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.¹ 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.\(^2\) The easy Tahitian attitude towards sex was well known in England.\(^3\) 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.\(^4\) As "the simplest explanation is probably the correct one," Bligh's supposition appears true.\(^5\)

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) (collection of essays) [hereinafter MUTINY AND ROMANCE]. 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.").


After returning to Tahiti to pick up women, the mutineers realized they would be hunted down and so searched for a hiding place. 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. 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. 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.


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

Throughout the Nineteenth Century the Royal Navy was the island’s protector.\textsuperscript{16} Its officers drafted several legal codes for the islanders.\textsuperscript{17} 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.\textsuperscript{18} Britain then took action because a murder

\begin{itemize}
\item \textsuperscript{10} \textit{Kirk, supra} note 9, at 61–67.
\item \textsuperscript{11} \textit{See, e.g.}, Charles Prestood Lucas, \textit{Introduction} to \textit{The Pitcairn Island Register Book} 15–16 (AMS Press 1977) (Charles Prestwood Lucas ed., 1929).
\item \textsuperscript{15} \textit{See generally} A Native [Rosalind Amelia Young], \textit{The Mutineers of the “Bounty:” The Pitcairn Islanders From 1859–80}, in \textit{22 Scribner’s Mag.} 54 (1881) (describing resettlement).
\item \textsuperscript{17} \textit{See Brodie, supra} note 9, at 84–91 (reprinting laws drafted in 1838 by Capt. Russell Elliott of \textit{H.M.S. Fly}); Harry L. Shapiro, \textit{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 \textit{H.M.S. Champion}).
\end{itemize}
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.\(^{19}\)

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.\(^{20}\) The investigation sparked a massive burst of legislation for Pitcairn.\(^{21}\) And in 2010, it helped spur a new constitution for the island.\(^{22}\)

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\(^{21}\) 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 & COMMW. 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).

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.\(^2\) The office of High Commissioner was created in 1877 to bring law and order to the Pacific.\(^2\) The High Commissioner, based in Suva, Fiji, also held the office of Governor of Fiji.\(^2\) Besides Pitcairn, he oversaw a number of islands including the Cooks, the New Hebrides, the Solomons, the Gilberts, the Ellices, and the Unions.\(^2\) The High Commissioner had sole legislative authority over his islands, subject only to his laws being disapproved by the authorities in London.\(^2\) The High Commissioner relocated to Honiara in the Solomons in 1952 and Pitcairn was then removed from his jurisdiction.\(^2\)

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.\(^2\)

\(^{23}\) Constitution: Plenty of Strong Yet Empty Words for Britain's Smallest Colony, 24 PACE INT'L L. REV. (forthcoming 2012).

\(^{24}\) 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).

\(^{25}\) 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).

\(^{26}\) 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").
Consul Robert Teesdale Simons, a Deputy High Commissioners in 1902 instructed the Pitcairners to formally claim three neighbors of Pitcairn. These were Henderson, Ducie, and Oeno—all uninhabited. The British flag had already been raised over Henderson in 1819, a fact apparently unknown to Simons. 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. 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. A British warship, H.M.S. Leander, visited the
trio in 1937 to reaffirm the claim, leaving on each the British flag and a sign saying they belonged to George VI. 35 It did so because of the new potential for transpacific aviation, the cause of a scramble for Pacific islands in the 1930s. 36 Those islands today give Pitcairn a vast exclusive economic zone in the Pacific. 37

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. 38 This lasted until 1904 when Consul Simons called on Pitcairn. 39 Simons found the judges were incompetent and could not get their decisions enforced, while the other officials engaged in rivalries preventing good government. 40 He was highly critical of the Pitcairners:


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. 3 U.K. FOREIGN OFFICE, FOREIGN OFFICE LIST AND DIPLOMATIC AND CONSULAR YEARBOOK FOR 1910, at 369 (1910) [hereinafter 3 U.K. 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.

