the High Commission; 2) the existing shipping connections linked the island to New Zealand; and 3) there were a large number of Pitcairners residing in New Zealand.<sup>130</sup> (Plus New Zealand had a history of administering small Pacific Islands such as the Cooks, Niue, and the League of Nations-mandated territory of Western Samoa.)<sup>131</sup> The advice was not taken.

## VI. POST-WAR: 1952

Maude in 1963 explained of his 1940 Code that “[m]y hope was that, regardless of arguments about the applicability of the British Settlements Act and other legislation, that the best sanction of all must surely be the written consent of every person affected by the legislation. But I imagine this is the naïve view of a layman.”<sup>132</sup> Indeed it was, for the Supreme Court of Fiji—sitting in its appellate capacity over the Western Pacific High Commission islands—in 1951 had declared Maude’s code to have been issued *ultra vires*, holding the High Commissioner had no power to create courts or laws for Pitcairn.<sup>133</sup> The Court did not consider the idea that the islanders had a common law right to make laws.<sup>134</sup> By ignoring the fact that the laws had local sanction, the islanders’ views were made irrelevant. And having found the laws were invalid, the Supreme Court decided it had

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130. Memorandum by the Chief Sec’y, Western Pacific High Commission, May 4, 1948, in U.K. FOREIGN & COMMW. OFFICE, WESTERN PACIFIC HIGH COMMISSION: SELECTED DOCUMENTS 167–72 (2002); Maude Notes on Final Revision, *supra* note 101, *passim*; S. Cameron, *Pitcairn—Its Place in a Pacific World*, 41 N.Z. GEOGRAPHIC SOC’Y REC. 3 (1966) (discussing Kiwi ties to island).

131. See generally NEW ZEALAND’S RECORD IN THE PACIFIC ISLANDS IN THE TWENTIETH CENTURY (Angus Ross ed., 1969); *Mandat pour le Samoa Allemand/Mandate for German Samoa*, 2 LEAGUE OF NATIONS OFFICIAL J. 91 (1922) (Switz.) (giving New Zealand authority to run Western Samoa, which it did until 1962), *reprinted in* 17 AM. J. INT’L L. SUPP. 173 (1923).

132. Letter from H.E. Maude, Research School of Pacific Studies, Australian National University, Canberra, to Kenneth O. Roberts-Wray, Colonial Office, London, Oct. 28, 1963, in 7 PCR 7-3015; (MP MSS 0003, Part III, Series D/3, Box 63).

133. *In re Floyd McCoy*, W. Pac. High Comm’n Review No. 41 of 1951, ¶ 3 (Fiji Sup. Ct., July 14, 1951) (Vaughn, C.J., in chambers) (“The Pitcairn Regulations of 1940 are clearly not made under [Pacific Order, 1893, §108]. . . . It appears, prima facie, therefore that they have no legal effect”), in 6 PCR 6-2539; *id.* ¶ 8 (Pacific Order, 1893, did not enable High Commissioner to neither create courts on Pitcairn nor provide for legislation for the island). This was not the first time fears were expressed about *ultra vires* regulations in the Pacific. Parliament in 1916 enacted a statute, the Pacific Islands Regulations (Validation) Act, 1916, 6 & 7 Geo. 5, c. 9, to validate regulations issued by the High Commissioner after the applicability of his regulations to “settlements” was questioned by Britain’s Law Officers. 21 PARL. DEB., H.L. (5th ser.) (1916) 721–22 (U.K.) (statement of Lord Islington).

134. Cf. KENNETH O. ROBERTS-WRAY, COMMONWEALTH AND COLONIAL LAW 154 (1966).

no power to review an appeal from Pitcairn.<sup>135</sup> An order-in-council had to be issued by the Queen to remedy the lack of authority and under the new order Maude's code was re-enacted.<sup>136</sup>

The new order was also prompted by the decision to separate the offices of Governor of Fiji and Western Pacific High Commissioner, as the High Commissioner and his administration were being moved to the Solomon Islands.<sup>137</sup> (The High Commission terminated in 1978 after the Solomons, the last of the territories under it, gained independence.)<sup>138</sup> The Governor of Fiji continued to have responsibility for Pitcairn, as he was also Governor of Pitcairn.<sup>139</sup> There was no real change in the administration, however, only a change in nomenclature.<sup>140</sup> The Pitcairn

135. *In re McCoy*, W. Pac. High Comm'n Review No. 41 of 1951, ¶ 13 (Fiji Sup. Ct. July 14, 1951). Fiji Chief Justice J.H. Vaughn included this as a postscript to this opinion: "I am unable to find any authority for the statement in Hals. [Halsbury's] Laws of England, 2nd Ed., Vol[.] XI, p. 9, footnote (k) that Pitcairn was brought under the High Commissioner for the Western Pacific in 1898." The authority the Chief Justice could not find is described in note 19, *supra*.

136. Pitcairn Order, 1952, S.I. 1952/459, § 5 (U.K.), *amended by* Pitcairn (Amendment) Order, 1963, S.I. 1963/368 (U.K.), *revoked by* Pitcairn Order, 1970, S.I. 1970/1434 (U.K.), *issued pursuant to* British Settlements Act, 1887, 50 & 51 Vict., c. 54, *and* British Settlements Act, 1945, 9 & 10 Geo. 6, c. 7; Pitcairn Island (Local Government Regulations) Ordinance No. 2 of 1952 (LLMC) (repealed by Local Government Ordinance No. 1 of 1964 (LLMC)). Included in the re-enactment was the review by the Supreme Court of Fiji, which was exercised in *In re Radley Christian* (Fiji Sup. Ct., Mar. 2, 1957) (Hyne, C.J., *in chambers*), *in* 6 PCR 6-2670-71 (original in WPA F138/13/3).

137. DUPONT, *supra* note 28, at 1185. *Cf.* REPORT OF A COMMISSION APPOINTED TO INQUIRE INTO THE WORKINGS OF THE WESTERN PACIFIC ORDER IN COUNCIL AND THE NATURE OF THE MEASURES REQUISITE TO SECURE THE ATTAINMENT OF THE OBJECTS FOR WHICH THOSE ORDERS IN COUNCIL WERE ISSUED, 1884, [C. (2d ser.) 3905], ¶ 195, *in* 55 P.P. (1884) 781, MF 90.485 (suggesting offices separate and High Commissioner move to New Guinea); ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, VIA PORTS: FROM HONG KONG TO HONG KONG 78 (1965) (Grantham, former High Commissioner, stating leaving Suva was a mistake and suggested the Solomons instead be administered by Australia).

138. *See* Solomon Islands Independence Order, 1978, S.I. 1978/783 (U.K.) (effective July 7, 1978). One source says the Western Pacific High Commission terminated four days later on July 11. U.K. FOREIGN & COMMW. OFFICE, *supra* note 130, at vii. The High Commissioner had served as Governor of the Solomon Islands until they became independent. CLIVE MOORE, HAPPY ISLES IN CRISIS: THE HISTORICAL CAUSES FOR A FAILING STATE IN SOLOMON ISLANDS, 1998-2004, at 35 (2004).

139. *Fiji to "Rule" Pacific Isles*, THE ARGUS (Melbourne, Vict.), Apr. 10, 1952, at 1 (NLA). There are other examples of double governorships. From 1965 to 1973 the Governor of the Bahamas concurrently served as Governor of the Turks and Caicos Islands, a separate colony. *See* Turks and Caicos Islands (Constitution) Order, 1965, S.I. 1965/1861 (U.K.); Turks and Caicos Islands (Constitution) Order, 1969, S.I. 1969/736 (U.K.). And today the Governor of the Falklands is also the Commissioner, i.e. governor, of South Georgia and the South Sandwich Islands. IAN D. HENDRY & SUSAN DICKSON, BRITISH OVERSEAS TERRITORIES LAW 35 (2011).

140. *McLoughlin Twentieth*, *supra* note 33, at 78.

Office on Fiji was merged in 1958 to become the South Pacific Office, reporting to the Governor.<sup>141</sup>

Despite the removal of the High Commissioner's authority over Pitcairn, the High Commissioner's Court initially continued to exercise jurisdiction. Its jurisdiction was invoked once more on Pitcairn: Donald A. McLoughlin, a magistrate in Fiji, was in 1958 appointed a judicial commissioner of the High Commissioner's Court to hear a petition for divorce.<sup>142</sup>

The new Pitcairn Order was accompanied by instructions to the Governor about oaths and the form of the laws.<sup>143</sup> Typically laws did not become effective until after they were posted on Pitcairn. The usual procedure was 1) the laws would be formulated at the governor's office with the input of the legal adviser; 2) copies would be mailed to Pitcairn to the Chief Magistrate with instructions to post them on the public notice board; 3) the Chief Magistrate would do so and send a telegram to the Governor informing him of the date of posting; and 4) notice would be placed in the *Fiji Gazette* that the law took effect on the date of.

These notices would later be made in the *Pitcairn Miscellany*, the island's newspaper—which was almost entirely circulated to Pitcairn's multitude of fans abroad.<sup>144</sup> The Royal Instructions forbade the Governor to pass laws to grant divorces, give properties to himself, affect the currency, or regulate the military, among other restrictions.<sup>145</sup>

## VII. CONTINUED NEGLECT: 1950S

A colonial officer who visited for eight weeks in 1954 said the word to describe the island administration was "anarchy."<sup>146</sup> His explanation was that:

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141. *Id.* at 83.

142. *Young v. Young*, W. Pac. High Comm'r Ct. No. 1/1958 (Feb. 21, 1958), in 6 PCR 6-2756–58 (original probably in WPA). The correspondence amongst officials of the Pitcairn Government about how to proceed with the divorce case, including the selection of McLoughlin to preside over them, is in 6 PCR 6-3712–55. McLoughlin's account of the case is at MCLOUGHLIN 1958 REPORT, *supra* note 74, ¶¶ 64–71.

143. Pitcairn Royal Instructions, 1952 (London, H.M.S.O 1952), in 6 PCR 6-2553, amended by Pitcairn Royal Instructions, 1963, [1963] 1 S.I. 1423; and Pitcairn Royal Instructions, 1966, [1966] 3 S.I. 5185. *See also* ROBERTS-WRAY, *supra* note 132, at 146–49 (discussing royal instructions to colonial governors).

144. *See, e.g.*, 25 PITCAIRN MISCELLANY, Nov. 1983 at 4 (Pitcairn Is.), in 8 PCR 8-3484; 25 PITCAIRN MISCELLANY, May 1984 at 3 (Pitcairn Is.), in 8 PCR 8-3488. *Cf.* FAR EAST AND AUSTRALASIA 2009, at 1055 (Lynn Daniel ed., 40th ed. 2008) (Europa Regional Surveys of the World) (stating *Miscellany's* circulation was 1,400).

145. *See supra* note 142 (Pitcairn Royal Instructions).

146. Claydon, *supra* note 33, ¶ 50.

To hold office in the local government is no honor; in fact . . . election to the post of Chairman of the Internal Committee or Chief Magistrate is the precursor to a period of hard work, no thanks[,] and much abuse. The current Pitcairn attitude is [that officials] “are paid for the work; let them do the work.”<sup>147</sup>

He attributed laxness in the administration to the fear that a zealous enforcer of the laws would, when out of office, face retribution by his successors.<sup>148</sup> The rule of law had not been established on Pitcairn, he claimed, and suggested an outside presence was needed.<sup>149</sup> Five years later another visiting official was highly critical of the island leadership, regarding these men as exemplars of the Peter Principle, and suggested an outsider be stationed there because the islanders were incapable of administering their own affairs.<sup>150</sup> He also observed a hostility to the island police officer “due to Pitcairner[s]’ dislike of any sort of law enforcement.”<sup>151</sup> These modern officials repeated the statements made by British visitors for a century that an outsider was needed to take charge.<sup>152</sup>

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147. *Id.*

148. *Id.* ¶ 49 (“few, if any, of the candidates for office can offer themselves with clean hands. It is difficult then to expect an individual to invite reference to his past, or to incur ill-will and later retribution when he is out of office. . . . Councils go on from year to year in a humdrum fashion, hoping against hope that nothing will occur during their term of office to oblige them to depart from their state of lethargy.”). The same thing was reported in 1885 on Norfolk Island, which was settled by Pitcairners in 1856:

One thing is most certain, that is, that the present form of government by an elected Magistrate will never do, and *must* be stopped at once, for there is neither justice nor order. Everybody is so closely related, and everybody lives in a ‘glass house’, and is afraid to throw a stone, so that the Chief Magistrate *dare* not administer even justice, or he would be pounced upon at once, and is in a constant fear of how a decision will be regarded by others, who may, and would retaliate, if they do not approve.

Extract of a Letter from Henry Wilkinson, Q.C., to Lord Augustus Loftus, Governor of Norfolk Island & New South Wales, Sydney, in PAPERS RELATING TO HER MAJESTY’S COLONIAL POSSESSIONS: REPORTS FOR 1883, 1884, AND 1885, 1886 [C. (2d series) 4842], at 227–28 (U.K.), in 45 P.P. (1886) 1, MF 92.337-9, IUP Colonies 24. Other correspondence between Wilkinson and Loftus, highly critical of the Norfolk’s government, is printed in that report and at PAPERS RELATING TO HER MAJESTY’S COLONIAL POSSESSIONS: REPORTS FOR 1884 AND 1885, 1885, [C. (2d series) 4583], at 279–88 (U.K.), in 52 P.P. (1884–85) 559, MF 91.413-16, IUP Colonies 24.

149. Claydon, *supra* note 33, ¶ 50 (“law has little meaning to the average Pitcairner or to his local government.”).

150. M’LOUGHLIN 1958 REPORT, *supra* note 74, ¶¶ 26–29.

151. *Id.* ¶ 39.

152. *See, e.g.*, Letter from Capt. Edward Russell, *H.M.S. Actaeon*, to Commodore Mason, January 1837, in 3 PCR 3-1228 (TNA ADM 1/48) (“I fear that unless some person with authority from the Government is sent to superintend their internal affairs, that there will be constant quarrels and disturbances upon the Island.”); Letter from Lt. Cmdr. Henry S. Hunt, *H.M.S. Basilisk*, to Rear Adm. Richard Thomas, Commander-in-Chief, Pacific Station, Valparaiso, Chile, Aug. 1, 1844, in 3 PCR 3-1298 (TNA ADM

One call was made as long ago as 1838.<sup>153</sup> These 1950s visitors were also ignored. A recurring theme in modern writings on Pitcairn, is the claim that Britain has always neglected the islanders—one going so far as to state that the neglect was “lax to the point of turpitude.”<sup>154</sup> A typical example of the laxity is a 1945 government report seemed less concerned with the effect of the poor administration on the islanders than with the bad publicity it produced for Britain in the press.<sup>155</sup>

Neglect was standard. Visits from colonial officials were years apart and sometimes lasted only hours.<sup>156</sup> The Western Pacific High

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1/5561) (“I would again take the liberty of pressing on the notice of the Government that this interesting people should no longer be left without more efficient Authority to control them.”); U.K. COLONIAL OFFICE, REPORT OF VISIT OF H.M.S. SAPHO TO PITCAIRN ISLAND, 1882, ¶ 20 (London, H.M.S.O. 1882) (report of Capt. Bouverie F. Clark, who visited in 1882, stating an outsider was needed to take charge), available at <http://www.jstor.org/stable/60229116> (last visited Jan. 4, 2012), and in 4 PCR 4-1481.

153. H.W. Bruce, *Voyage of H.M.S. Imogene, Captain H.W. Bruce—Sandwich, Tahiti, and Pitcairn Islands*, 7 NAUTICAL MAG. & NAVAL CHRON. 737, 743 (1838) (Eng.) (“It would be a great boon to this most amiable and deserving people, were our government to send them a duly authorized person of character, intelligence, and ability, to preside over them and their interests.”).

154. Andrew Lewis, *Pitcairn’s Tortured Past: A Legal History*, in JUSTICE, LEGALITY, AND THE RULE OF LAW: LESSONS FROM THE PITCAIRN PROSECUTIONS 61 (Dawn Oliver ed., 2009) (turpitude). See also Marc T. Greene, *Pitcairn’s Island Is Losing Its ‘Mutineers’*, 79 AM. MERCURY, Aug. 1954, at 35 (alleging the “British government has neglected [Pitcairn] from the start” and “Britain has been and continues to be singularly indifferent to it.”); SILVERMAN, *supra* note 9, at 188 (stating “the paternal and sporadically generous attitude of the Crown has not precluded complaints that it was not doing enough for these distant cousins of the Empire”); Glynn Christian, Letter, *Looking After Pitcairn’s Future*, THE TIMES (London), June 22, 1983, at 9 (complaining of neglect of Pitcairn and contrasting money spent on Falklanders); SIMON WINCHESTER, *THE SUN NEVER SETS: TRAVELS TO THE REMAINING OUTPOSTS OF THE BRITISH EMPIRE* 280 (1985) (stating “Pitcairn has good reason to think they and their tiny island are being shunned by the policy-makers and the bureaucrats in London”; this volume was published in Britain as *Outposts*); William Prochnau & Laura Parker, *Trouble in Paradise*, VANITY FAIR, Jan. 2008, at 103 (chronicling the history of London ignoring issues on Pitcairn). *Contra* R. v. Christian, [2005] PNSC 1, [2006] 1 L.R.C. 745, 75 BRIT. Y.B. INT’L L. 2004, at 428, ¶¶ 111–47 (Pitcairn Is. Sup. Ct.) (detailing last half century of efforts to inform islanders of the law and efforts to police Pitcairn). Compare Carlton Skinner, *Self-Government in the South Pacific*, 43 FOREIGN AFF. 137, 143–46 (1963) (criticizing “the ‘zoo’ theory of colonial administration” deliberately neglectful of residents’ needs and desires) with Patsy T. Mink, *Micronesia: Our Bungled Trust*, 6 TEX. INT’L L. F. 181, 184–86 (1971) (giving examples of gross neglect by United States in administering Trust Territory of the Pacific Islands and how it had followed the “zoo theory”).