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.\textsuperscript{41}

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.\textsuperscript{42} The magistrate was forbidden to be a churchman because of concerns about the minister of the day.\textsuperscript{43} The Internal and External Committees were to draw up local regulations.\textsuperscript{44}

Court was to be held twice a month.\textsuperscript{45} The magistrate was to try cases.\textsuperscript{46} 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.\textsuperscript{47} 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.\textsuperscript{48} 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

\begin{itemize}
  \item \textsuperscript{41} Id. at 3.
  \item \textsuperscript{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.
  \item \textsuperscript{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).
  \item \textsuperscript{44} McLoughlin Twentieth, supra note 33, at 65. The External Committee was merged into the Internal Committee in 1911. Id. at 65, n.6.
  \item \textsuperscript{45} SHAPIRO, supra note 17, at 301.
  \item \textsuperscript{46} Id.
  \item \textsuperscript{47} Id.
  \item \textsuperscript{48} Id.
\end{itemize}
Deputy Commissioners.\textsuperscript{49} Several such cases from Pitcairn, including attempted murder and abortion, were referred over the years.\textsuperscript{50} Appeals from the Island Court went to the Deputy High Commissioner.\textsuperscript{51}

The first law punished contempt of court.\textsuperscript{52} 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.\textsuperscript{53} Adultery and rape had to be referred to the High Commissioner’s Court.\textsuperscript{54} 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."\textsuperscript{55} (Those who helped in the commission were equally liable.)\textsuperscript{56} 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.\textsuperscript{57} Voyeurism was banned, as it had been under the old code.\textsuperscript{58}

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

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


\textsuperscript{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).

\textsuperscript{52} SHAPIRO, supra note 17, at 301 (reprinting Local Law 1).

\textsuperscript{53} Id. at 301–02 (reprinting Local Law 2).

\textsuperscript{54} Id. at 302 (reprinting Local Law 3).

\textsuperscript{55} Id. at 302 (reprinting Local Law 4).

\textsuperscript{56} Id.

\textsuperscript{57} SHAPIRO, supra note 17, at 302 (reprinting Local Law 5).

\textsuperscript{58} Id. (reprinting Local Law 6).

\textsuperscript{59} Id. at 299.

\textsuperscript{60} Id. The local committee regulations appear in id. at 312–17.

\textsuperscript{61} Id. at 304 (reprinting Local Law 12). Such laws were adopted, see, e.g., F.D. Alley, \textit{£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.

\textsuperscript{62} SHAPIRO, supra note 17, at 303–05 (reprinting Local Laws 10, 11, 13, 14, and 16).
were required.\textsuperscript{63} The ban on immigration, in place since 1882, was not re-enacted, but the islanders were forbidden to deport anyone.\textsuperscript{64}

The concern Simons had for abortifacients is also manifested in the code.\textsuperscript{65} 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."\textsuperscript{66} Prohibition was also enacted for the islanders—but not for resident foreigners.\textsuperscript{67} Theft was regulated at length; children who stole could be caned.\textsuperscript{68} These laws were amended a few times—such as abolishing the External Committee—but largely endured until 1941.\textsuperscript{69} An example of a change was a quarantine law for ships, enacted in 1906.\textsuperscript{70}

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.\textsuperscript{71} One observer in 1914 predicted the island's imminent demise.\textsuperscript{72} 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.\textsuperscript{73} That meant sometimes a ship a week called there, bringing large numbers of people

\begin{itemize}
  \item \textsuperscript{63} Id. at 306 (reprinting Local Law 21).
  \item \textsuperscript{64} Id. at 305 (reprinting Local Law 19).
  \item \textsuperscript{65} Id. at 304.
  \item \textsuperscript{66} Id.
  \item \textsuperscript{67} SHAPIRO, supra note 17, at 305–06 (reprinting Local Law 20).
  \item \textsuperscript{68} Id. (reprinting Local Laws 8 and 9).
  \item \textsuperscript{69} Id. at 306–12 (showing amendments).
  \item \textsuperscript{70} McLaughlin Twentieth, supra note 33, at 67.
  \item \textsuperscript{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).
  \item \textsuperscript{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).
  \item \textsuperscript{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 Pitcairners).
eager to buy souvenirs.\textsuperscript{74} And it massively improved communications as "[t]he lonely island overnight found itself with the best mail service south of the Equator."\textsuperscript{75}

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.\textsuperscript{76} He also felt the Pitcairn laws ought to be put on a "more definite basis" than Simons's code.\textsuperscript{77} Fifteen years later, something was done about Rodwell's suggestion when James Scott Neill, British Consul at Tonga, went to Pitcairn for five weeks.\textsuperscript{78} 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.\textsuperscript{79} He suggested to the Colonial Office that the essential form of government was sound.\textsuperscript{80} He drafted a new legal code and a code of procedure for the court.\textsuperscript{81} Neill observed the Pitcairn magistrate "has never seen a proper Court function and has never received any practical instruction."\textsuperscript{82} The

\begin{footnotes}
\item 74. \textit{Maude History, supra} note 6, at 95–96 (noting visits to buy souvenirs); \textit{Donald A. McLoughlin, Report on Judicial and Administrative Visit to Pitcairn Island} ¶¶ 15–16 (Oct. 27, 1958), in \textit{6 PCR 6-2759} (TNA CO 1036/401) [hereinafter \textit{McLoughlin 1958 Report}] (listing ships regularly calling there in 1958); Irving & Electa Johnson, \textit{Westward Bound in the Yankee}, 81 \textit{NAT'L GEOG. MAG.} 1, 32 (1942) (noting few actually landed on island but steamers regularly stopped for mail); Marc T. Greene, \textit{Pitcairn Island: Port of Call, CHRISTIAN SCI. MONITOR WKLY. MAG.}, June 16, 1945, at 16, 17 (noting liners arrived fortnightly); Luis Marden, \textit{I Found the Bones of the Bounty}, 112 \textit{NAT'L GEOG. MAG.} 725, 767 (1957) (noting in 1957 a ship arrived about weekly). \textit{See also} \textit{McLoughlin 1958 Report, supra} note 74, ¶ 27 (a colorful account of getting supplies from a visiting ship).

\item 75. \textit{Robert J. Casey, Easter Island: Home of the Scornful Gods} 78 (1931). \textit{See also} V. LeYoung Ardift, \textit{Pitcairn Island Postal Affairs}, 51 \textit{AM. PHILATELIST} 651 (1938); Clyde Carriker & John F. Field, \textit{A Study of Pitcairn Island Life and Postal History, 1920–32} (pts. 1–2), 86 \textit{AM. PHILATELIST} 607, 683 (1972) (studying Pitcairn correspondence handled by the American postmaster at Cristobal in the Panama Canal Zone).

\item 76. \textit{Rodwell, supra} note 73, ¶ 6.

\item 77. \textit{Id.}


\item 79. \textit{Neill Tonga, supra} note 78, at 173.

\item 80. \textit{Neill Report, supra} note 78, at 13.

\item 81. \textit{Id.} at 29–51.

\item 82. \textit{Id.} at 13, 15.
\end{footnotes}
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.”

(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. 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.)

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.” Neill submitted a proposed code with his report, a comprehensive codification, and revision of the existing laws. 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.

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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 1/1-13).

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 (Pitcaim 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.89 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.90 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.91 The island economy at the time, and for many years thereafter, was on a subsistence-barter basis.92 The islanders were even able to barter through the mail with suppliers in the United States.93 The island’s exports have been souvenirs—including baskets and carved wooden curios—sold to those on passing ships and through the mail.94 So important is this work, there is a government agency for selling souvenirs.95 Oranges were also once exported—but this trade was cut-off by World War II.96

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


90. BLAKELEY, supra note 89, at 145–46. Cf. MICKEY’S CHRISTMAS CAROL (Walt Disney Pictures 1983) (Ebeneezer 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).


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.\textsuperscript{97} 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.”\textsuperscript{98} 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.\textsuperscript{99} His initial impression was that “the local government had little control over the people, and law enforcement was conspicuous by its almost total absence.”\textsuperscript{100}

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

\begin{itemize}
\item \textsuperscript{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).
\item \textsuperscript{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).
\item \textsuperscript{100} H.E. Maude, Pitcairn Island: A General Report, ¶ 2 (June 6, 1941), in 5 PCR 5-2198–2229 [hereinafter Maude General].
\item \textsuperscript{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:
\begin{itemize}
\item (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;
\item (b) the regulations were not based on any previous law or custom and was regarded as unnecessary or undesirable by the Committee;
\item (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 is was in accordance with the wishes of the islanders themselves.
\end{itemize}
\item \textsuperscript{102} 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)).
\item \textsuperscript{103} Maude General, supra note 100, ¶ 4.
and it was then reviewed at mass meetings before every adult signed it.\textsuperscript{103} Maude felt this "confer[red] on the regulations the most authoritative sanction possible: the free and unanimous consent of the entire population."\textsuperscript{104} 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.\textsuperscript{105} The new Pitcairn code was approved by the High Commissioner in December 1941, then gazetted, and printed as a booklet.\textsuperscript{106}