155. H.E. Maude, Notes for Western Pacific High Commissioner on Pitcairn and New Zealand, Oct. 12, 1945, § (C)(b), in 7 PCR 7-3320 (WPA) (specifically mentioning American writer Marc Greene). Examples of Greene’s critical articles are Marc T. Greene, *Pitcairn Island*, 174 THE SPECTATOR 475 (1945) (Eng.) [hereinafter Greene *Pitcairn Island*]; Marc T. Greene, *Pitcairn’s Future*, 182 THE SPECTATOR 74 (1949) (Eng.); Greene, *supra* note 74; Greene, *supra* note 154.

156. The only visits under the High Commission administration were: Deputy High Commissioner R.T. Simons, five days in 1904; Simons, three days in 1907; High Commissioner Cecil Rodwell, seven hours in 1921; H.G. Piling, six hours in 1929; Consul Neill, thirty-seven days in 1937; Deputy High Commissioner Maude, seven months and nineteen days in 1940-1; Maude, eleven days in February 1944; and Maude,

Commissioners governed Pitcairn for fifty-four years, and only one visited: seven hours in 1921 while *en route* to England via the Panama Canal.<sup>157</sup> No Governor of Pitcairn visited his charge for the first twenty years the office existed.<sup>158</sup> When David Scott became governor in 1973, he found there was no ready way to visit the island. He had to rely on the good offices of the Royal Navy to convey him and it did so only because the Navy wished to observe France's nuclear tests nearby.<sup>159</sup> In 1982 the Governor visited for the first time in six years.<sup>160</sup> The governor in 1990, asked the Foreign Secretary for funds to provide for an annual visit by the administration to end the government's cheapskate policy of "ineffective long-range benevolence."<sup>161</sup>

### VIII. REENACTMENTS: 1960S

In 1961, the laws of England were explicitly extended to Pitcairn.<sup>162</sup> Later the reception ordinance would be repeatedly changed to adopt the

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twenty-one hours in August 1944. Maude, *supra* note 155, § (c). The 1929 visit is documented in H.G. PILLING, REPORT ON A VISIT TO PITCAIRN ISLAND, 1929 (1930) (Colonial Office Misc. Rep. 53). This problem of British colonial administrators failing to visit their charges is long-standing. Compare Guy H. Scholefield, *Problems of Reconstruction in the Pacific*, 10 UNITED EMPIRE: J. ROYAL COLONIAL INST., n.s. 330, 334 (1919) (Eng.) (AO) (observing Sir Ernest Bickham Sweet-Escott, Western Pacific High Commissioner from 1912 to 1918, "was not in the whole of his term of six years to visit the most important region of the High Commission, the Solomons and New Hebrides") with Ernest Bickham Sweet-Escott, Letter, *Problems of Reconstruction in the Pacific*, 10 UNITED EMPIRE: J. ROYAL COLONIAL INST., n.s. 338, 338 (1919) (Eng.) (AO) (confirming Scholefield's assertions and adding "he might have added that I was unable to visit Ocean and Pleasant (Walrus) Islands, the Gilbert, Ellice, and Union Islands, Fanning Island, and Pitcairn Island"—but was able to visit Tonga, which was *not* a British colony).

157. GRANTHAM, *supra* note 137, at 78 (Grantham, High Commissioner 1945–47, stated only one High Commissioner ever visited); RODWELL, *supra* note 73 (report of that one visit). Another account of Rodwell's visit is Ivy Dean, *The Loneliest Island: A Visit to Pitcairn*, 98 ADVENTIST REV. & SABBATH HERALD, Oct. 20, 1921, at 13, reprinting account in DAILY MAIL (London), Sept. 13, 1921.

158. SCOTT, *supra* note 112, at 162, 170 (Scott, governor 1973–75, was the first to visit). See also 391 PARL. DEB., H.C. (6th ser.) (2002) 882W (U.K.) (F.C.O. spokesman unable to state when a minister visited the island and no F.C.O. official of any rank had visited in seven years).

159. SCOTT, *supra* note 112, at 170.

160. 433 PARL. DEB., H.L. (5th ser.) (1982) 618 (U.K.) (statement of Lord Belstead).

161. Letter from Robin A.C. Byatt, Governor of Pitcairn, Wellington, to Douglas Hurd, Sec'y of State for Foreign & Commonwealth Affairs, London, Apr. 30, 1990, ¶ 18, in 8 PCR 8-3496 (TNA FPP 014/1/90). Cf. 849 PARL. DEB., H.C. (5th ser.) (1973) 278W (U.K.) (stating economic aid to Pitcairn in 1971 was only £379).

162. Judicature Ordinance No. 1 of 1961, § 7 (LLMC) (repealed by Judicature Ordinance No. 2 of 1970). Under the Pacific Order, 1893, §§ 21–22, English law had applied within the ambit of the High Commissioner. The laws of the United Kingdom do not apply in the dependent territories and generally Parliament does not legislate for them, instead it typically authorizes the sovereign to issue orders-in-council to provide for the territories. ROBERTS-WRAY, *supra* note 132, at 141–42. See generally ROBERT

laws of England as of a specified date; *e.g.*, in 1983 the laws of England as of January 1, 1983, were adopted.<sup>163</sup> Maude's 1940 regulations were replaced with new ordinances, but in substance left largely intact.<sup>164</sup> The Justice Ordinance, 1966, abolished the annually elected assessors and instead selected them off the voter rolls, like drawing names for jury duty.<sup>165</sup> It mostly retained the list of criminal offenses.<sup>166</sup> Codes of evidence and procedure were also enacted.<sup>167</sup>

Also in 1961 the judges of the Fiji Supreme Court were given jurisdiction over the islands in place of the High Commissioner's Court.<sup>168</sup> The office of Chief Magistrate was renamed Island Magistrate in 1964.<sup>169</sup>

The Queen granted the island a coat-of-arms by a Royal Warrant on November 4, 1969:

Azure on a Pile in base Vert fimbriated Or a representation of the *Bounty* Bible proper and in base of the Anchor of H.M.S. *Bounty* Or. And for the Crest on a Wreath Or and Vert on a Mount Vert a representation of the Pitcairn Island Wheelbarrow in front of a Slip of Miro leaved and fructed proper.<sup>170</sup>

Translated from heraldic: a shield of blue, the lower portion in green, the two parts divided by a thin pointed gold band, the point being at the top of the shield. In the lower part is a picture of the *Bounty's* Bible in its

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LIVINGSTON SCHUYLER, PARLIAMENT AND THE BRITISH EMPIRE: SOME CONSTITUTIONAL CONTROVERSIES CONCERNING IMPERIAL LEGISLATIVE JURISDICTION (1929) (discussing the ability of the Imperial Parliament, *i.e.* the Parliament at Westminster, to legislate for colonies).

163. Judicature (Amendment) Ordinance No. 4 of 1983, § 2.

164. Local Government Ordinance No. 1 of 1964 (LLMC); Justice Ordinance No. 1 of 1966 (LLMC). After McLoughlin visited in 1958, he submitted a long list of possible amendments to Maude's code. *See* MCLOUGHLIN 1958 REPORT, *supra* note 74, ¶¶ 109–30.

165. Local Government Ordinance No. 1 of 1964, § 9 (LLMC).

166. *Id.* §§ 78–104.

167. *Id.* §§ 12–52.

168. Judicature Ordinance No. 1 of 1961, § 3 (LLMC). The Pitcairn Order, 1952, § 5, empowered the Governor to create Pitcairnese courts but until that was done the High Commissioner's Court had jurisdiction. *Id.* § 3. The Judicature Ordinance, 1961, put the Fiji Supreme Court over the Island Court but this was a change only in name and not substance, for the High Commissioner's Court the same year became the High Court of the Western Pacific and it continued to have the chief and puisne judges of the Fiji Supreme Court as its members. *See* Western Pacific (Courts) Order, 1961, S.I. 1961/1506, §§ 3–4 (U.K.). The High Court had the same jurisdiction as the High Court in England, *id.* § 14(1), and was governed by the law of England. *Id.* § 15.

169. Local Government Ordinance No. 1 of 1964, §§ 3, 16 (LLMC). This ordinance was characterized as “an intriguing new constitution” in S.A. de Smith, *Constitutional Law*, [1965] ANN. SURV. COMMW. L. 1, 36–37 (1966) (Eng.).

170. Letters Patent, Nov. 4, 1969, in 7 PCR 7-3286.

natural colors sitting on the top of *Bounty's* anchor, the anchor in gold. Atop it, a crest, which is a green hill on top of which is the Pitcairn wheelbarrow, in front of the flower and stem of the miro tree with the leaves and flowers in their natural colors.<sup>171</sup> The island's flag, approved in 1984, is the British Blue Ensign, i.e. the British flag as the canton on a blue field with the coat-of-arms in the field.<sup>172</sup>

#### IX. YOU CAN'T GET THERE FROM HERE, 1960S TO DATE

For a half century after the Panama Canal opened, Pitcairn enjoyed prosperity.<sup>173</sup> But in the 1960s, transpacific jets ended the calls by passenger liners, and goods began to be shipped by modern container ships with little time to call.<sup>174</sup> Pitcairn's population had peaked at 233 in 1937.<sup>175</sup> Between 1960 and 1962, there was a mass exodus, the population

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171. Translated by the Author.

172. The flag's design was recorded by the College of Heralds on April 2, 1984, in their "T" series, vol. 84, p. 190.

173. For a range of views of Pitcairn daily life during the Twentieth and Twenty-First Centuries, see Duncan Cook, *Medical Report*, in U.K. COLONIAL OFFICE, COLONIAL OFFICE REP. NO. 155, PITCAIRN ISLAND, at 56–59 (1938); WOODBURN, *supra* note 97, at 159–69 (1940s); Marden, *supra* note 74, at 725; Ferdon, *supra* note 94, *passim* (same); EDWIN N. FERDON, JR., ONE MAN'S LOG 125–38 (1966) (same); Ernest Schubert, *Pitcairn Island Is Catching Up*, 11 S. PAC. BULL., Apr. 1961, at 55 (New Caledonia) (1960s); Margaret Cowell, *Life on Today's Pitcairn*, 36 PAC. ISLANDS MONTHLY, Dec. 1965, at 49 (Austl.) (same); BALL, *supra* note 5, *passim* (1970s); Ian M. Ball, *Last Week Six Pitcairn Leaders Were Convicted of Sexual Abuse Against Girls As Young As Five*, SUNDAY TELEGRAPH (London), Oct. 31, 2004, at 19 [hereinafter *Ball Last Weeks*] (same); John E. Randall, *Expedition to Pitcairn*, 6 OCEANS, Mar.-Apr. 1973, at 12 (same); Gwenda Cornell, *Pitcairn's Hallmarks: Geographical Isolation, Human Closeness*, 51 PAC. ISLANDS MONTHLY, June 1980, at 63 (Austl.) (1980s); Joanna Barlow, *Keeping Pitcairn in Touch With the World*, 56 GEOGRAPHICAL J. 140 (1983) (Eng.) (same); DEA BIRKETT, *Serpent in Paradise* (1997) (1990s); Simon Winchester, *Pitcairn: The Loneliest Island in the World*, 14 ISLANDS, Mar.-Apr. 1994, at 126 (same); Joshua Benton, *The Dwindling Days of 'A Heaven on Earth'*, THE BLADE (Toledo, Ohio), Aug. 22, 1999, at A1 (same); MARKS, *infra* note 220, *passim* (2000s).

174. *Pitcairn Call to Be Abandoned*, 38 PAC. ISLANDS MONTHLY, July 1967, at 109 (Austl.) (stating Shaw Savill line ending service); SCOTT, *supra* note 112, at 174 (stating that after Panama Canal opened "several cargo ships travelling in each direction passed within sight of the island every month. Many of these were prepared to call to deliver or collect small quantities of freight and mail, and to convey a passenger or two [but by 1973] conventional merchant ships were increasingly being replaced by much larger container ships whose schedules made them prohibitively expensive to stop to unload small parcels of goods."); 428 PARL. DEB., H.L. (5th ser.) (1982) 187 (U.K.) (statement of Lord Greenway) (stating container ships changed access to Pitcairn). See also Neill Report, *supra* note 78, at 9 (describing shipping arrangements in 1937); R. Gerard Ward, *Earth's Empty Quarter?: The Pacific Islands in a Pacific Century*, 155 GEOGRAPHICAL J. 235 (1989) (Eng.) (reviewing changes in travel patterns and economics); 2004 DECOLONIZATION REPORT, *supra* note 115, ¶ 33 (noting company whose container ships represented 20 of 35 annual calls at island suspended service to Pitcairn in 2003).

175. SILVERMAN, *supra* note 9, at 84, 92–95.

dropping from 140 to 90 because a single shipping company decided to reroute its vessels away from Pitcairn.<sup>176</sup>

Pitcairn is 300 miles away from the nearest inhabited land, Mangareva in the Gambiers of French Polynesia.<sup>177</sup> The only access is by sea and the lack of good connections to the outside world has been dangerous for Pitcairners.<sup>178</sup> The inaccessibility limits the islanders' future, something noted as far back as 1904.<sup>179</sup> (Describing the difficulty in reaching Pitcairn is another staple of recent writing.)<sup>180</sup> A 1980s effort by a coal millionaire from Virginia to lease Henderson Island and build airstrips there and on Pitcairn—a plan which would have provided security, financial and otherwise, to the islanders and was supported by them—was killed by the

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176. T. Reid Cowell, Report on a Visit to Pitcairn Island from 31st December, 1963 to 22nd January, 1964, ¶1 (1964), in 7 PCR 7-3039 (WPA).

177. Donald A. McLoughlin, *An Account of the Development of the System of Government and Laws on Pitcairn Island During the Nineteenth Century*, 10 TRANS. & PROC. FIJI SOC'Y 138, 139 (1969) [hereinafter *McLoughlin Nineteenth*]. Tristan da Cunha, a British possession in the South Atlantic, claims to be the most remote inhabited island in the world. SIMON WINCHESTER, ATLANTIC: GREAT SEA BATTLES, HEROIC DISCOVERIES, TITANIC STORMS, AND A VAST OCEAN OF A MILLION STORIES 437–38 (2010). Winchester notes there are even more remote islands—e.g., Kerguelén, Île Amsterdam, and Bjørnøya—but none of these are inhabited. Winchester, *supra* note 173, at 130.

178. See, e.g., *Shipping Will Improve, Promise to Pitcairn*, 42 PAC. ISLANDS MONTHLY, Mar. 1971, at 68 (Austl.) (stating Pitcairners were nearly out of food and water because of a drought and lack of shipping to provide relief supplies); *Pitcairn Man Dies on Mercy Dash*, DOMINION POST (Wellington, N.Z.), May 23, 2011, at A3 (discussing ill Pitcairner who died during the 32-hour sail from Pitcairn to Mangareva); *Morning Report: Mercy Dash Fails to Save Unwell Pitcairn Man* (Radio N.Z. broadcast, May 23, 2011) (further discussing death and stating Pitcairner was to be put on a medevac plane at Mangareva), available at <http://www.radionz.co.nz/national/programmes/morningreport/audio/2489692/mercy-dash-fails-to-save-unwell-pitcairn-man.aspx> (last visited Jan. 4, 2012).

179. Barlow, *supra* note 173, at 140 (noting lack of access and Britain's unwillingness to spend anything on the island); Diana Souhami, *Fletcher's Legacy*, 136 NEW STATESMAN, June 4, 2007, at 48 (Eng.) (noting how French islands in the Pacific have good connections with the outside world in contrast to nothing being done by Britain for Pitcairn); U.K. COLONIAL OFFICE, *supra* note 40, at 10 (noting in 1904 "the future prosperity and well-being of the Pitcairn people depend entirely upon their ability to maintain communication with the neighboring islands").

180. See, e.g., SCOTT, *supra* note 112, at 162 (island's governor); Eugenia Sheppard, *Visiting in Wake of the 'Bounty'*, PLAIN DEALER (Cleveland, Ohio), May 6, 1973, at 41 (reporter); Mitchell F. Bunkin, *Getting the Mail to Pitcairn*, 22 PITCAIRN LOG, Sept.-Nov. 1994, at 10 (mail); Matthew Bell, *Police Go 12,000 Miles on the Disappearing Rape Case*, SUNDAY MIRROR (London), Oct. 20, 1996, at 33 (police); Michael Wood, *Field Trip to Pitcairn*, 89 CHARTERED ACCT. J., Apr. 2010, at 12 (N.Z.) (island's auditors); MARKS, *infra* note 220, at 4–5 (reporters); Claire Harvey, *Pitcairn Trials Test Skills of Intrepid Reporters*, THE AUSTRALIAN (Sydney, N.S.W.), Oct. 7, 2004, at 17 (same). The best account is Mitchell F. Bunkin, *My Voyage to Pitcairn*, 21 PITCAIRN LOG, June-Aug. 1994, at 5.