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.\textsuperscript{107} Essentially, the system codified by Simons in 1904 was retained.\textsuperscript{108} All officers were elected except for the secretary, who was appointed by the High Commissioner.\textsuperscript{109} 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.\textsuperscript{110}

A change came in 1954 by a new ordinance empowering the Governor to appoint an advisory member of the Island Council.\textsuperscript{111} Traditionally, this

\begin{enumerate}
\item \textsuperscript{103} \textit{Id.} \textsuperscript{¶} 5–7. See also \textit{Langdon, supra} note 99, at 10; \textit{Woodburn, supra} note 97, at 162; 2 \textsc{Naval Intelligence Division, U.K. Admiralty, Pacific Islands: Eastern Pacific} 87 (1943); \textit{Won: A Constitution}, 40 \textit{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, \textit{reprinted in 5 PCR} 5-2234–36.
\item \textsuperscript{104} \textit{Maude General}, supra note 100, \textsuperscript{¶} 12. Nevertheless, the regulations were found by the Chief Justice of Fiji to have no legal sanction. \textit{See below at section VI.}
\item \textsuperscript{105} \textit{Langdon, supra} note 99, at 7–8; \textit{Woodburn, supra} note 97, at 137–40.
\item \textsuperscript{106} \textit{Instructions for the Guidance of the Local Government of Pitcairn Island}, 1941 \textit{W. Pac. High Comm'n Gazette} 359, \textit{reprinted as Pitcairn Island Government Regulations} 1940 (Suva, Fiji, F.W. Smith, Gov't Printer 1941), in 5 \textit{PCR} 5-2237–64 (WPA WPHC 23/II, File 10/2/2, vol. 2, item 42).
\item \textsuperscript{107} \textit{Pitcairn Island Government Regulations, 1940, § 4 (W.P.H.C.).}
\item \textsuperscript{108} \textit{McLoughlin Twentieth}, \textit{supra} note 33, at 68.
\item \textsuperscript{109} \textit{Pitcairn Island Government Regulations, 1940, §§ 3, 8(3).}
\item \textsuperscript{110} \textit{Id.} \textsuperscript{§} 7.
\item \textsuperscript{111} \textit{Pitcairn Island Government (Amendment) Ordinance No. 4 of 1954 (repealed by Local Government Ordinance No. 1 of 1964 (LLMC), \textit{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, \textit{in 6 PCR} 6-2651. Claydon had urged the schoolteacher's governmental role be put on a legal basis. \textit{Claydon, supra} note 33, \textsuperscript{¶} 57.
was the "education officer," i.e. for example, the schoolteacher.\textsuperscript{112} 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.\textsuperscript{113} 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."\textsuperscript{114} Nevertheless, as late as 2004 the teacher was still identified as government adviser.\textsuperscript{115}

The island court consisted of a magistrate and two assessors.\textsuperscript{116} 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

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\textsuperscript{112} David Scott, \textit{Window Into Downing Street} 171 (2003).

\textsuperscript{113} Claydon, \textit{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, \textit{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 Pitcairners, 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, \textit{infra} note 220, at 189 (stating "teachers were not heeded . . . unless they told colonial authorities what they wanted to hear").

\textsuperscript{114} McLoughlin Twentieth, \textit{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, \textit{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. \textit{Id.} ¶ 42. McLoughlin accused advisers of committing other misconduct. \textit{Id.} ¶¶ 112–19.


\textsuperscript{116} Pitcairn Island Government Regulations, 1940, ¶ 14.
Court in Fiji.\textsuperscript{117} Appeals from the Island Court went to the Supreme Court of Fiji.\textsuperscript{118}

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.\textsuperscript{119} A remarkable law fines registered voters who fail to cast a ballot.\textsuperscript{120} Another punished those who cried "sail ho!" when no ship was in sight.\textsuperscript{121} The common law crimes of murder and rape of an adult woman were not codified.\textsuperscript{122}

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.\textsuperscript{123}

\textsuperscript{117} Id. §§ 15–16.
\textsuperscript{118} Id. § 21(4).
\textsuperscript{119} Id. §§ 56–104.
\textsuperscript{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.”).
\textsuperscript{121} Id. § 98. Cf. CASEY, supra note 75, at 79–80 (describing vividly how “sail ho!” stopped all other activity on island).
\textsuperscript{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.”).
\textsuperscript{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/I 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. 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.” During the first six months they were offered, £12,760 worth of Pitcairn Islands—plural—stamps were sold. Stamp sales paid all public expenses for decades. This self-sufficiency ended recently when the accumulated surpluses were exhausted.