British government at the behest of scientists interested in wildlife but not their fellow men.<sup>181</sup>

The anchorage at Pitcairn is poor.<sup>182</sup> And once landed, the Hill of Difficulty, a 200-foot, nearly vertical ascent, must be surmounted.<sup>183</sup> Only in the last decade has Britain invested in infrastructure to make arrivals easier by building a breakwater and a road from the landing to the village.<sup>184</sup> Even communicating with the island has long been difficult. For decades, immediate contact was maintained via radiogram and ham radio.<sup>185</sup> As late as 1982, all official communications were done via Morse.<sup>186</sup> The island was connected to the international phone system only

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181. 439 PARL. DEB., H.L. (5th ser.) (1983) 1130W–1131W (U.K.) (discussing proposal of Arthur M. “Smiley” Ratliff); 38 PARL. DEB., H.C. (6th ser.) (1983) 439W (U.K.) (same); *Has Smiley the Answer for Pitcairn?*, 53 PAC. ISLANDS MONTHLY, Nov. 1982, at 31 (Austl.) (same); Gary Karasik, *Smiley Ratliff: Some Men Are Islands*, 4 ISLANDS, Oct. 1984, at 16 (same); WINCHESTER, *supra* note 154, at 280–83 (same); 433 PARL. DEB., H.L. (5th ser.) (1982) 620 (U.K.) (statement of Lord Belstead) (noting Island Council approved plan); James Serpell, *Desert Island Risk*, 98 NEW SCIENTIST 320 (1983) (Eng.) (opposing plan because of environmental concerns); *Island at Risk*, 17 ORYX: J. FAUNA PRESERVATION SOC’Y 109 (1984) (Eng.) (same); F. Raymond Fosberg, *Henderson Island Threatened*, 10 ENVTL. CONSERVATION 171 (1983) (Switz.) (same); 57 PARL. DEB., H.C. (6th ser.) 364W (U.K.) (giving statement of Foreign Office minister that plan was dead); F. Raymond Fosberg, *Henderson Island Saved*, 11 ENVTL. CONSERVATION 183 (1984) (Switz.) (noting plan was dead); Harry L. Yazell, *Pitcairn—It Might Have Been Different*, 46 VOICE OF PROPHECY NEWS, Jan.-Feb. 1988, at 6 (lamenting killing plan). The airstrip proposal led to a comprehensive scientific expedition to the islands. Juliet Vickery, *Pitcairn Islands: Paradise Past, Paradise Present?*, 9 TRENDS IN ECOLOGY & EVOLUTION 316 (1994) (Neth.). The results of the expedition are presented in THE PITCAIRN ISLANDS: BIOGEOGRAPHY, ECOLOGY, AND PREHISTORY (Tim G. Benton & Tom Spencer eds., 1995), *reprinting* Symposium, 56 BIOLOGICAL J. LINNEAN SOC’Y 1 (1995) (Eng.) (the entire volume consists of papers on the expedition). For Ratliff, see Bill Archer, *Region Laments Passing of “Smiley” Ratliff*, BLUEFIELD DAILY TELEGRAPH (Bluefield, W. Va.), Nov. 3, 2007, at 1, *available at* <http://bdtonline.com/local/x51951.1612/Region-laments-passing-of-entrepreneur-Smiley-Ratliff> (last visited Jan. 5, 2012).

182. RODWELL, *supra* note 73, at 16 (report of A.H. Summers, Commander, S.S. *Ionic*, assessing anchorage).

183. SPENCER MURRAY, *supra* note 9, at 54. The best description of the laborious nature of getting people and supplies from the landing to the village before the road and motor vehicles is MCLOUGHLIN 1958 REPORT, *supra* note 74, ¶ 5.

184. 424 PARL. DEB., H.C. (6th ser.) (2004) 97WS (U.K.) (stating £1.9 million allocated for road and breakwater); 455 PARL. DEB., H.C. (6th ser.) (2007) 383W (U.K.) (breakwater); INT’L DEV. COMM., EFFECTIVENESS OF EC DEVELOPMENT ASSISTANCE, 1999–2000, H.C. 669, ¶¶ 167–68 (U.K.) (road). A 2008 article claimed Britain had spent £15 million on Pitcairn since the rape investigations began. Kathy Marks, *Islands of Dark Secrets*, 137 NEW STATESMAN, Aug. 4, 2008, at 16. A later article said the total was up to £20 million. *Mayor of Pitcairn Island Charged With Child Porn Offenses*, THE INDEPENDENT (London), Dec. 6, 2010, at 26 [hereinafter *Mayor of Pitcairn Island Charged With Child Porn Offenses*].

185. MARKS, *infra* note 220, at 29 (radiograms); SCOTT, *supra* note 112, at 176 (ham radio).

186. 428 PARL. DEB., H.L. (5th ser.) (1982) 180 (U.K.) (statement of Lord McNair). Cf. U.S. TRUST TERR. OF THE PAC. IS., 1955 ANNUAL REPORT OF THE HIGH COMMISSIONER OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS TO THE SECRETARY OF THE INTERIOR FOR THE FISCAL YEAR ENDED

in 1985—though for years before, calls could be patched through via shortwave by ham operators.<sup>187</sup> The Internet arrived in 2002.<sup>188</sup>

“[Y]ou can reach any where on the island in minutes. Wherever you stand, you hear the crash of the surf. There’s nowhere to go; no escape,” observed a visitor in the 1990s.<sup>189</sup> Confinement did not appeal to many islanders. “Pitcairn is a paradise, but there’s not a lot to do in Paradise.”<sup>190</sup> So the difficulty in travel meant many left permanently.<sup>191</sup> Pitcairn’s is the “familiar story of the depopulation of inconvenient and inaccessible places where there are few opportunities and few attractions to young people who

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JUNE 30, at 28 (1955) [hereinafter U.S. TRUST TERR. OF THE PAC. IS., 1955 ANNUAL REPORT] (stating United States had established radiotelephone circuits throughout the Trust Territory after only seven years administering the islands).

187. Peter W. Barnes, *Think It’s Tough to Make a Call to a Tiny Pacific Island? Not Atoll*, WALL ST. J., July 10, 1985, at 1 (reporting American Telephone & Telegraph Co. had begun service to Pitcairn); FERDON, *supra* note 173, at 128–29 (giving account by Ferdon of being connected from Pitcairn to his wife in Santa Fe, N.M., a ham radio operator in Mesa, Ariz., being the intermediary by telephoning Ferdon’s wife and connecting the telephone to the radio). More recently, telephone calls were made via Inmarsat satellite and cost several dollars a minute. Winchester, *supra* note 173, at 126, 130. Cf. Henry Robinson Palmer, *A Visit to Pitcairn’s Island*, 38 HARPER’S WKLY. 1167, 1167 (1894) (saluting Pitcairn’s lack of telegraph cables, sounding like Thoreau in *Walden*).

188. Joe Voergst, *From Wild to Wired: The World’s Most Famous Outpost Goes Online*, 30 ISLANDS, June 2010, at 24. Cf. 303 PARL. DEB., H.C. (6th ser.) (1997) 182W–183W (U.K.) (discussing lack of Internet access on island).

189. Dea Birkett, *Purgatory in Paradise*, THE AGE (Melbourne, Vict.), Oct. 2, 2004, Insight Section at 7.

190. Bamaby Conrad, *What Happened to Mister Christian of H.M.S. Bounty*, 18 SMITHSONIAN, Feb. 1988, at 92, 100 (quoting an islander describing Pitcairn terrain).

191. Cf. John Connell, *Islands Under Pressuer—Population Growth and Urbanization in the South Pacific*, 13 AMBIO 306, 307 (1984) (Swed.) (stating Pitcairn and many Pacific territories have more natives living abroad than at home); John Lynch & France Mugler, *English in the South Pacific*, 8 WORLD ENGLISHES (Issue 1) 20 (1989) (Eng.) (stating “there has been substantial emigration from a number of the Polynesian countries, especially to New Zealand and the United States. Indeed, there are more Niueans and Tokelauans in New Zealand than there are in Niue and Tokelau.”). Noting the decline in population has been another staple of Pitcairn articles for decades. See, e.g., Greene *Pitcairn Island*, *supra* note 154, at 33; Robert Trumbull, *Pitcairn Island Reverses Exodus: But Future of British Colony of 88 Remains in Doubt*, N.Y. TIMES, Oct. 5, 1969, at 11 (giving a particularly good account); Harriet Choice, *Pitcairn Island: From Bligh’s Bounty to Long, Lonely Decline*, DAILY NEWS (Los Angeles, Cal.), Dec. 22, 1985, (Travel Section), at 1; John Connell, *The End Ever Nigh: Contemporary Population Change on Pitcairn Island*, 16 GEOJOURNAL 193 (1988) (Ger.); Harriet Shapiro, *Trouble in Christian’s Paradise*, 31 PEOPLE WKLY., Apr. 17, 1989, at 44; Benton, *supra* note 173, at A1; Michael J. Field, *A Few Good Men Needed on Pitcairn*, AGENCE FRANCE-PRESSE, Feb. 2, 1998, available at <http://archives.pireport.org/archive/1998/february/02-04-05.html> (last visited Jan. 4, 2012); Bunkin, *supra*, note 180 at 5. But the phenomenon was reported in the 1890s. Cf. Letter from Capt. Henry H. Dyke, *H.M.S. Comus*, to Sec’y of the Admiralty, London, Nov. 23, 1897, ¶ 5 (stating young men wanted to leave), in U.K. COLONIAL OFFICE, CORRESPONDENCE RELATING TO THE CONDITION OF THE PITCAIRN ISLANDERS, 1899, [C. (2d series) 9148], at 2.

have to leave in order to obtain further education, and there are few reasons to attract them back.”<sup>192</sup>

## X. FIJI INDEPENDENCE: 1970

Fiji won independence in 1970.<sup>193</sup> A new Pitcairn Order and companion royal instructions were issued by the Queen, which served as the island’s fundamental law until 2010.<sup>194</sup> Fiji’s independence caused Britain to entrust the governorship of Pitcairn to the British High Commissioner<sup>195</sup> to New Zealand.<sup>196</sup> His office was chosen for reasons similar to why a transfer of the islands had been mooted—New Zealand possessed shipping connections to Pitcairn, a Pitcairn expatriate community, and Pitcairn’s purchasing agents.<sup>197</sup> London had given little

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192. 428 PARL. DEB., H.L. (5th ser.) (1982) 179 (U.K.) (statement of Lord McNair). *See also Radio on Pitcairn Upsets Its Youth*, N.Y. TIMES, May 24, 1938, at 21 (noting news of the outside world via radio was making people want to leave); Ferdon, *supra* note 94, at 83 (attributing exodus of young to limited educational opportunities); 2004 DECOLONIZATION REPORT, *supra* note 115, ¶ 1 (same); Rønne, Rønne, *supra*, note 127 at 38 (alleging Adventist Church’s “anti-pleasure” attitude was driving young away); Dea Birkett, *Fletcher Christian’s Children*, N.Y. TIMES, Dec. 8, 1991 (Magazine), at 66, 72 (noting lack of opportunities for young islanders).

193. Fiji Independence Act 1970, c. 50 (U.K.); Fiji Independence Order, 1970, [1970] 3 S.I. 6630 (U.K.). In 2010, the Fiji archives admitted it lost its original copy of the Fiji Independence Order, which is the equivalent of America’s National Archives losing both the Declaration of Independence and the Constitution. *See Fiji Loses Copy of Independence Order*, DOMINION POST (Wellington, N.Z.), Oct. 16, 2010, at A23.

194. Pitcairn Order, 1970, S.I. 1970/1434 (U.K.), *as amended by* Pitcairn (Amendment) Order, 2000, S.I. 2000/1340 (U.K.) *and* Pitcairn (Amendment) Order, 2002, S.I. 2002/2638 (U.K.); Pitcairn Royal Instructions, 1970, [1970] 3 S.I. 6725 (U.K.); U.K. FOREIGN & COMMW. OFFICE, PARTNERSHIP FOR PROGRESS AND PROSPERITY: BRITAIN AND THE OVERSEAS TERRITORIES, 1999, Cm. 4264, at 62 [hereinafter PARTNERSHIP FOR PROGRESS AND PROSPERITY]. The Royal Instructions continued the rules on the form and subject of ordinances contained in the prior set of instructions. For correspondence discussing the drafting of the Pitcairn Order, *see* Letter from R.N. Posnett, Pacific & Indian Ocean Dep’t, Foreign & Commw. Office, London, to Robert S. Foster, Governor of Fiji & Pitcairn, Suva, Fiji, July 23, 1970, in 7 PCR 7-3329, and the reply letter, Aug. 11, 1970, in 7 PCR 7-3333; Memorandum from D.G. Gordon-Smith, Legal Adviser, Foreign & Commw. Office, to Posnett, Aug. 20, 1970, in 7 PCR 7-3336; Letter from Foster to Posnett, Sept. 22, 1970, in 7 PCR 7-3339, and the reply letter dated Oct. 2, 1970, in 7 PCR 7-3341.

195. As an “ambassador” represents one head-of-state to another, Commonwealth countries which recognize Queen Elizabeth II as head-of-state—such as the United Kingdom and New Zealand—would, if they exchanged “ambassadors,” be sending a representative *from* the Queen to the Queen. These countries instead call their mutual ambassadors “high commissioners.” *See* ROBERT HICKEY, HONOR & RESPECT: THE OFFICIAL GUIDE TO NAMES, TITLES, AND FORMS OF ADDRESS 32 (2008).

196. 263 PARL. DEB., H.C. (6th ser.) (1995) 1020W (U.K.); PARTNERSHIP FOR PROGRESS AND PROSPERITY, *supra* note 194, at 62. *See also* FOREIGN AFFAIRS COMM., OVERSEAS TERRITORIES: REPORT, 2007-8, H.C. 147-II, Ev-58 (U.K.) (discussing criteria for appointing governors) [hereinafter FOREIGN AFFAIRS OVERSEAS].

197. Memorandum from the Acting Commissioner, South Pacific Office, Suva, Fiji, to Donald A. McLoughlin, Legal Adviser, Feb. 12, 1970, in 7 PCR 7-3324. The United States also did some governing

thought to how Fijian independence would affect Pitcairn. There is no mention of the island in the debate in Parliament on the Fiji Independence Act.<sup>198</sup> The bureaucrats had no time to plan the transition, since the Act was being considered by Parliament only twelve weeks before Independence Day.<sup>199</sup> And the fact the Commonwealth Office—the former Colonial Office—had been merged with the Foreign Office just a few years before meant official attention was focused on foreign rather than colonial issues.<sup>200</sup>

After the administration of Pitcairn fell upon him, the new governor complained about “the problems involved, which may not have been fully realised in London, in transferring responsibility for a dependent territory from a well-organized colonial administration to a small diplomatic post like” his and pleaded for the resources to properly administer the island. Among the issues were the lack of staff in Auckland for the day-to-day work, the lack of direct radio communications between New Zealand and Pitcairn—whose radio aerials were still pointed toward Fiji—the lack of anyone to audit the Pitcairn books, and the fact his legal adviser was in Fiji. Previously, staff had been borrowed from the Fiji colonial administration for free—but in New Zealand there were no resources to borrow and everything had to be paid for.<sup>201</sup> The High Commissioner bluntly told his superiors that if he did not get the proper funding London needed to find someone else to be Pitcairn’s governor.<sup>202</sup>

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from afar when it ran the Trust Territory of the Pacific Islands from Honolulu and then Guam. U.S. TRUST TERR. OF THE PAC. IS., 1952 ANNUAL REPORT OF THE HIGH COMMISSIONER OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS TO THE SECRETARY OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, at 2–3 (1952) (stating that when the Navy Department administered the Trust Territory, 1947–51, territorial headquarters was at Pearl Harbor, and in 1951, when the Interior Department took over, headquarters moved to Fort Ruger, Honolulu); U.S. TRUST TERR. OF THE PAC. IS., 1955 ANNUAL REPORT, *supra* note 186, at 4 (stating headquarters moved in 1954 to Guam, also outside the Trust Territory). *See also* RUTH G. VAN CLEVE, THE OFFICE OF TERRITORIAL AFFAIRS 140, n.\* (1974) (Praeger Library of U.S. Gov’t Dep’ts & Agencies) (discussing seats of government of Trust Territory).

198. *See* 803 PARL. DEB., H.C. (5th Ser.) (1970) 1427–59 (U.K.).

199. *See id.*

200. 761 PARL. DEB., H.C. (5th ser.) (1968) 1866 (U.K.) (statement of John Biggs-Davison) (stating the merger subordinated the interests of colonial citizens to good relations with foreigners). *See also* 491 PARL. DEB., H.C. (6th ser.) (2009) 160WH (U.K.) (statement of Andrew Rosindell) (stating the overseas territories “should not be under foreign affairs. The [overseas territories] are not foreign; they are British. Why is it under foreign affairs? Why are British overseas territories—territories of Her Majesty the Queen—under the Foreign Office? They are neither foreign nor Commonwealth. They are not members of the Commonwealth in their own right. There are British overseas territories in the Commonwealth only via Britain, so they should not really be under the Foreign Office at all.”).

201. *Cf.* FIJI LEGISLATIVE COUNCIL DEBATES, SECOND SESSION, 1908, at 32 (1909) (Governor of Fiji and High Commissioner stating Fiji government provided free space to High Commission).

202. Letter from Arthur Galsworthy, Governor of Pitcairn, Wellington, to David L. Cole, Foreign & Commw. Office, London, Nov. 23, 1970, *in* 7 PCR 7-3360.

The Governor appoints a commissioner, who handles the day-to-day affairs.<sup>203</sup> The actual administration has been run from the British consulate in Auckland, three thousand nautical miles from Pitcairn.<sup>204</sup> Only in recent years have efforts been made to devolve responsibility to the islanders or station an official liaison on Pitcairn, despite such calls having been made for a century.<sup>205</sup>

Fiji's independence meant its courts were severed from Pitcairn's.<sup>206</sup> A Pitcairn Supreme Court was created on paper but no judges or staff were appointed and its phantom existence continued until the Twenty-First Century.<sup>207</sup> Upon the creation of the Supreme Court the Island Commissioner in New Zealand wrote the Pitcairners: "With Pitcairn's splendid record of freedom from crime and civil litigation it seems highly improbable that a need will ever arise for the establishment of such courts."<sup>208</sup> No provision was made for appeals from the island until 2000.<sup>209</sup>

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203. Salt v. Fell, [2006] E.R.N.Z. 475, ¶ 5 (N.Z. Emp. Relations Auth. 2004).

204. Salt v. Fell, [2008] NZCA 128, [2008] 3 N.Z.L.R. 193, ¶¶ 4–5; PARTNERSHIP FOR PROGRESS AND PROSPERITY, *supra* note 194, at 62.

205. FOREIGN AFFAIRS OVERSEAS, *supra* note 196, at Ev-6 (statement of Pitcairn Commissioner); U.N. Second International Decade for the Eradication of Colonialism: Pacific Regional Seminar, Nouméa, New Caledonia, *Statement of Pitcairn Islands Study Center (Dr. Herbert Ford, USA)*, at 2, 5–6, U.N. Doc. PRS/2010/DP.5 (May 18, 2010) (discussing administrative changes); U.N. G.A., Special Comm. on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, *Pitcairn*, ¶¶ 6–7, U.N. Doc. A/AC.109/2011/4 (Jan. 9, 2011) (discussing the creation of division managers on island and creating "fair and transparent systems of Government job selection and performance management"); U.N. G.A., Special Comm. on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, *Pitcairn*, ¶ 7, U.N. Doc. A/AC.109/2007/6 (Mar. 9, 2007) (stating British diplomat stationed there as "Governor's Representative" since 2003); *Maude General*, *supra* note 100, ¶ 41 (writing in 1941 upon reviewing colonial files: "I was impressed by the long series of reports from about 1890 onwards emphasizing, often in strong terms, the unsatisfactory state into which the island's affairs had been permitted to get and urging, for the most part, the appointment of a resident administrative official as the only solution"). See also Glynn Christian, *supra* note 154, at 9 (calling for permanent government representative on the island beyond the schoolteacher).

206. Even after independence, appeals from the High Court of the Western Pacific still went to the Court of Appeals of Fiji and then to the Privy Council. Western Pacific (Appeals to Privy Council) Order, 1970, S.I. 1970/1435 (U.K.); Western Pacific (Courts) (Amendment) Order, 1971, S.I. 1971/715 (U.K.).

207. Judicature Ordinance No. 2 of 1970, § 3 (repealed by Judicature (Courts) Ordinance No. 2 of 1999, *codified in LAWS OF PITCAIRN*, *supra* note 21, c. 2) (continuing previous set-up)

208. Letter from C.E. Dymond, Pitcairn Island Commissioner, Auckland, to the Island Magistrate, Nov. 6, 1970, ¶ 3, in 7 PCR 7-3352.

209. Pitcairn Court of Appeal Order, 2000, S.I. 2000/1341 (U.K.); Pitcairn (Appeals to Privy Council) Order, 2000, S.I. 2000/1816 (U.K.). See also *Neill Report*, *supra* note 78, at 15 (noting that when a proposed legal code was submitted to the Colonial Office in 1938, the code's author "purposely made no

In its campaign in the 1970s against colonialism the United Nations (U.N.) repeatedly pressed for Pitcairn's independence.<sup>210</sup> Despite the fact that nobody, let alone the Pitcairners, was calling for such a step "such [was] the emotion-laden drive to eradicate the last vestiges of 'colonialism.' The non-viability of [this] bit of real estate [was] irrelevant."<sup>211</sup> The islanders were opposed to any change in their status.<sup>212</sup> (Though there have been reports, denied by the government, that Pitcairners are interested in being annexed by France.)<sup>213</sup> More recently, the U.N. has backed off and

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provision for appeals. The jurisdiction is very limited, and it would be impossible to provide for an expeditious hearing of appeals.").

210. See, e.g., G.A. Res. 2709 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8249 (Vol. 1), at 99 (Dec. 14, 1970). See generally Robert E. Gorelick, *Self-Determination and the Absurd: The Case of Pitcairn*, 23 INDIAN J. INT'L L. 17 (1983) (discussing the U.N.'s decolonization campaign). The basis for the U.N.'s decolonization efforts is Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (XV), U.N. GAOR, 15th sess., Supp. No. 16, U.N. Doc. A/4684, at 66 (1961); Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (XV), U.N. GAOR, 15th sess., Supp. No. 16, U.N. Doc. A/4684, at 29 (1961) (giving standards for self-determination). See also The Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1654 (XVI), U.N. GAOR, 16th sess., Supp. No. 17, U.N. Doc. A/5100, at 65 (1962) (stating decolonization must be pursued immediately). Cf. *E. Timor (Port. v. Austl.)*, 1995 I.C.J. 90, ¶ 29 (June 30) (stating right to self-determination is "one of the essential principles of contemporary international law"). See also Hurst Hannum, *Rethinking Self-Determination*, 34 VA. J. INT'L L. 1, 11–28 (1993) (discussing U.N. and self-determination); Thomas M. Franck & Paul Hoffman, *The Right of Self-Determination in Very Small Places*, 8 INT'L L. & POL. 331 (1976); James Crawford, *Non Self-Governing Territories: The Law and Practice of Decolonization, in THE CREATION OF STATES IN INTERNATIONAL LAW* ch. 14 (2d ed. 2006); Anthony H. Angelo, *To Be or Not to Be . . . Integrated, That Is the Problem of Islands*, 2 REVUE JURIDIQUE POLYNÉSIENNE 87 (2002) (Fr. Polynesia); Barrie McDonald, *Decolonization and Beyond: The Framework for Post-Colonial Relationships in Oceania*, 21 J. PAC. HIST. 115 (1986) (Austl.); Alison Quentin-Baxter, *Sustained Autonomy: An Alternative Political Status for Small Islands?*, 24 VICT. U. WELLINGTON L. REV. 1 (1994) (N.Z.) (providing an astute analysis of alternatives for small Pacific Islands).

211. Howard F. Smith, Book Review, 44 PAC. AFFAIRS 650 (1971) (B.C.). See also Roger Fisher, Book Review, 66 AM. J. INT'L L. 644 (1972) (U.N. ignored "the real problems of the small places, their tangible problems of economics and administration."); Roberto Adam, *Micro-states and the United Nations*, 2 ITALIAN Y.B. INT'L L. 1976, at 80 (1977). Cf. Press Release, Pitcairn Islands Study Center, Pitcairn Island Under Martial Law and "Selective Prosecution" Academic Charges (May 27, 2003) (American professor who heads the Study Center stating that because of British mistreatment of island the residents should declare independence and send a delegation to Turtle Bay asking for admission), available at <http://library.puc.edu/pitcairn/news/releases/news27-05-27-03.shtml> (last visited Jan. 4, 2012); Kim Ruscoe, *Pitcairn Asks UN to Remove British Police*, DOMINION POST (Wellington, N.Z.), May 30, 2003, at A4 (same).

212. 880 PARL. DEB., H.C. (5th ser.) (1974) 19W–20W (U.K.) (reprinting resolution of the Pitcairn Island Council of June 16, 1968). See also 603 PARL. DEB., H.C. (5th ser.) (1959) 1283–369 (U.K.) (discussing the futures of Britain's small colonies).

213. Compare Simon Winchester, *Mutiny for French Bounty*, THE GUARDIAN (London), June 12, 1993, at 26; York Membery, *Bounty Island Shapes up for Final Mutiny*, SUNDAY TIMES (London), Apr. 16, 2000, at 29; and Victoria Main, *A Mutiny Too Far as Bounty Heirs Drift to France*, THE TIMES (London),

seems content with the *status quo*.<sup>214</sup> Britain objects to Pitcairn being listed by the U.N. as a “non self-governing territory” subject to its review.<sup>215</sup>

In the 1990s, efforts were made by Britain to spur economic development and attract tourists.<sup>216</sup> A new—and minor—source of income has been registrations for the island’s Internet domain.<sup>217</sup> The islanders began selling pure honey—which has been endorsed by the House of Windsor.<sup>218</sup> The honey and curios—still a mainstay of the economy—are now sold online.<sup>219</sup>

## XI. RAPE INVESTIGATIONS: 1996<sup>220</sup>

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July 8, 2000, at 13 *with* 238 PARL. DEB., H.C. (6th ser.) (1994) 544W–545W (U.K.) (denying reports of Pitcairnese disloyalty).

214. See, e.g., G.A. Res. 65/115, U.N. GAOR, 65th Sess., Supp. No. 23, U.N. Doc. A/RES/65/115 A-B, at 13 (Jan. 20, 2011).

215. U.K. FOREIGN & COMMW. OFFICE, SEVENTH REPORT OF THE FOREIGN AFFAIRS COMMITTEE, SESSION 2007–08, OVERSEAS TERRITORIES: RESPONSE OF THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS, 2008, Cm. 7473, ¶ 14.

216. Martin Williams, *Pitcairn: A Two-Century Old Haven*, 26 N.Z. INT’L REV., Mar.–Apr. 2001, at 26 (Pitcairn Governor Williams discusses economic development); Bruce Ansley, *The Pitcairn Problem*, 189 THE LISTENER, July 26, 2003 (N.Z.) (TL) (discussing development); Angela Gregory, *Pitcairn Looks to Break Out of Its Isolation*, N.Z. HERALD (Auckland), Mar. 30, 2006, at A12 (discussing economic development with island commissioner); Elenoa Baselala, *Getting Ready for International Dealings*, ISLANDS BUS., Oct. 2007, at 35 (Fiji); Nick Squires, *Pitcairn Island Wants to End Centuries of Isolation*, OTTAWA CITIZEN (Ont.), Nov. 11, 2001, at A12; Oliver Bennett, *Bounty Islands Fear Tourists Will Result in Paradise Lost*, THE INDEPENDENT (London), May 6, 2001, at 2 (plans for hotel on Oeno); Tim Donoghue, *Pitcairn Hopes to Cash in on Kivi Cop’s Island Wedding*, DOMINION POST (Wellington, N.Z.), June 11, 2011, at A1 (promoting island as “adventure wedding” destination). See also Maria Amoamo, *Remoteness and Myth Making: Tourism Development on Pitcairn Island*, 8 TOURISM PLANNING & DEV. 1 (2011) (Eng.) (discussing appeal of Pitcairn).

217. Helen Studd, *Mutiny Isle Awaits Online Bounty*, THE TIMES (London), Dec. 27, 2000, at 3; Philip E. Steinberg & Stephen D. McConnell, *Mutiny on the Bandwith: The Semiotics of Statehood in the Internet Domain Registries of Pitcairn Island and Niue*, 5 NEW MEDIA & SOC’Y 47 (2003); PITCAIRN SINGLE PROGRAMMING DOCUMENT, *supra* note 129, at 19–21 (showing income from registrations). Other islands have the same idea, most prominently Tuvalu (.tv) and the Cocos (Keeling) Islands (.cc). Navin Katyal, *The Domain Registration .BIZness: Are We Being “Pulled Over” on the Information Super Highway?*, 24 HASTINGS COMM. & ENT. L.J. 241, 251 (2002).

218. James Driscoll, *Beekeeping in Pitcairn*, 6 N.Z. BEEKEEPER, Feb. 1999, at 16; 2004 DECOLONIZATION REPORT, *supra* note 115, ¶ 23 (discussing apiculture); Sri Carmichael, *I’ll Let You Off, Mr. Christian: You Make Honey Fit for a Queen*, EVE STANDARD (London), Jan. 8, 2010, at 3. Cf. Apiaries Ordinance No. 1 of 1999 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 18) (enacted to protect the honey’s pureness).

219. Voergst, *supra* note 188, at 24.

220. There is a significant literature on the rape cases. There are two books on them. The first is KATHY MARKS, *LOST PARADISE: FROM MUTINY ON THE BOUNTY TO A MODERN-DAY LEGACY OF SEXUAL MAYHEM*, THE DARK SECRETS OF PITCAIRN ISLAND REVEALED (2009), to give the title of the American edition, written by a reporter who covered the trials. This book was published in Britain as TROUBLE IN

The need for effective policing was long noted. For example, an official in 1953 observed the Governor's appointment of a native islander as policeman on Pitcairn, which came with "no official backing of any description, save a tenuous channel of correspondence, some 3000 miles long, was morally wrong."<sup>221</sup> But the Foreign Office told the press it was "not viable" to have a full-time police officer there.<sup>222</sup> After the eleven-year-old daughter of an Australian resident on Pitcairn reported being

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PARADISE: UNCOVERING THE DARK SECRETS OF BRITAIN'S MOST REMOTE ISLAND (2008) and in Australia as PITCAIRN: PARADISE LOST: UNCOVERING THE DARK SECRETS OF A SOUTH PACIFIC FANTASY ISLAND (2008) (All page references herein are to the American edition.). Academics discuss the cases in the essay collection Oliver, *supra* note 154. The chapters therein are: Dawn Oliver, *Problems on Pitcairn* (an introduction to topic and the book) [hereinafter Oliver *Problems on Pitcairn*]; Dawn Oliver, *The Pitcairn Prosecutions: Paper Legal Systems and the Rule of Law* (an overview of the cases); Andrew Lewis, *Pitcairn's Tortured Past: A Legal History*; Gordon Woodman, *Pitcairn Island: A Peculiar Case of the Diffusion of the Common Law*; Dino Kritsiotis & A.W.B. Simpson, *The Pitcairn Prosecutions: An Assessment of Their Historical Context by Reference to the Provisions of Public International Law*; Colm O'Connell, "A Million Mutinies Now: Why Claims of Cultural Uniqueness Cannot Be Used to Justify Violations of Basic Human Rights"; George Letsas, *Rights and Duties on Pitcairn Island*; and Stephen Guest, *Legality, Reciprocity, and the Criminal Law on Pitcairn*. There are a number of articles on the prosecutions in foreign legal publications: Anthony Trenwith, *The Empire Strikes Back: Human Rights and the Pitcairn Proceedings*, 7 J. S. PAC. L. 6 (2003) (Vanuatu) (early article before the trials began on legal issues in cases); Anthony H. Angelo & Andrew Townsend, *Pitcairn: A Contemporary Comment*, 1 N.Z. J. PUB. INT'L L. 229 (2003) (suggesting restorative justice better solution than criminal trials); Anthony H. Angelo & Fran Wright, *Pitcairn: Sunset on the Empire?*, 2004 N.Z. L.J. 431 (discussing prosecutions and future for Pitcairn) [hereinafter Angelo & Wright *Pitcairn Sunset*]; Anthony H. Angelo & Fran Wright, *The Pitcairn Trials Act 2003 (NZ), Ordinance 6 of 2004 (Pit) and the Bounty of the Mutiny*, 21 N.Z. U. L. REV. 486 (2004) (discussing ordinance removing mayor from office following his conviction and arguing it was a bill of attainder) [hereinafter Angelo & Wright *Pitcairn Trials Act*]; Fran Wright, *Pitcairn—The Saga Continues*, 2005 N.Z. L.J. 295 (giving status of cases); Anthony H. Angelo, *Pitcairn—The Saga Continues*, 2006 N.Z. L.J. 249 (same) [hereinafter Angelo *Pitcairn—The Saga Continues*]; Sue Farran, *The Case of Pitcairn: A Small Island, Many Questions*, 11 J. S. PAC. L. 124 (2007) (Vanuatu) (discussing legal process issues raised in prosecutions); Sue Farran, *The "Re-Colonising" of Pitcairn*, 38 VICTORIA U. WELLINGTON L. REV. 435 (2007) (N.Z.) (examining how courts addressed question of British jurisdiction over Pitcairn); Sue Farran, *Conflicts of Laws in Human Rights: Consequences for Colonies*, 11 EDIN. L. REV. 121 (2007) (Scot.) (discussing formation of Pitcairn judiciary in light of European human rights law); Sue Farran, *Prerogative Rights, Human Rights, and Island People: The Pitcairn and Chagos Island Cases*, 2007 PUB. L. 414 (Eng.) (comparing Pitcairn case to those involving the British subjects exiled from the British Indian Ocean Territory); Helen Power, *Pitcairn Island: Sexual Offending, Cultural Difference and Ignorance of Law*, 2007 CRIM. L. REV. 609 (Eng.) (discussing legal issues on the defendants' knowledge of wrong-doing); Fran Wright, *Certainty and Ascertainability of Criminal Law After the Pitcairn Trials*, 39 VICTORIA U. WELLINGTON L. REV. 659 (2008) (N.Z.) (discussing Privy Council's 2006 decision) [hereinafter Wright *Certainty and Ascertainability*]; Fran Wright, *Legality and Reality: Some Lessons from the Pitcairn Islands*, 73 J. CRIM. L. 69 (2009) (Eng.); Stephen Guest, *Pitcairn: Sexual Enculturation and Promulgation of Law*, 2010 N.Z. L.J. 36 (discussing legal issues on the defendants' knowledge of wrong-doing) [hereinafter Guest *Sexual Enculturation*].

221. J.B. Claydon, Report [to the Governor of Pitcairn] on Administrative Visit to Pitcairn Island, Jan. 30, 1954, ¶ 75, in 6 PCR 6-2585.

222. Tim Minogue, *Policing Paradise*, 44 WORLD PRESS REV., Sept. 1997, at 40.

raped, Britain, in 1996, dispatched two officers from Kent to investigate.<sup>223</sup> Those officers “cautioned” the accused for underage sex.<sup>224</sup> In 1997 Britain sent a member of the Kent Constabulary, Gail Cox, to visit and train Pitcairn’s sole officer since that officer had never before received instruction on police work.<sup>225</sup> When she returned in 1999 a girl told Cox that she had been raped by a New Zealand visitor to the island.<sup>226</sup> The accused, aged twenty-three, pleaded guilty to unlawful carnal knowledge of a minor—the first court case since 1972—and his one-hundred day jail sentence was commuted so he could be deported.<sup>227</sup> When Cox returned to England a wide-ranging investigation began.<sup>228</sup> The ensuing multi-year “Operation Unique,” run by the Kent Constabulary, interviewed dozens of Pitcairners, past and present.<sup>229</sup> One of the investigating officers reported: “We were literally cold calling on people and the responses were unbelievable. Every single Pitcairn girl we spoke to disclosed she had been

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223. MARKS, *supra* note 220, at 29; Claire Harvey, *Paradise Lost for Pitcairn, the Island Where Sex Abusers Imposed Their Brutal Will*, THE TIMES (London), Oct. 26, 2004, at 8.

224. MARKS, *supra* note 220, at 29–30; Bell, *supra* note 180, at 33; Christopher Niesche, *Dark Secrets of the World’s Most Isolated Speck of Rock*, THE AUSTRALIAN (Sydney, N.S.W.), Mar. 10, 2001, at 10.