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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).


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).


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. 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." 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. The Court did not consider the idea that the islanders had a common law right to make laws. 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


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).


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).

no power to review an appeal from Pitcairn. 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.

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. (The High Commission terminated in 1978 after the Solomons, the last of the territories under it, gained independence.) The Governor of Fiji continued to have responsibility for Pitcairn, as he was also Governor of Pitcairn. There was no real change in the administration, however, only a change in nomenclature.

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 Pitcaim 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.


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).


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.141

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.142

The new Pitcairn Order was accompanied by instructions to the Governor about oaths and the form of the laws.143 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.”144 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.145

VII. CONTINUED NEGLECT: 1950s

A colonial officer who visited for eight weeks in 1954 said the word to describe the island administration was “anarchy.”146 His explanation was that:

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.
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.”

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. The rule of law had not been established on Pitcairn, he claimed, and suggested an outside presence was needed. 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. He also observed a hostility to the island police officer “due to Pitcairners['] dislike of any sort of law enforcement.” These modern officials repeated the statements made by British visitors for a century that an outsider was needed to take charge.

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.


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


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. 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.” 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. Neglect was standard. Visits from colonial officials were years apart and sometimes lasted only hours. The Western Pacific High

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. SAPPHO 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. Inogene, 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.”).


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.\textsuperscript{157} No Governor of Pitcairn visited his charge for the first twenty years the office existed.\textsuperscript{158} 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.\textsuperscript{159} In 1982 the Governor visited for the first time in six years.\textsuperscript{160} 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.”\textsuperscript{161}

\textbf{VIII. REENACTMENTS: 1960s}

In 1961, the laws of England were explicitly extended to Pitcairn.\textsuperscript{162} Later the reception ordinance would be repeatedly changed to adopt the twenty-one hours in August 1944. Maude, supra note 155, § (c). The 1929 visit is documented in H.G. Pilling, \textit{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. \textit{Compare} Guy H. Scholefield, \textit{Problems of Reconstruction in the Pacific}, 10 \textit{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") \textit{with} Ernest Bickham Sweet-Escott, Letter, \textit{Problems of Reconstruction in the Pacific}, 10 \textit{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 \textit{not} a British colony).

\textsuperscript{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, \textit{The Loneliest Island: A Visit to Pitcairn}, 98 \textit{Adventist Rev. \& Sabbath Herald}, Oct. 20, 1921, at 13, reprinting account in \textit{Daily Mail} (London), Sept. 13, 1921.

\textsuperscript{158} SCOTT, supra note 112, at 162, 170 (Scott, governor 1973–75, was the first to visit). \textit{See also} 391 \textit{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).

\textsuperscript{159} SCOTT, supra note 112, at 170.


\textsuperscript{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. \textit{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. Maude’s 1940 regulations were replaced with new ordinances, but in substance left largely intact. The Justice Ordinance, 1966, abolished the annually elected assessors and instead selected them off the voter rolls, like drawing names for jury duty. It mostly retained the list of criminal offenses. Codes of evidence and procedure were also enacted.

Also in 1961 the judges of the Fiji Supreme Court were given jurisdiction over the islands in place of the High Commissioner’s Court. The office of Chief Magistrate was renamed Island Magistrate in 1964.

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.

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

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).

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.).
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. 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.

**IX. YOU CAN’T GET THERE FROM HERE, 1960S TO DATE**

For a half century after the Panama Canal opened, Pitcairn enjoyed prosperity. 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. Pitcairn’s population had peaked at 233 in 1937. Between 1960 and 1962, there was a mass exodus, the population...
dropping from 140 to 90 because a single shipping company decided to reroute its vessels away from Pitcairn.\footnote{176} Pitcairn is 300 miles away from the nearest inhabited land, Mangareva in the Gambiers of French Polynesia.\footnote{177} The only access is by sea and the lack of good connections to the outside world has been dangerous for Pitcairners.\footnote{178} The inaccessibility limits the islanders’ future, something noted as far back as 1904.\footnote{179} (Describing the difficulty in reaching Pitcairn is another staple of recent writing.)\footnote{180} 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
British government at the behest of scientists interested in wildlife but not their fellow men. 181

The anchorage at Pitcairn is poor. 182 And once landed, the Hill of Difficulty, a 200-foot, nearly vertical ascent, must be surmounted. 183 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. 184 Even communicating with the island has long been difficult. For decades, immediate contact was maintained via radiogram and ham radio. 185 As late as 1982, all official communications were done via Morse. 186

The island was connected to the international phone system only


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.