225. Stewart Tandler & Peter Birkett, *WPC’s Crime-Free Paradise*, DAILY TELEGRAPH (London), Sept. 12, 1997, at 9 (profiling Cox); Sebastian O’Kelly, *Her Word Is Law for a Mutinous People*, DAILY TELEGRAPH (London), Sept. 20, 1997, at 16 (same). Cf. *Maude General*, *supra* note 100, ¶ 3 (writing in 1941: “the primary need of the community is a period of firm but sympathetic administration, during which the islanders can become used to standards of law enforcement such as are usual in other parts of the Empire and the local officials can be trained to govern the island without fear or favour.”); Ross Clark, *Empire Strikes at Pitcairn*, THE TIMES (London), Oct. 26, 2004, at 21 (stating “Pitcairners were a people minding their own business until [officer Gail Cox] was dispatched to help with ‘community policing’ in 1999.”).

226. Claire Harvey, *Lawyers’ Odyssey for Pitcairn for Child Sex Trial*, THE TIMES (London), Sept. 23, 2004, at 16.

227. MARKS, *supra* note 220, at 36–40; R. v. Christian, [2005] PNSC 1, [2006] 1 L.R.C. 745, 75 BRIT. Y.B. INT’L L. 2004, at 428, ¶ 177 (Pitcairn Is. Sup. Ct.). The government later realized it was mistaken as to the age of consent, at issue in this case. The defendant was pardoned and received a financial award from the government. MARKS, *supra* note 220, at 228–29. Under section 65 of Maude’s code, the age of consent was fourteen; it was raised to sixteen by Pitcairn Island Government Regulations (Amendment) Ordinance No. 1 of 1957, § 4 (LLMC). Some commentators on the 2004 trials argued the islanders could not have know of British law on the age of consent and appeared unaware of the 1940 and 1957 laws which were published on Pitcairn. See, e.g., Clark, *supra* note 225, at 21 (“It may suit us in Britain to have an age of consent of 16, but what right do we have to apply our own standards, retrospectively, to a remote society on the other side of the earth. It is clear that until the trials were announced many of the island’s population were unaware that they were supposed to conform to British laws.”).

228. See generally Eve Pertile, *Culture of Shame*, POLICE REV., Feb. 29, 2008, at 24 (Eng.) [hereinafter Pertile *Culture*]; Eve Pertile, *Islanders on Trial*, POLICE REV., Mar. 7, 2008, at 24 (Eng.) [hereinafter Pertile *Islanders on Trial*].

229. Tim Watkin, *Trials of a Faraway Island*, N.Z. HERALD (Auckland), May 10, 2003, at B6; MARKS, *supra* note 220, at 29–44.

a victim of sexual abuse.”<sup>230</sup> One of the appellate judges characterized it as “child sexual abuse on a grand scale.”<sup>231</sup>

The investigator said, “I made a report to the Foreign Office, recommending the island should be abandoned if the residents didn’t pull their socks up.”<sup>232</sup> Thus, there was concern that the British government was using the prosecutions as a justification to shut the island down—a claim seemingly proven when a letter between cabinet ministers was released, showing island funding was cut because of the prosecutions.<sup>233</sup> Those views are not new. A top colonial official, in 1846, wrote Pitcairnians were “of no more use to the Nation at large, than if they were settled in the Interior of Africa,” and the population should be resettled.<sup>234</sup> With this attitude it is understandable why Britain’s colonial administrators were accused of ignoring issues on Pitcairn.<sup>235</sup> One of the most damning assessments came from the Law Lords.

But the fact that this scale of offending [in the present case was] . . . almost certainly the tip of the iceberg, [and] was tolerated for so long in such a small, isolated and closely knit community is an indication of the poor state of supervision exercised over its affairs by the colonial authorities.<sup>236</sup>

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230. *Pertile Culture*, *supra* note 228, at 25 (quoting Detective Inspector Peter George).

231. *Christian v. The Queen*, [2006] UKPC 47, [2007] 2 A.C. 400, [2007] 1 L.R.C. 726, 130 I.L.R. 696, ¶ 48 (appeal taken from Pitcairn Is.) (opinion of Lord Hope of Craighead).

232. Tim Minogue, *Law Catches Up With ‘Bounty’ Islanders: U.K. Police Are Being Sent to Tackle A Crime Wave on Remote Pitcairn Island*, THE INDEPENDENT (London), June 1, 1997, at 5.

233. Press Release, Pitcairn Islands Study Center, British Foreign Office Minister’s Rhetoric Signals U.K. Government Plans to End Habitation of Pitcairn Says Academic (Aug. 20, 2003), available at <http://library.puc.edu/pitcairn/news/releases/news31-08-20-03.shtml> (last visited Jan. 4, 2012); Letter from Clare Short, Sec’y of State for Dev., to Robin Cook, Sec’y of State for Foreign & Commw. Affairs, Feb. 8, 2001, in JUSTICE, LEGALITY, AND THE RULE OF LAW: LESSONS FROM THE PITCAIRN PROSECUTIONS 265 (Dawn Oliver ed., 2009).

234. Minute of James Stephen, Under Sec’y of State for the Colonies, to George William Lyttelton, Lord Lyttelton, Under Sec’y of State of War & the Colonies, Jan. 14, 1846, in 3 PCR 3-1308 (TNA CO 201/370).

235. MARKS, *supra* note 220, ch. 14 (detailing British indifference as documented in official papers). However, a major source of complaint relied on by Marks—the schoolteacher and government adviser in the 1950s—appears from official correspondence to have been a particularly difficult, self-important man. See, e.g., Letter from H.A.C. Dobbs, Deputy W. Pac. High Comm’r, to Chief Sec’y, W. Pac. High Comm’n, Apr. 12, 1950, in 6 PCR 6-2425 (WPA).

236. *Christian v. The Queen*, [2006] UKPC 47, ¶ 56 (opinion of Lord Hope of Craighead).

One change for the better for Pitcairners—and citizens of all other territories—was the restoration of British citizenship with a right to live in Britain that came in 2002.<sup>237</sup>

## XII. THE GROWING STATUTE BOOK: 2000S

The accusations levied against the men of Pitcairn generated a passel of scandalous news stories.<sup>238</sup> Britain also had a major procedural problem in that there was no working court system, as the island's judiciary, once active, had been allowed to fall into complete desuetude for decades.<sup>239</sup> As long ago as the 1970s, it was reported the door to the island's jail cell had rusted into position—open.<sup>240</sup> There had been no arrests since the 1950s.<sup>241</sup> Not a single criminal case, not even for minor charges, had been brought

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237. See British Overseas Territories Act, 2002, c. 8 (U.K.); GABRIELLE GARTON GRIMWOOD, THE BRITISH OVERSEAS TERRITORIES BILL, [HL] BILL 40 OF 2001–2002 (2001) (House of Commons Library Research Paper 01/90).

238. See generally Lisa Fletcher, *Reading the News: Pitcairn Island at the Beginning of the Twenty-First Century*, 3 ISLAND STUD. J. 57 (2008) (Can.) (analyzing press coverage of rape trials); Melanie Simons, Keith Tuffin & Karen Frewin, *Newspaper Constructions of Sexual Abuse on Pitcairn Island*, 37 AUSTL. J. COMM. 95 (2010) (same). A sampling of article titles give the tone of the coverage: Dea Birkett, *Island of Lost Girls*, N.Y. TIMES, Oct. 29, 2004, at A25; Neil Tweedie, *Pitcairn Island Mayor Treated Girls as 'Harem' Court Told*, NAT'L POST (Don Mills, Ont.), Oct. 5, 2004, at A15; Neil Tweedie, *Pitcairn Men 'Given Free Rein' to Use Girls for Sex*, DAILY TELEGRAPH (London), Oct. 1, 2004, at 16; Kathy Marks, *Former Pitcairners Tell of Rape As a Way of Life*, THE INDEPENDENT (London), Oct. 1, 2004, at 35; Kathy Marks, *Island Chief Raped Me When I Was 11, Pitcairn Trial Told*, BELFAST TELEGRAPH (N. Ire.), Sept. 30, 2004, at 1; Claire Harvey, *Pitcairn Gang 'Led Sex Spree of 30 Years'*, THE TIMES (London), Sept. 30, 2004, at 39; Neil Tweedie, *Sex at 12 Is Normal, Say Pitcairn Women*, DAILY TELEGRAPH (London), Sept. 29, 2004, at 3.

239. *McLoughlin Law*, *supra* note 33, at 39–44 (analyzing docket from 1904–1940 and noting court procedures deteriorated far from due process); PACIFIC ISLANDS YEARBOOK & WHO'S WHO 200 (Judy Tudor ed., 10th ed. 1968) (reporting island court sat twice a year then); Oliver *Problems on Pitcairn*, *supra* note 220, at 12 (stating until the late 1990s, “[t]here was . . . no operative internal legal system” and detailing how the Island Court created under the Justice Ordinance No. 1 of 1966 (LLMC) (repealed by Justice Ordinance No. 3 of 1999), could impose no sentence greater than six months imprisonment and £25 fine, while more serious offenses were triable in the Pitcairn Supreme Court, to which no judge or officials ever had been appointed); *Governor of Pitcairn & Associated Islands v. Sutton*, [1995] 1 N.Z.L.R. 426, 429, 104 I.L.R. 508, 511 (C.A. 1994) (stating that after the Judicature Ordinance No. 2 of 1970 (repealed by Judicature (Courts) Ordinance No. 2 of 1999) terminated role of Fiji courts, Pitcairn's courts existed only on paper). *Contra R. v. Christian*, [2005] PN.S.C. 1, [2006] 1 L.R.C. 745, 75 BRIT. Y.B. INT'L L. 2004, at 428, ¶ 110 (Pitcairn Is. Sup. Ct.) (“We find that English administration of justice over Pitcairn Island was not a paper administration operating in an occasional and ad hoc way, but a reality when considering how civil and criminal disputes were dealt with through the twentieth century.”). See also Eric Were, *Ten Weeks on (Tax-Free, Traffic-Free, Almost Money-Free) Pitcairn Island*, AUSTL. WOMEN'S WKLY., Nov. 27, 1963, at 39 (stating attending the regular sessions of court was then popular entertainment).

240. HERBERT P. FORD, PITCAIRN 92–93 (1972); Ball *Last Weeks*, *supra* note 173, at 19.

241. MARKS, *supra* note 220, at 30–31.

from 1972 to 1999.<sup>242</sup> An elaborate court system was erected to handle the rape accusations.<sup>243</sup> Britain also negotiated a treaty with New Zealand to allow the Pitcairn courts to sit there.<sup>244</sup> New laws on the judiciary and criminal procedure—mainly based on New Zealand law because the lawyer drafting them was a Kiwi—were also enacted.<sup>245</sup>

Pitcairn now has a statute book of 887 pages.<sup>246</sup> That is up significantly from the previous code of 500 pages.<sup>247</sup> Along with the lawmaking on the trials and criminal procedure, a flurry of legislation regulating everything from beekeeping, registration of sex offenders, endangered species, and liquor were issued in the last decade.<sup>248</sup> One

242. *Id.* at 193.

243. *Id.* at 5 (“island had no legal infrastructure”); Judicature (Courts) (Amendment) Ordinance No. 2 of 2000 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 2); Pitcairn Court of Appeal Order, 2000, S.I. 2000/1341 (U.K.), *amended by* Pitcairn Court of Appeal (Amendment) Order, 2004, S.I. 2004/2669 (U.K.); Pitcairn (Appeals to Privy Council) Order, 2000, S.I. 2000/1816 (U.K.), *amended by* Judicial Committee (Appellate Jurisdiction) Rules Order, 2009, S.I. 2009/224 (U.K.). For courts in the Pacific in general, see PACIFIC COURTS AND LEGAL SYSTEMS (Guy Powles & Mere Pulea eds., 1988).

244. Agreement Concerning Trials Under Pitcairn Law in New Zealand and Related Matters, N.Z.-U.K., Oct. 11, 2002, 2219 U.N.T.S. 57, U.K.T.S. No. 33 (2003) (Cm. 5944), 2003 N.Z.T.S. No. 2; Pitcairn Trials Act 2002 (N.Z.); Pitcairn Trials Act Commencement Order, 2003, S.R. 2003/11 (N.Z.). *See also* N.Z. H.R., FOREIGN AFFAIRS, DEF. & TRADE COMM., PITCAIRN TRIALS BILL (2002) (explaining Pitcairn Trials Act), *available at* <http://www.parliament.nz> (last visited Jan. 4, 2012); N.Z. PARLIAMENTARY LIBRARY, BILLS DIGEST NO. 918: PITCAIRN TRIALS ACT 2002 (2002) (same), *available at* <http://www.parliament.nz> (last visited Jan. 4, 2012); *Cf.* Agreement Concerning a Scottish Trial in the Netherlands, Neth.-U.K., Sept. 18, 1998, 2062 U.N.T.S. 82, U.K.T.S. No. 43 (1999) (Cm. 4378) (Anglo-Dutch agreement to provide for trial of the Pan Am 103 bomber) [hereinafter Agreement Concerning a Scottish Trial in the Netherlands].

245. Transcript of Arguments at 56, *R. v. Seven Named Accused*, Pitcairn Is. Sup. Ct. Nos. 1-55/2003 (testimony of Paul Julian Treadwell, Pitcairn Legal Adviser, who drafted the legislation stating he based laws on New Zealand laws even though English law was supposed to apply on Pitcairn), *in* 2 PCR 2-619. *See also* *R. v. Christian*, [2005] PNCS 1, [2006] 1 L.R.C. 745, 75 BRIT. Y.B. INT’L L. 2004, at 428, ¶ 83 (Pitcairn Is. Sup. Ct.) (full listing of Pitcairnese ordinances related to courts); Angelo & Townsend, *supra* note 220, at 231 (stating “40 Ordinances dealing with justice and penal orders” enacted 1999–2003, “a number equivalent to the total number of Ordinances made in the previous 33 years.”). A review of Pitcairn law before the recent legislative activity is Dharendra K. Srivastava, *Pitcairn Island*, *in* SOUTH PACIFIC ISLANDS LEGAL SYSTEMS 252–67 (Michael A. Ntumu gen. ed., 1993).

246. LAWS OF PITCAIRN, note 21. *See also* Farran *Prerogative Right*, *supra* note 220, at 419 (“The flurry of legislative activity affecting Pitcairn might seem excessive, unreasonable, and not proportionate.”).

247. JERRY DUPONT, *THE COMMON LAW ABROAD* 1208 (2001) (describing previous code: “circa 550p+forms”).

248. Apiaries Ordinance No. 1 of 1999 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 28); Sexual Offences (Notification and Prevention) Ordinance No. 3 of 2010 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 44); Endangered Species Protection Ordinance No. 3 of 2004 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 42); Sale and Use of Liquor Ordinance No. 5 of 2009 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 26); Registration of Business Names Ordinance No. 7 of 1999 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 16). Britain over the years has also applied a number of international

important change was a land reform law. The limited acreage had come to be owned mainly by emigrants, so a law was finally enacted in 2000 to redistribute property to actual occupants of Pitcairn—a step that had been repeatedly urged on the government for a half-century.<sup>249</sup> All these new laws joined existing ones on such irrelevancies as labor unions and collisions at sea.<sup>250</sup> This is a big change from the Nineteenth Century when a visitor claimed the islanders “have laid down a rule for themselves—a golden one—NEVER TO MAKE A LAW UNTIL IT IS WANTED.”<sup>251</sup>

Yet the Governor has failed to enact something as elemental to government as a criminal code.<sup>252</sup> Like many British territories, Pitcairn incorporates British law into its domestic law.<sup>253</sup> Pitcairners are said to be

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conventions to Britain, many of which seem to have little relevance to the island. *See, e.g.*, Michael O. Eshleman, & Stephen A. Wolaver, *Prego Signor Postino: Using the Mail to Avoid the Hague Service Convention's Central Authorities*, 12 ORE. REV. INT'L L. 283, 359 (2010) (noting Pitcairn's participation in Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, *opened for signature* Nov. 15, 1965, 20 U.S.T. 361, U.K.T.S. No. 50 (1969) (Cmnd. 3986), 658 U.N.T.S. 163).

249. Land Tenure Reform Ordinance No. 7 of 2000 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 14); Lands Court Ordinance No. 8 of 2000 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 15); U.N. Special Comm. on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, *Pitcairn*, ¶ 22, U.N. Doc. A/AC.109/2005/10 (Mar. 23, 2005); Claydon, *supra* note 221, ¶ 147 (predicting in 1954 that unless something was done, most of the island would be owned by off-islanders); MCLOUGHLIN 1958 REPORT, *supra* note 74, ¶¶ 32, 35, 90–101 (noting in 1958 land records were a mess, observing the fractionalized ownership caused land to sit idle, and offering suggestions on land and title reform—including adopting the Torrens system); 578 PARL. DEB., H.C. (5th ser.) (1957) 89W–90W (U.K.) (stating government was considering land reform).

250. Trade Unions and Trade Disputes Ordinance No. 1 of 1959 (LLMC) (codified in LAWS OF PITCAIRN, *supra* note 21, c. 23); Prevention of Collisions at Sea Ordinance No. 2 of 1983 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 30). The Pitcairn Government's legal adviser said the trade union law was “enacted in order to comply with the requirements of an International Labour Convention.” *McLoughlin Twentieth*, *supra* note 33, at 83. That appears to be the Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, July 1, 1949, 96 U.N.T.S. 257, 154 B.F.S.P. 653, to which the United Kingdom is a signatory. But it has not been extended to Pitcairn. Letter from Kulwant Dulai, Treaty Section Enquiry Serv., Legal Adviser's Directorate, Foreign & Commw. Office, London, to Author (Apr. 13, 2011). The Universal Declaration of Human Rights calls for the right to join trade unions. Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 23, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810, at 71 (Dec. 10, 1948).

251. ΜΕΤΟΙΧΟΣ, *Pitcairn's Island*, SYDNEY MORNING HERALD (Sydney, N.S.W.), Oct. 19, 1850, at 3. The same rule is stated—*sans* capitals—in THOMAS BOYLES MURRAY, *supra* note 9, at 252.

252. *Cf.* Angelo & Wright *Pitcairn Sunset*, *supra* note 220, at 432 (stating it is “very unusual for a colony not to have a criminal law of some kind of its own from the earliest times” and noting the first territorial laws usually include criminal code).

253. HENDRY & DICKSON, *supra* note 139, at 139–41. The territorial laws adopting British law are Administration of Justice Ordinance No. 5 of 1990, §§ 5–6, 33 BRIT. ANTARCTIC GAZETTE No. 1 (1990) (Brit. Antarctic Terr.); Courts Ordinance No. 3 of 1983, §§ 3–4 (Brit. Indian Ocean Terr.); Interpretation and General Clauses Ordinance No. 14 of 1977, § 83 (Falkland Is.); English Law (Application) Ordinance No. 10

displeased by the adoption of “foreign” law—as are citizens of the British Virgin Islands, who have also had outside law brought to their island.<sup>254</sup> There is now only a very limited Pitcairn Criminal Code consisting of minor offenses such as damaging the Polynesian rock carvings and failing to vote.<sup>255</sup> “[F]rom time immemorial the criminal law has been found an absolute necessity for the public order and for human society in general.”<sup>256</sup> Jeremy Bentham long ago argued it essential to have a comprehensive body of law.<sup>257</sup> Rather than doing so, the government legislates about trivia, *e.g.*, the government’s legal adviser in 1965 was very pleased with himself in drafting a traffic code to govern the “tractors, bicycles, and two motor cycles” on the island.<sup>258</sup>

While it has laws for minutia, Pitcairn continues to incorporate England’s criminal law by reference, a state of affairs persisting for a century now.<sup>259</sup> Those laws were unknown to Pitcairners as only in 1997 was a set of the statutes delivered to the island.<sup>260</sup> In contrast, within two

of 2005 (St. Helena, Ascension & Tristan da Cunha); Application of Colony Laws Ordinance No. DS1 of 1977 (S. Ga. & S. Sandwich Is.); Courts (Constitution and Jurisdiction) Ordinance No. 5 of 2007, § 33 (Sovereign Base Areas of Akrotiri & Dhehlika), in S.B.A. GAZETTE No. 1450, Mar. 9, 2007.

254. U.N. Second International Decade for the Eradication of Colonialism: Pacific Regional Seminar, Nouméa, New Caledonia, *Statement of Pitcairn Islands Study Center (Dr. Herbert Ford, USA)*, at 5–6, U.N. Doc. PRS/2010/DP.5 (May 18, 2010) (stating Pitcairners object to incorporation by reference and want the British to explicitly promulgate laws for them); Bill Maurer, *Writing Law, Making a “Nation”*: History, Modernity, and Paradoxes of Self-Rule in the British Virgin Islands, 29 *LAW & SOC’Y REV.* 255, 273–74 (1995) (discussing resentment of the government bringing in outside laws for adoption rather than drafting original laws).

255. Summary Offenses Ordinance No. 15 of 2000, §§ 19(1), 21 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 5).

256. CARL LUDWIG VON BAR, *A HISTORY OF CONTINENTAL CRIMINAL LAW* 379 (Thomas S. Bell et al. trans., 1916) (Continental Legal History Series 6).

257. 4 JEREMY BENTHAM, *THE WORKS OF JEREMY BENTHAM* 537 (Russell & Russell 1962) (John Bowring ed., 1843). Britain’s Statute Law Society long ago recommended Britain enact laws as part of code. STATUTE LAW SOCIETY, *STATUTE LAW: THE KEY TO CLARITY* (1972). This was not done and the current system of amending statutes by reference continues—even more inconvenient for Pitcairners than Britons since Pitcairners have very limited access to legal materials.

258. *McLoughlin Twentieth*, *supra* note 33, at 84.

259. Judicature Ordinance (Courts) (Amendment) Ordinance No. 2 of 2000, § 16 (codified at LAWS OF PITCAIRN, *supra* note 21, c. 2). The Pacific Order, 1893, § 21, which applied to Pitcairn from 1898 to 1952, had a provision stating crimes in England would be crimes within the ambit of the Pacific Order; its predecessor, the Western Pacific Order, 1877, § 22, contained similar language.

260. *R. v. Christian*, [2005] PNCS 1, [2006] 1 L.R.C. 745, 75 BRIT. Y.B. INT’L L. 2004, at 428, ¶ 95 (Pitcairn Is. Sup. Ct.) (stating a set of *Halsbury’s Statutes* was sent to Pitcairn). The island secretary testified the lawbooks were requested by Officer Cox and were stored in the secretary’s office initially, and then later placed in the newly-built prison. Transcript of Arguments at 24–26, *R. v. Seven Named Accused*, Pitcairn Is. Sup. Ct. Nos. 1-55/2003 (testimony of Betty Christian), in 2 PCR 2-619. One member of the Judicial Committee observed that having a set of *Halsbury* “gathering dust” on Pitcairn was “a meaningless gesture.”

years of the *ancien régime* being toppled, France's revolutionaries had enacted a complete penal code.<sup>261</sup> Having a consolidated criminal code is an improvement for both the citizens and those who must enforce it.<sup>262</sup> Pitcairners have been failed by their colonial masters in this regard.

### XIII. RAPE PROSECUTIONS: 2003–06

After years of investigation, charges were finally brought in April 2003; they were sixty-four counts under Britain's Sexual Offences Act of 1956<sup>263</sup> against seven Pitcairn men.<sup>264</sup> The charges were twenty-one counts of rape, forty-one of indecent assault, and two of gross indecency with a child under fourteen.<sup>265</sup> The incidents occurred many years, even decades, before.<sup>266</sup> Among those charged were the mayor of the island and his predecessor.<sup>267</sup> Two months later, similar counts were made against six Pitcairn men living in New Zealand.<sup>268</sup> Some claimed sex at a young age was part of the island's culture.<sup>269</sup> However, the charges were not about

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Christian v. The Queen, [2006] UKPC 47, [2007] 2 A.C. 400, [2007] 1 L.R.C. 726, 130 I.L.R. 696, ¶ 39 (appeal taken from Pitcairn Is.) (opinion of Lord Woolf).

261. LUDWIG VON BAR, *supra* note 259, at 322–24.

262. Cf. 3 JAMES FITZJAMES STEPHEN, A HISTORY OF THE CRIMINAL LAW OF ENGLAND ch. 34 (London, Macmillan 1883) (The author, a judge of the Queen's Bench, helped draft a proposed consolidated criminal law of England and in this chapter discusses the advantages of such a code.).

263. 4 & 5 Eliz. 2, c. 69 (U.K.). Cf. Angelo & Wright *Pitcairn Sunset*, *supra* note 220, at 431 ("The Sexual Offences Act is not self-evidently the law of Pitcairn.").

264. MARKS, *supra* note 220, at 81–83.

265. *Id.* at 83.

266. *Id.*

267. Claire Harvey, *Pitcairn Island's Mayor "Initiated Girls Into Harem"*, DAILY TELEGRAM (Sydney, N.S.W.), Oct. 5, 2004, at 12 (discussing charges against sitting mayor); Claire Harvey, *Pitcairn Judge in the Dock*, THE AUSTRALIAN (Sydney, N.S.W.), Oct. 8, 2004, at 5 (discussing charges against former magistrate; his office was renamed mayor subsequent to his term and the judicial functions transferred).

268. MARKS, *supra* note 220, at 83.

269. See generally Tim Watkin, *Lonely Island Weathering a Storm*, N.Z. HERALD (Auckland), Aug. 25, 2002, at B6 (N.Z.). MARKS, *supra* note 220, ch. 12; Stephen D'Antal, *That's What Girls Are For*, THE TIMES (London), May 9, 2001, at 22. Examples of this perspective include Garth George, *A Land Awash With Sex, Hypocrisy, and Double Standards*, N.Z. HERALD (Auckland), Nov. 3, 2004, at A17 (stating practice "obviously been part of the Pitcairn culture since the place was settled" and wondering why anyone should be outraged since "[e]very night on the streets of Auckland girls as young as 11 and 12 are peddling their bodies and having sex with men three, four and five times their age."); Jane Sullivan, *Pitcairn Men Were Following Custom: McCullough*, SYDNEY MORNING HERALD (Sydney, N.S.W.), Nov. 16, 2004, at 3 (quoting best-selling author Colleen McCullough, who wrote *The Thorn Birds*: "It's Polynesian to break your girls in at 12."); Clark, *supra* note 225, at 21 ("[A]nthropological history would suggest that it is we in advanced industrial societies who are unusual in insisting that sexual intercourse be delayed until well after sexual maturity. You would not expect Bushmen to have an age of consent and neither, until the Marriage

young people having sex, they were about much older men being with girls.<sup>270</sup> Among the victims were an eleven-year-old and a seven-year-old.<sup>271</sup>

Defense counsel tried to stop the rape trials by arguing that Pitcairn was never properly made a British colony and, therefore, Britain had no authority to prosecute. In addition, they claimed the judiciary had no authority since it was formed only in anticipation of these specific cases.<sup>272</sup> “You cannot have a very large nation totally crushing a small community. The world won’t put up with it [anymore],” said one of the defense lawyers.<sup>273</sup> But these arguments were rejected by the Supreme Court, the Court of Appeals, and the Privy Council.<sup>274</sup> The courts ruled that since the

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Act of 1753 [26 Geo. 2, c. 33 (U.K.)] outlawed the marriage of child brides in the Fleet chapel, did we. [*But see* An Act to take Away Clergy from the Offenders in Rape or Burglary, and an Order for the Delivery of Clerks Convict Without Purgation, 18 Eliz. 1, c. 7, § 4 (1576) (U.K.) (setting age of consent at ten).] Our Government has an obsession with preserving ‘diversity,’ by which it seems to mean languages and headscarves. Yet a genuine example of cultural diversity is treated as perversion and is stamped out with the full force of the human rights charter.”); D’Antal, *supra* note 272, at 22 (quoting Glynn Christian, television chef resident in Auckland and a cousin of the islanders: “You can’t take middle-class standards onto Pitcairn.”). *Cf.* Trenwith, *supra* note 220, pt. 4; Power, *supra* note 220; O’Cinneide, *supra* note 220. It was long ago recognized by a colonial officer that the islanders’ society was a blend of European and Polynesian. Duncan Cook, *Medical Report*, in U.K. COLONIAL OFFICE, COLONIAL OFFICE REP. NO. 155, PITCAIRN ISLAND, at 53 (1938) (“Though the material requirements of the islanders have been met in more or less a Polynesian manner, the social and religious life has been predominately European in nature. By living example, by education, and by religious training, [mutineers Edward] Young and [John] Adams and, later, Adams alone stamped the English traditions of justice, moral rectitude, and social solidarity on the growing children who later transmitted the same teaching. The school, which has always been a feature of Pitcairn life, also has fixed the above virtues.”).

270. *Cf.* D’Antal, *supra* note 272, at 22 (quoting Adventist minister on Pitcairn: “There were some who thought that sex among and with the under 16’s was merely Pitcairn’s way. But as far as I was concerned, when children are hurt cultural mores are not an issue.”); Alexander Ward, Comment, *What Possible Victory in Pitcairn Challenge?*, THE ADVERTISER (Adelaide, S. Austl.), Nov. 13, 2004, at 28 (Ward, president of the Law Society [i.e., bar association] of South Australia: “Cultural considerations could never excuse the abuse that occurred. If British law did not apply then would the law of the jungle apply,” where the weakest would be preyed upon?).

271. Claire Harvey, *Paradise Lost for Pitcairn, the Island Where Sex Abusers Imposed Their Brutal Will*, THE TIMES (London), Oct. 26, 2004, at 8.

272. *See generally* R. v. Seven Named Accused, [2004] PNCS 1, 127 I.L.R. 232 (Pitcairn Is. Sup. Ct.).

273. Claire Harvey, *Islanders on Verge of Mutiny As Sex Trial Outsiders Flood Pitcairn*, THE AUSTRALIAN, July 2, 2004, at 6 (quoting Adrian Cook, a Queen’s Counsel from Norfolk Island).

274. *Seven Named Accused*, [2004] PNCS 1, *aff’d* [2004] PNCA 1, [2004] 5 L.R.C. 706, 127 I.L.R. 284 (Pitcairn Is. Ct. App.), *aff’d sub. nom.* Christian v. The Queen, [2004] UKPC 52, [2004] 5 L.R.C. 735 (appeal taken from Pitcairn Is.). The Privy Council decision is discussed at length in Oliver *Problems on Pitcairn*, *supra* note 220; Wright *Certainty and Ascertainability*, *supra* note 220. *See also* Tim Watkin, *Remote Control*, 204 THE LISTENER, July 29, 2006, at 28 (N.Z.) (TL) (discussing how Privy Council refused to entertain oral arguments about the sovereignty argument); David Hope, Lord Hope of Craighead,

government had declared Pitcairn to be British, the judiciary would not disturb that declaration.<sup>275</sup>

The trials were held on Pitcairn in October 2004.<sup>276</sup> The prosecutor stated that conditions on Pitcairn were “[v]ery rudimentary but holding the trial on Pitcairn, rather than in Britain or elsewhere, gives us the greatest chance of justice.”<sup>277</sup> Despite the logistical difficulties, the government rejected options such as having the trials in New Zealand or aboard a visiting warship.<sup>278</sup> Some suggested an attempt at restorative justice, something akin to South Africa’s experience following Apartheid.<sup>279</sup> This too was rejected. The newly created Pitcairn bar consisted entirely of New Zealanders serving as judges and attorneys.<sup>280</sup> (Staffing courts with

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*Foreword* to JUSTICE, LEGALITY, AND THE RULE OF LAW: LESSONS FROM THE PITCAIRN PROSECUTIONS v–viii (Dawn Oliver ed., 2009) (criticizing the way the Judicial Committee handled the appeal; Lord Hope was one of the members of the panel that heard the 2006 appeal); Michael Beloff, *Lawless Island*, TIMES LITERARY SUPP., Apr. 30, 2010, at 25 (Eng.) (reviewing JUSTICE, LEGALITY, AND THE RULE OF LAW: LESSONS FROM THE PITCAIRN PROSECUTIONS (Dawn Oliver ed., 2009)) (discussing Lord Hope’s preface).

275. *Christian v. The Queen*, [2006] UKPC 47, [2007] 2 A.C. 400, [2007] 1 L.R.C. 726, 130 I.L.R. 696, ¶ 9 (appeal taken from Pitcairn Is.) (opinion of Lord Hoffmann), *citing* *Coast Lines, Ltd. v. Societa Nazionale di Navigazione (The Fagernes)*, [1927] P. 311, 324 (C.A.) (Eng.). *Cf.* *Nyali v. Att’y-Gen.*, [1956] 1 Q.B. 1, 15 (Eng.) (“The courts rely on the representatives of the Crown to know the limits of its jurisdiction and to keep within it. Once jurisdiction is exercised by the Crown the courts will not permit it to be challenged.”); *Post Office v. Estuary Radio, Ltd.*, [1968] 2 Q.B. 740, 755 (Eng.) (The crown knows limits of its jurisdiction); *Watts v. United States*, 1 Wash. Terr. 288, 295–6 (1870) (in a case from the San Juan Islands—now a part of Washington State but then disputed between the United States and Canada—court dismissed sovereignty question because it was a political question for the executive to resolve); *Legal Status of E. Green. (Den. v. Nor.)*, 1933 P.C.I.J. (ser. A/B) No. 53, at 46 (Apr. 5) (holding a sovereign need not exercise its powers extensively in a territory to be sovereign over it); *Clipperton Island Arbitral Award of King Victor Emmanuel III*, Jan. 28, 1931, 26 AM. J. INT’L L. 390, 393 (1932) (holding sovereignty over an uninhabited territory is perfected from the moment possession is taken as long as no other state disputes possession), *translating* 6 REVUE GÉNÉRALE DU DROIT INT’L PUBLIC, 3d ser. 129 (1932) (Fr.), *original reprinted in* 2 R.I.A.A. 1105.

276. MARKS, *supra* note 220, chs. 8–11 (report on trial by reporter present for them).

277. Harvey, *supra* note 274, at 6.

278. *Pertile Islanders on Trial*, *supra* note 228, at 24. *See also* Kim Griggs, *The Pitcairn Code*, 185 THE LISTENER, Aug. 17, 2002, at 26, 27 (N.Z.) (considering trial options).

279. Angelo & Townsend, *supra* note 220, at 239–44; Griggs, *supra* note 281, at 27 (quoting Glynn Christian suggesting restorative justice). *Cf.* 1 S. AFR. TRUTH & RECONCILIATION COMM., TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT 1–174 (1998) (explaining origins and processes of Commission), *available at* <http://www.justice.gov.za/trc/report/index.htm> (last visited Jan. 4, 2012); DESMOND MPIOLO TUTU, NO FUTURE WITHOUT FORGIVENESS (1999) (account by chairman of Truth & Reconciliation Commission).

280. Judicial Practitioners Ordinance No. 3 of 2001 (*codified in* LAWS OF PITCAIRN, *supra* note 21, c. 10) (creating Pitcairn bar); MARKS, *supra* note 220, at 64 (stating prosecutor was a New Zealand lawyer); *id.* at 73 (same as to defender); *id.* at 90 (same as to trial judges); *id.* at 224 (same as to appellate judges); *Jan Corbett & Tony Stickley*, End of a Legend As Pitcairn Meets the Modern Law, N.Z. HERALD (*Auckland*), June 30, 2001, at E1 (N.Z.) (same as to magistrates); *R. v. Seven Named Accused*, [2004] PNCA 1, [2004] 5

foreigners is routine in the Pacific.)<sup>281</sup> Some of the proceedings of the Pitcairn courts took place in New Zealand.<sup>282</sup> But for the actual trial, lawyers and judges went to Pitcairn and testimony was taken from the many witnesses living in New Zealand by video-conferencing.<sup>283</sup> The rape cases in 2004 were tried by judges, not jurors<sup>284</sup>—understandable since the

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L.R.C. 706, 127 I.L.R. 284, ¶ 88 (Pitcairn Is. Ct. App.) (noting magistrates and lawyers were Auckland barristers); *Trenwith*, *supra* note 220, at 6, appx. (listing names of court personnel); *Watkin*, *supra* note 272, at B6 (stating there were “no lawyers” and Public Defender Paul Dacre was first admitted to the Pitcairn bar); Guest Sexual Enculturation, *supra* note 220, at 36. See also Tim Watkin, *Defending the Right*, 198 THE LISTENER, Apr. 30, 2006, at 26 (N.Z.) (TL) (Pitcairn’s chief justice refused to admit to bar a N.Z. attorney desired by defendants). Cf. *Leis v. Flynt*, 439 U.S. 438 (1979) (finding no constitutional right to have attorney of one’s choice admitted to practice pro hac vice).

281. Anthony H. Angelo, *Legal Capacity in Pacific Island Countries*, in REGIONALISING INTERNATIONAL CRIMINAL LAW IN THE PACIFIC ISLANDS 73 (Neil Boister & Alberto Costi eds., 2006); JENNIFER CORRIN & DON PATTERSON, INTRODUCTION TO SOUTH PACIFIC LAW 100 (2d ed. 2007) (South Pacific Law Series). For example, the current Chief Justice of the Marshall Islands, Daniel Cadra, lives in Alaska and is an Assistant Attorney General there. Cf. 20 ALASKA BAR RAG, Sept.–Oct. 1996, at 3; ALASKA DIRECTORY OF ATTORNEYS, FALL 2011, at 89 (Eloise Robbins ed., 2011). In the 1990s, the Public Defender in Micronesia and then Palau was another Alaskan, Marvin C. Hamilton, III. Victoria Barber, *Hundreds Attend Service to Mourn Bethel Judge*, TUNDRA DRUMS (Bethel, Alaska), Apr. 25, 2011, at 2 (stating Judge Hamilton, who the Author knew, served in those roles). And the Chief Justice of Tuvalu in the Pacific, Sir Gordon Ward, also served as the Chief Justice of the Turks and Caicos Islands in the Caribbean and lives in Fiji, whose court of appeals he formerly sat on. *R. v. Kauapa*, [2010] TVHC 4 (Tuvalu High Ct.) (Ward, C.J.); *Palms Resort, Ltd. v. P.P.C., Ltd.*, [2010] UKPC 30, ¶ 9 (appeal taken from Turks and Caicos Is.) (noting decision below was by Chief Justice Ward); *Blaze Guts Judge’s Home*, FIJI TIMES (Suva), Aug. 27, 2007, at 5 (stating Justice Ward, formerly of the Fiji Court of Appeals, lived in Pacific Harbor, Fiji).

282. See, e.g., *NZ Courtroom Part of Pitcairn—Briefly*, DOMINION POST (Wellington, N.Z.), Nov. 18, 2003, at A4 (describing sitting of the Pitcairn Supreme Court at Papakura District Court, South Auckland). Cf. BRIT. INDIAN OCEAN TERR. CONST., Art. 13(4) (allowing Supreme Court of the British Indian Ocean Territory to sit in the United Kingdom); Falkland Islands Courts (Overseas Jurisdiction) Order, 1989, S.I. 1989/2399, § 2 (U.K.) (allowing Falkland Islands Magistrate’s Court to hear cases arising in the British Antarctic Territory and South Georgia and the South Sandwich Islands); Cocos (Keeling) Islands Act, 1955, § 15 (Austl.) (permitting Supreme Court of the Territory of the Cocos (Keeling) Islands to sit anywhere in Australia); Supreme Court Ordinance, 1955, § 4 (Cocos (Keeling) Is. [Austl.]) (same); Wake Island Code, 32 C.F.R. § 935.66(c) (2010) (U.S.) (permitting Wake Island Court of Appeals to sit on Wake, in Hawaii, or in the vicinity of Washington, D.C.); Agreement Concerning a Scottish Trial in the Netherlands, *supra* note 244 (allowing trial of the Pan Am 103 bomber); High Commissioner Law No. 46 of April 28, 1955, ALLIED KOMMANDATURA GAZETTE 1056 (U.S. High Comm’r for Ger.) (creating American civilian court in West Berlin), *reprinted in Allied Kommandatura v. Tiede* (U.S. Ct. Berlin 1979), 86 F.R.D. 227, 261–65.

283. *Pertile Islanders on Trial*, *supra* note 228, at 25.

284. *R. v. Seven Named Accused*, [2004] PNSC 1, 127 I.L.R. 232, ¶¶ 196–206 (Pitcairn Is. Sup. Ct.) (allowing rape trials despite lack of jury); *Harvey*, *supra* note 274, at 5 (quoting Kari Boye Young, wife of a defendant, saying islanders were upset at the lack of a jury trial: “Britain has given these men British passports but they don’t have the basic rights of every British citizen to be tried by their peers.”). Compare 390 PARL. DEB., H.C. (5th ser.) (1943) 1634W–1635W (U.K.) (statement of Col. Oliver Stanley, Colonial Sec’y) (listing the twelve British colonies without trial by jury, including Pitcairn, and stating “in none of these . . . has there ever been any actual right of trial by jury.”) with *Fiske*, *supra* note 12, at 154 (stating

community is so small and the entire population is related to one another.<sup>285</sup> Reporters, previously banned from the island, were allowed to come to Pitcairn to cover the trials.<sup>286</sup>

All this was enormously expensive. In comparison, when the former Pitcairn police officer was herself prosecuted in 2005 for assaulting her successor, New Zealand lawyers—a judge, prosecutor, and public defender—were transported to the island. The trial resulted in the defendant being convicted, placed on probation, and ordered to pay court costs of \$60 NZD. That case cost the Pitcairn Government \$40,000 NZD, over \$600 NZD per islander.<sup>287</sup>

All the rape defendants were convicted; four on rape charges, the others on indecent assault charges.<sup>288</sup> The judges imposed light sentences under British law.<sup>289</sup> For example, when the island's mayor—convicted of five counts of rape—was sentenced the judge noted that in England a judge would begin his calculation for such a conviction with a prison term of ten to fifteen years.<sup>290</sup> But because of the special circumstances of Pitcairn, the

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islanders were conducting jury trials in 1830s) and NEILL TONGA, *supra* note 78, at 157 (stating laws he examined provided for jury trials).

285. See generally Harvey, *supra* note 274 (stating in the rape cases a jury was impossible because everyone is related). Cf. HENRY HUTCHISON MONTGOMERY, *THE LIGHT OF MELANESIA: A RECORD OF THIRTY-FIVE YEARS MISSION WORK IN THE SOUTH SEAS 26–27* (London, Society for Promoting Christian Knowledge 1896) (writing of the Pitcairn's cousins on Norfolk Island that they needed “a magistrate from outside. At present, as they are all related, the magistrate is uncle or cousin to every soul amongst them, and it must be hard indeed for the embodiment of the law to resist the pleadings of his relations.”). Another colonial power failing—at least for a time—to provide for trial by jury in the Pacific was the United States in the Trust Territory of the Pacific Islands. James Robert Arnett, II, *The American Legal System and Micronesian Customary Law: The Legal Legacy of the United States to the New Nations of the Trust Territory of the Pacific Islands*, 4 UCLA PAC. BASIN L.J. 161, 170 (1985).

286. Russell Brown, *Meals Not Included*, 195 THE LISTENER, Sept. 4, 2004, at 52 (TL) (discussing reporters at trial); Keri Welham, *Isle of Unease*, CHRISTCHURCH PRESS (N.Z.), July 27, 2002, at D1 (discussing previous ban on reporters).

287. Phil Taylor, *Island Justice Costly But Worth the Price*, N.Z. HERALD (Auckland), Sept. 3, 2005, at A11.

288. R. v. Christian, [2005] PNCS 1, [2006] 1 L.R.C. 745, 75 BRIT. Y.B. INT'L L. 2004, at 428, ¶¶ 18–43 (Pitcairn Is. Sup. Ct.) (stating factual findings at hearings).

289. Claire Harvey, “*You Seemed to Believe You Had Some Right to Sexually Violate Young Girls*”, HERALD SUN (Melbourne, Vict.), Oct. 30, 2004, at 13; Pertile *Islanders on Trial*, *supra* note 228, at 26. The title of Harvey's article quotes the sentence of Justice Russell Johnson in R. v. Randall Kay Christian, Pitcairn Is. Sup. Ct. Nos. 23-36/2003 (Oct. 24, 2004), in 2 PCR 2-571: “You seemed to believe you had some right to sexually violate young girls whenever you felt like it. These are beliefs that are contrary to laws and human rights wherever mankind lives.”

290. R. v. Stevens Raymond Christian, Pitcairn Is. Sup. Ct. Nos. 37-46/2003, ¶ 7 (Oct. 24, 2004) (Blackie, C.J.), in 2 PCR 2-579.

mayor was sentenced to three years and eligible for parole after one.<sup>291</sup> Following the convictions, the Supreme Court heard arguments on the legality of the prosecutions.<sup>292</sup> Several legal theories were advanced.<sup>293</sup> The main themes were: 1) abuse of process; 2) denial of justice; and 3) breach of Britain's Human Rights Act of 1998.<sup>294</sup>

Among the factors argued were the long delay in prosecution,<sup>295</sup> the failure to promulgate British law on the island, the formation of the legal system after the allegations were raised, the lack of knowledge on Pitcairn of the age of consent, and the lack of legal advice.<sup>296</sup> The last is a long-standing issue. When Donald A. McLoughlin visited in 1958 to preside over a divorce, he reported that he "was placed in the somewhat unusual position of having to interview the parties, prepare the papers, witness them, and then hear the evidence in open Court" in trying the resulting case.<sup>297</sup>

The argument regarding the lack of notice of the British law the defendants were charged with violating had merit.<sup>298</sup> The Pitcairn

291. *Id.* at ¶¶ 8–17.

292. *R. v. Christian*, [2005] PNSC 1, ¶ 1; Beloff, *supra* note 277, at 25 ("the trial, unusually, was bifurcated, with the facts being ascertained in Pitcairn and the law being argued in New Zealand."). *Cf.* *Angelo Pitcairn—The Saga Continues*, *supra* note 220, at 296 (criticizing "back-to-front" procedure).

293. *R. v. Christian*, [2005] PNSC 1, ¶ 45.

294. *Id.*; Human Rights Act, 1998, c. 42 (U.K.). *See also* THE HUMAN RIGHTS ACT 1998: WHAT IT MEANS (Lammy Betten ed., 1999).

295. Chief Justice Charles S. Blackie in 2004 denied a request to stay the prosecutions based passage of time. The four areas of delay identified by the defense and rejected by the Court were: 1) the time between the alleged offending and when a complaint was lodged; 2) the time from the beginning of the investigation and prosecution deciding to charge; 3) the time between the decision to charge and formally making the charge; and; 4) the time between the charges and the start of the trial. *R. v. Seven Named Accused*, Pitcairn Is. Sup. Ct. Nos. 1-55 (Aug. 6, 2004), *in* 1 PCR 1-157.

296. *R. v. Christian*, [2005] PNSC 1. Finding out the law on Pitcairn was for all practical purposes impossible and no legal advice was available except from the government's own lawyers. *Angelo Pitcairn—The Saga Continues*, *supra* note 220, at 296. And they did not visit Pitcairn. Paul Treadwell, the legal adviser from 1979 to 2010, never visited the island, and his predecessor, Donald A. McLoughlin, last visited in 1958. Lewis, *supra* note 154, at 59–60. *Compare* Derek O'Brien & John Arnold Epp, *Legal Aid in the Overseas Territories*, 33 COMMON L. WORLD REV. 160, 162, n.8 (2004) (Eng.) (stating Pitcairn was only permanently-inhabited British territory without provision for legal aid) *with* Legal Aid (Criminal Proceedings) Ordinance No. 1 of 2001 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 9).

297. MCLOUGHLIN 1958 REPORT, *supra* note 74, ¶ 64. *See also* ROBERTS-WRAY, *supra* note 132, at 909 (writing in 1966: "It is permissible to wonder how far English law has in fact been effective . . . it seems likely that the island's magistrates have never known much about it and have formed their own written laws sufficient for most purposes.").

298. *See generally* Guest *Sexual Enculturation*, *supra* note 220. *See also* Beloff, *supra* note 277, at 25 ("It is well established that ignorance of the law is no excuse: but what if those who are subject to the law have no means of gaining access to its content? Is it appropriate for a modern Western democracy to impose

prosecutor told the press that “the Pitcairn laws . . . will be (unfamiliar) to every person in the process.”<sup>299</sup> Only in 1997 were a set of British statutes sent to Pitcairn—but they were not made publicly available.<sup>300</sup> This was comparable to the Australian territory of the Cocos Islands, which had laws so incomprehensible and unknowable that an Australian parliamentary committee in 1991 found “the lack of accessibility and ready ascertainability of the laws of the Territory [to be] a violation of fundamental human rights.”<sup>301</sup> In 1859 the Governor of Norfolk Island—and of New South Wales—wrote London categorically opposing to any effort to impose British or New South Wales law on Norfolk, where the Pitcairners had moved *en masse* three years before. He opposed such a move for reasons that apply to Pitcairn today:

The habits and modes of thought of the islanders are so different from those of Englishman, the circumstances of the colony are so unique, that I confess I should be sorry to see the laws of England or of New South Wales, either civil or criminal, adopted in the aggregate as the laws of Norfolk Island. Were this done . . . the islanders would be subjected to a legal system, which having been framed to suit a state of society altogether different from that which it is proposed to apply it, would probably be found to be a variance with their feelings and habits, and of the bearing of which upon all their relations with each other they would be utterly ignorant.<sup>302</sup>

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its values through law—especially in the area of sex, where the boundaries of what should be tolerated are in a constant state of revision—on a community, far distant in terms of geography and practices, who have had no part in the making of that law?”); Joseph E. Murphy, *The Duty of the Government to Make the Law Known*, 51 *FORDHAM L. REV.* 255 (1982).

299. Welham, *supra* note 289, at D4.

300. *Id.*

301. AUSTRALIAN HOUSE OF REPRESENTATIVES, *STANDING COMMITTEE ON LEGAL & CONSTITUTIONAL AFFAIRS, ISLANDS IN THE SUN: THE LEGAL REGIMES OF AUSTRALIA'S EXTERNAL TERRITORIES AND THE JERVIS BAY TERRITORY* ¶ 4.10.3 (1991), available at [http://www.aph.gov.au/house/committee/reports/1991/1991\\_PP47report.htm](http://www.aph.gov.au/house/committee/reports/1991/1991_PP47report.htm) (last visited Jan. 4, 2012). See also 184 *PARL. DEB.*, H.R. (1992) 2804 (Austl.) (statement of Bob Collins, Minister for Transport & Communications, calling Cocos (Keeling) Islands' legal regime to be “seriously deficient, unfair and inappropriate”), reprinted in 14 *AUSTL. Y.B. INT'L L.* 434 (1992). Cf. F.C. Hutley, *Sources of the Law on Norfolk Island*, 24 *AUSTL. L.J.* 108 (1950) (complaining of the “chaotic state of” the laws of the Australian territory of Norfolk Island at the time and noting the Australian government by its failure to publish the laws had made it impossible for anyone, including the lawyers, to find the law).

302. Letter from William T. Denison, Governor of Norfolk Island & New South Wales, Sydney, to Sir Edward Bulwer-Lytton, Colonial Sec'y, London, Jan. 22, 1859, in U.K. COLONIAL OFFICE, *PITCAIRN ISLANDS: COPY OF CORRESPONDENCE WITH THE GOVERNMENT OF NEW SOUTH WALES IN REFERENCE TO PITCAIRN ISLANDERS SETTLED IN NORFOLK ISLAND*, H.C. 297, at 23, in 38 *P.P.* (1863) 337, MF 69.306-7. Cf. Brian Z. Tamahana, *A Proposal for the Development of a System of Indigenous Jurisprudence in the*

The Judicial Committee in the Pitcairn appeal sympathized with the Pitcairn defendants on the issue of notice of the law. “Their Lordships would accept that the fact that a law had not been published and could not reasonably have been known to exist may be a ground for staying a prosecution for contravention of that law as an abuse of process.”<sup>303</sup> Nevertheless, the defendants’ argument was rejected. “It is . . . unnecessary to discuss the philosophical basis or legal limits of such a principle because” the trial and appellate courts had rejected the argument.<sup>304</sup> Another of the Law Lords felt that the failure to publish the 1956 law on Pitcairn was acceptable since it did not create new offenses but only recodified an earlier statute which put the common law on the books.<sup>305</sup>

All the process arguments were rejected by the trial court and on appeal.<sup>306</sup> After the mayor of Pitcairn was convicted of rape, the Governor enacted a law removing him from office and banning him and the other convicts from office.<sup>307</sup> This was criticized as a bill of attainder and retrospective punishment.<sup>308</sup> Following the Privy Council judgment, trials in a Pitcairn court of the defendants living in New Zealand went forward; two men were convicted of rape.<sup>309</sup> A total of nine men were convicted in the two sets of trials. The British government agreed to pay women who had been attacked under its Victims of Crime Compensation Program,

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*Federated States of Micronesia*, 13 HASTINGS INT’L & COMP. L. REV. 71, 94–99, 112–14 (1989) (discussing consequences of imposing outside law).

303. *Christian v. The Queen*, [2006] UKPC 47, [2007] 2 A.C. 400, [2007] 1 L.R.C. 726, 130 I.L.R. 696, ¶ 24 (appeal taken from Pitcairn Is.) (opinion of Lord Hoffmann). *See also id.* ¶¶ 40–41 (opinion of Lord Woolf) (stating that while “persons who are intended to be bound by a criminal statute must first be given either actual or at least constructive notice of what the law requires” and defendants “were probably unaware of the terms of the Sexual Offences Act or even that there was legislation of that name or the sentences that could be imposed for those offenses” the Pitcairn prosecution was acceptable because the islanders “were aware . . . that their conduct was contrary to the criminal law.”).

304. *Id.* ¶ 24 (opinion of Lord Hoffmann).

305. *Id.* ¶¶ 83–86 (opinion of Lord Hope of Craighead) (citing Offences Against the Person Act, 1861, 24 & 25 Vict., c. 100, §§ 48, 52 (U.K.)).

306. *R. v. Christian*, [2005] PNCS 1, [2006] 1 L.R.C. 745, 75 BRIT. Y.B. INT’L L. 2004, at 428 (Pitcairn Is. Sup. Ct.); *R. v. Christian*, [2006] PNCA 1, [2006] 4 L.R.C. 746 (Pitcairn Is. Ct. App.).

307. Local Government (Special Electoral Provisions) Ordinance No. 6 of 2004 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 11A). *Cf.* U.S. CONST. art. I, § 9.

308. *See generally* Angelo & Wright *Pitcairn Trials Act*, *supra* note 220. *See also* Local Government Ordinance No. 1 of 1964, § 3(3) (providing for removal of Pitcairn officials who were sentenced to prison). *Cf.* U.S. CONST. art. I, § 9, cl. 3 (prohibiting bills of attainder).

309. *Two More Guilty of Child Sex on Pitcairn*, CAIRNS POST (Queensl.), Jan. 10, 2007, at 15.

regardless of whether their attackers were prosecuted.<sup>310</sup> Britain also finally brought in outsiders to enforce the law, military policemen, and a Scottish officer from the Orkneys.<sup>311</sup>

#### XIV. CONSTITUTION: 2010

It was no “miracle at Philadelphia” for the Pitcairn Constitution.<sup>312</sup> The road to it started in 1999 when the Foreign and Commonwealth Office resolved to undertake a review of colonial governance.<sup>313</sup> Most of the fourteen British overseas territories<sup>314</sup> received new constitutions in the twenty-first century.<sup>315</sup> The Pitcairn Constitution was based on the constitution issued in 2009 for St. Helena, Ascension, and Tristan da Cunha.<sup>316</sup> Meetings were held on Pitcairn with the islanders and British officials to discuss the proposal.<sup>317</sup> The Constitution was approved by Her Majesty as an order-in-council at Buckingham Palace on February 10, 2010

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310. *Morning Report: Pitcairn Victims Eligible for Compensation* (Radio N.Z. broadcast, Oct. 10, 2008), available at <http://www.radionz.co.nz/national/programmes/morningreport/audio/1753231/pitcairn-island-victims-eligible-for-compensation> (last visited Jan. 4, 2011).

311. Judith Slater, *Pitcairn Island Deployment: British Community Policing in the Raw*, TALK THROUGH: THE MAGAZINE OF THE MINISTRY OF DEFENCE POLICE, Jan. 2007, at 8 (Eng.) (account of British M.D.P.’s stationed there); Malcolm Gilbert, *A Policeman’s Lot is Such a Happy One*, THE SCOTSMAN (Edinburgh), June 5, 2007, at 10 (account by a policeman from the Orkneys).

312. Cf. CATHERINE DRINKER BOWEN, *MIRACLE AT PHILADELPHIA* (1966).

313. See generally PARTNERSHIP FOR PROGRESS AND PROSPERITY, *supra* note 194. A further government review, giving its position on the overseas territories, is to be published in 2012. 532 PARL. DEB., H.C. (6th ser.) (2011) 48WS (statement of William Hague, Foreign Sec’y).

314. This is now the preferred term of art in Britain, replacing older terms such as “dependent territories” and “colonies.” See British Overseas Territories Act, 2002, c. 8, § 1 (U.K.). But see Interpretation Act, 1978, c. 30 (U.K.) (defining “colony” in a way which includes all current British overseas territories).

315. HENDRY & DICKSON, *supra* note 139, at vii. Counting Pitcairn, there are fourteen British overseas territories. British Nationality Act, 1981, c. 61, sched. 6 (U.K.) (listing them). Those with recent constitutions are the British Indian Ocean Territory (2004), the Cayman Islands (2009), the Falkland Islands (2008), Gibraltar (2006), Montserrat (2010), Pitcairn (2010), St. Helena, Ascension, and Tristan da Cunha (2009), the Turks and Caicos Islands (2006), and the Virgin Islands (2007). Those with older constitutions are Anguilla (1982), Bermuda (1968), the British Antarctic Territory (1989), the Sovereign Base Areas of Akrotiri and Dhekelia (1960), and South Georgia and South Sandwich Islands (1985).

316. OFFICE OF THE GOVERNOR OF PITCAIRN, CONSULTATION DOCUMENT FOR CONSTITUTIONAL REVIEW, Sept. 22, 2009, ¶ 1 (stating connection to St. Helena document) available at <http://www.government.pn/Consultation%20document%20for%20constitutional%20review.pdf> (last visited Jan. 4, 2012); St. Helena, Ascension, and Tristan da Cunha Constitution Order, 2009, S.I. 2009/1751 (U.K.).

317. E-mail from Andrew Allen, Head of Southern Oceans Team, Overseas Territories Directorate, Foreign & Commonwealth Office, London, to Author, Mar. 11, 2011, 12:46:57 (G.M.T.).

and took effect three weeks later on March 4.<sup>318</sup> (“Miracle in S.W.1,” perhaps?) This was one of many orders-in-council issued the same day which concerned military pensions, Libyan taxes, Welsh, and other tedious subjects.<sup>319</sup> It is a detailed document with about as many articles as there are islanders.

The Queen is the executive.<sup>320</sup> She nominally appoints a governor—but in reality the Foreign Office chooses for her.<sup>321</sup> The Governor has sole legislative powers.<sup>322</sup> There is also an Island Council.<sup>323</sup> Its composition is fixed by law and currently consists of a mayor, the deputy mayor, four councilors—these six being elected—and an appointed member chosen by the Governor.<sup>324</sup> The Governor, Deputy Governor, and Commissioner are all *ex officio* members.<sup>325</sup> The Island Council is to enforce the law and make regulations about zoning, “keeping the Islands clean,” quarantine, soil conservation, explosives, and similar minor matters—but anything they do can be overturned by the Governor.<sup>326</sup> There is an Attorney General, appointed by the Governor, who cannot be removed except for cause.<sup>327</sup> Numerous minor functionaries exist under the island laws, such as the Registrar of Business Names, the Registrar of Births and Deaths, the Registrar of Marriages, and the Postmaster.<sup>328</sup> There is a civil service and

318. Pitcairn Constitution Order, 2010, S.I. 2010/244 (U.K.), reprinted in LAWS OF PITCAIRN, *supra* note 21, at xxvii; Proclamation Appointing the Day, *supra* note 22. See also ROBERTS-WRAY, *supra* note 132, at 143 (orders-in-council “almost invariably employed to establish a constitution”); Amicus Brief of the Government of the United Kingdom of Great Britain and Northern Ireland as Amicus Curiae Supporting Petitioner, at 7, *Matimak Trading Co. v. Khalily*, 522 U.S. 1098 (1998) (No. 97-893), 1997 WL 33549577, 1997 U.S. S. Ct. Briefs LEXIS 744 (describing constitutional arrangements of British colonies).

319. Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions (Amendment) Order 2010, S.I. 2010/240 (U.K.); Double Taxation Relief and International Tax Enforcement (Libya) Order 2010, S.I. 2010/243 (U.K.); National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2010, S.I. 2010/245 (U.K.).

320. PITCAIRN CONST., art. 33(1).

321. *Id.* art. 33(2); Memorandum of the Foreign & Commonwealth Office, in FOREIGN AFFAIRS COMM., OVERSEAS TERRITORIES: EVIDENCE, 2007–8, H.C. 147-II, Ev-144, ¶ 32 (U.K.) (stating appointments made on advice of F.C.O.).

322. PITCAIRN CONST., art. 36.

323. *Id.* art. 34.

324. *Id.*

325. Local Government Ordinance of 1964, § 6 (codified as amended as LAWS OF PITCAIRN, *supra* note 21, c. 11).

326. *Id.* § 7.

327. PITCAIRN CONST., art. 35.

328. See Registration of Business Names Ordinance No. 7 of 1999, § 2 (codified as amended as LAWS OF PITCAIRN, *supra* note 21, c. 16); Births and Deaths Registration Ordinance No. 1 of 1952, § 2 (codified as amended as LAWS OF PITCAIRN, *supra* note 21, c. 18) (LLMC); Marriage Ordinance No. 4 of

an ombudsman.<sup>329</sup> There is a Court of Appeals, a Supreme Court, a Magistrate's Court, and a Lands Court.<sup>330</sup> All of this recent legislative activity gives tiny Pitcairn an enormous amount of government for its five-dozen residents.<sup>331</sup>

## XV. THE NEXT STEPS

Queen Elizabeth II put it on the bicentennial of settlement. "Few other small communities can be so well known around the world or held in such universally warm regard as Pitcairn or its people."<sup>332</sup> Yet the rape prosecutions showed a dark side to the island.<sup>333</sup> An American argued "[t]he legal structure . . . changes only in response to crisis," and Pitcairn in the last decade affirms that.<sup>334</sup> Thirty years ago in Parliament, it was suggested that there were only three courses of action for Pitcairn: evacuation of the population, investing in the island and its people, or "playing for time, of dragging out discussions while the situation on the island deteriorates from bad, to worse, to desperate."<sup>335</sup> Britain, for decades, sailed the third course and only in the last decade, tacked to the second.<sup>336</sup> Even though New Zealand would be a better fit to govern the

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1952, § 1(2) (codified as amended as LAWS OF PITCAIRN, *supra* note 21, c. 20) (LLMC); Post Office Ordinance No. 3 of 1954, § 4 (codified as amended as LAWS OF PITCAIRN, *supra* note 21, c. 21) (LLMC).

329. PITCAIRN CONST. arts. 56–57, 59–60.

330. *Id.* art. 49 (Court of Appeals); *id.* art. 45 (Supreme Court); Judicature (Courts) Ordinance No. 2 of 1999, § 10 (codified as amended in LAWS OF PITCAIRN, *supra* note 21, c. 2) (Magistrate's Court); Lands Court Ordinance No. 8 of 2000 (codified in LAWS OF PITCAIRN, *supra* note 21, c. 15).

331. *Cf.* Graham Hassell & Feue Tipu, *Local Government in the South Pacific Islands*, [2008] COMMW. J. LOC. GOVERNANCE 3 (Austl.) (discussing local government elsewhere in the Pacific). This is nothing new for Pitcairn: America's National Broadcasting Company in 1938 ran up against a great deal of bureaucracy involving the Colonial Office in London and the Western Pacific High Commissioner in Fiji when it sought to transmit from the island. A.A. SCHECHTER, WITH EDWARD ANTHONY, *I LIVE ON AIR* ch. 20 (1941).

332. *The Queen's Message*, 32 PITCAIRN MISCELLANY, Jan. 1990, at 1 (Pitcairn Is.).

333. *Cf.* Ball *Last Weeks*, *supra* note 173, at 19.

334. MARTIN MAYER, *THE LAWYERS* 137 (New York, Harper & Row 1967).

335. 428 PARL. DEB., H.L. (5th ser.) (1982) 179 (U.K.) (statement of Lord McNair). *Cf.* AUST. ROYAL COMM'N INTO MATTERS RELATING TO NORFOLK ISLAND, REPORT OF THE ROYAL COMMISSION INTO MATTERS RELATING TO NORFOLK ISLAND 345–46 (1976) (faulting Australian government for an ad hoc policy that allowed Norfolk Island to "stumble along" for a half century), *text of report available at* <http://www.info.gov.nf/reports/external%20reports/1976%20Royal%20Commission%20Nimmo.pdf> (last visited Jan. 4, 2012) (the pagination here does not correspond to the printed version).

336. John Kay, *We Hand Mutiny Isle £1.5m in Bounty*, THE SUN (London), May 17, 2011, at 25 (quoting spokesman for U.K. Department of International Development justifying expenditure for wind turbines: "The people of Pitcairn are British citizens and therefore the U.K. Government is legally responsible for their wellbeing.").

islands, Britain has now shown its first real interest in what is now its sole Pacific possession.<sup>337</sup>

The legal adviser to the Governor observed four decades ago, “the most outstanding factors in the development of their system of government and laws have been their comparative isolation from the rest of the world and the impact on them of their various contacts with outsiders.”<sup>338</sup> The 2010 charges against the mayor of Pitcairn for possessing child pornography obtained over the Internet is evidence that the principle of *plus ça change* is universal and ever-lasting.<sup>339</sup>

#### XVI. A NOTE ON SOURCES

Archival documents cited herein were part of the record submitted to the Judicial Committee of the Privy Council in its consideration of *Christian v. The Queen*. These items are cited as PCR (“Privy Council Record”) followed by a two-part page number (e.g., “2 PCR 156 means volume two, page 156, and the pagination is continuous through all volumes). Because the PCR is not readily available to scholars, the Author has deposited electronic copies it with the Pitcairn Islands Study Center, Pacific Union College, Angwin, California,<sup>340</sup> the Pacific Collection, Thomas Hale Hamilton Library, University of Hawaii, Honolulu; and the Center for Adventist Research, James White Library, Andrews University, Berrien Springs, Michigan. The University of Hawaii’s posting most of the Privy Council Record at its online historical document depository, eVols, available at <http://evols.library.manoa.hawaii.edu/>. The file numbers herein were supplied by Ned Fletcher, a New Zealand barrister who worked for the prosecution on the *Pitcairn* case. The Author has reviewed the documents only through the PCR. The archives are abbreviated thusly with the archival file numbers indicated:

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337. See Anthony H. Angelo, *The Pitcairn Prosecutions*, 2010 N.Z.L.J. 34, 35 (reviewing JUSTICE, LEGALITY, AND THE RULE OF LAW: LESSONS FROM THE PITCAIRN PROSECUTIONS (Dawn Oliver ed., 2009)).

338. *McLoughlin Nineteenth*, *supra* note 177, at 138.

339. See *Mayor of Pitcairn Island Charged With Child Porn Offenses*, *supra* note 184, at 26; *Pitcairn’s Mayor Charged Over Child Pornography*, DOMINION POST (Wellington, N.Z.), Dec. 4, 2010, at A3; *Papakura Trial for Pitcairn Mayor*, SUNDAY STAR-TIMES (Wellington, N.Z.), Dec. 11, 2010, at A4 (describing plans for hearing in Pitcairn Supreme Court, sitting in New Zealand); *One News: Pitcairn Mayor Appears on Child Pornography Charges* (TV One broadcast, New Zealand, Dec. 11, 2011) (reporting on preliminary hearing held in New Zealand), available at <http://tvnz.co.nz/national-news/pitcairn-mayor-appears-child-pornography-charges-video-4631653> (last visited Jan. 4, 2012).

340. See *Book on Pitcairn Given to PUC Library*, 153 ADVENTIST REV. & SABBATH HERALD 1338 (1976); *Pitcairn Island Material Is Donated to PUC*, 76 PAC. UNION RECORDER, Nov. 22, 1976, at 7; Herbert P. Ford, *Pitcairn Study Center Is Begun at PUC*, 154 ADVENTIST REV. & SABBATH HERALD 646 (1977); *Pitcairn Island Gift Is Given to PUC Study Center*, 77 PAC. UNION RECORDER, Mar. 20, 1978, at 8; *The Pitcairn Islands Study Center*, 18 PITCAIRN LOG, Sept.-Nov. 1990, at 8.

(FCOA) = Foreign and Commonwealth Office Archives, Hanslope Park, Hanslope, Milton Keynes, Buckinghamshire, England; (MP) = Papers of Henry Evans and Honor Courtney Maude, Special Collections, Barr Smith Library, University of Adelaide, Adelaide, South Australia, Australia; (WPA) = Western Pacific Archives, Special Collections, University of Auckland Library, Auckland, New Zealand;<sup>341</sup> (TNA) = The National Archives of the United Kingdom, Public Record Office, Kew, Richmond, Surrey, England.

“P.P.” indicates the British Parliamentary Papers.<sup>342</sup> The cite “59 P.P. (1899) 563, MF 105.516” means the document is at page 563 of volume 59 of the *Accounts and Papers* for Parliament’s 1899 session and on microfiche number 105.516 of the Chadwyck-Healey edition. “IUP” refers to the selective Irish University Press reprint *1000-Volume Series of British Parliamentary Papers, 1801–1899*, giving the division (e.g. “Australia”) and volume number the report appears in. Britain’s *Parliamentary Debates*, also known as *Hansard*, are all online at <http://hansard.millbanksystems.com> (covering 1803–2005), and <http://www.parliament.uk/business/publications/hansard> (covering Commons debates from 1988 to date and Lords debates from 1995 to date).

Some sources relied upon by the Author are available online. Rather than clutter the footnotes with addresses impossible to retype, the presence of an online version is indicated by an abbreviation following the print citation. These abbreviations are:

(AO) = Project Archive, [www.Archive.org](http://www.Archive.org); (GB) = Google Books, [www.books.google.com](http://www.books.google.com); (NLA) = National Library of Australia’s “Trove” website for newspapers, <http://trove.nla.gov.au/newspaper>; (TL) = *The Listener*, the magazine of New Zealand public radio, [www.listener.co.nz](http://www.listener.co.nz).

Finally, the Law Library Microfilm Consortium, Honolulu, Hawaii, has filmed some of the Pitcairn Ordinances on LLMC Microfilm 97-495. The note (LLMC) identifies them.

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341. For information about the Western Pacific Archives, see A.I. Diamond, *The Central Archives of Fiji and the Western Pacific High Commission*, 1 J. PAC. HIST 204 (1966) (Austl.); Frank Rogers, *Western Pacific and Western Pacific High Commission Archives*, ARCHIFACTS: BULL. ARCHIVES & RECORDS ASS’N N.Z., Mar. 1986, at 10 (lamenting the archives had been moved from Fiji to England by the British government without any consultation of those in the region); Stephen Innes, *Western Pacific Archives In Their New Home*, 42 J. PAC. HIST 265 (2007) (Austl.) (discussing return of archives to South Pacific by the librarian overseeing the collection).

342. See also FRANK RODGERS, A GUIDE TO BRITISH GOVERNMENT PUBLICATIONS ch. 8 (1980) (discussing *Sessional Papers*); PERCY FORD & GRACE FORD, A GUIDE TO PARLIAMENTARY PAPERS: WHAT THEY ARE, HOW TO FIND THEM, HOW TO USE THEM 71–73 (3d ed. 1980) (discussing how to cite *Sessional Papers*).