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

in 1985—though for years before, calls could be patched through via shortwave by ham operators. The Internet arrived in 2002.

"[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. Confinement did not appeal to many islanders. "Pitcairn is a paradise, but there's not a lot to do in Paradise."

So the difficulty in travel meant many left permanently.
have to leave in order to obtain further education, and there are few reasons to attract them back.”

X. FJ ÍNDEPENDENCE: 1970

Fiji won independence in 1970. A new Pitcairn Order and companion royal instructions were issued by the Queen, which served as the island’s fundamental law until 2010. Fiji’s independence caused Britain to entrust the governorship of Pitcairn to the British High Commissioner to New Zealand. 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. London had given little

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); Renne, Renne, 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).


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).


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. The bureaucrats had no time to plan the transition, since the Act was being considered by Parliament only twelve weeks before Independence Day. 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.

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. 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.

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).


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

The Governor appoints a commissioner, who handles the day-to-day affairs. The actual administration has been run from the British consulate in Auckland, three thousand nautical miles from Pitcairn. 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.

Fiji's independence meant its courts were severed from Pitcairn's. 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. 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." No provision was made for appeals from the island until 2000.

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).
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)
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. 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.” The islanders were opposed to any change in their status. (Though there have been reports, denied by the government, that Pitcairners are interested in being annexed by France.) More recently, the U.N. has backed off and

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


seems content with the *status quo*.\textsuperscript{214} Britain objects to Pitcairn being listed by the U.N. as a “non self-governing territory” subject to its review.\textsuperscript{215}

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

XI. RAPE INVESTIGATIONS: 1996\textsuperscript{220}


\textsuperscript{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 Bandwidth: 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).


\textsuperscript{219} Voergst, supra note 188, at 24.

\textsuperscript{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.” But the Foreign Office told the press it was “not viable” to have a full-time police officer there. After the eleven-year-old daughter of an Australian resident on Pitcairn reported being
raped, Britain, in 1996, dispatched two officers from Kent to investigate.\footnote{223} Those officers “cautioned” the accused for underage sex.\footnote{224} 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.\footnote{225} When she returned in 1999 a girl told Cox that she had been raped by a New Zealand visitor to the island.\footnote{226} 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.\footnote{227} When Cox returned to England a wide-ranging investigation began.\footnote{228} The ensuing multi-year “Operation Unique,” run by the Kent Constabulary, interviewed dozens of Pitcairners, past and present.\footnote{229} 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

\begin{footnotes}
\footnote{223} MARKS, supra note 220, at 29; Claire Harvey, \textit{Paradise Lost for Pitcairn, the Island Where Sex Abusers Imposed Their Brutal Will}, \textit{THE TIMES} (London), Oct. 26, 2004, at 8.
\footnote{224} MARKS, supra note 220, at 29-30; Bell, supra note 180, at 33; Christopher Niesche, \textit{Dark Secrets of the World’s Most Isolated Speck of Rock}, \textit{THE AUSTRALIAN} (Sydney, N.S.W.), Mar. 10, 2001, at 10.
\footnote{225} Stewart Tendler & Peter Birkett, \textit{WPC’s Crime-Free Paradise}, \textit{DAILY TELEGRAPH} (London), Sept. 12, 1997, at 9 (profiling Cox); Sebastian O’Kelly, \textit{Her Word Is Law for a Mutinous People}, \textit{DAILY TELEGRAPH} (London), Sept. 20, 1997, at 16 (same). \textit{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, \textit{Empire Strikes at Pitcairn}, \textit{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.”).
\footnote{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 (Pitcaim 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 Pitcaim. \textit{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.”).
\end{footnotes}
a victim of sexual abuse."230 One of the appellate judges characterized it as "child sexual abuse on a grand scale."231

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."232 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.233 Those views are not new. A top colonial official, in 1846, wrote Pitcairners 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.234 With this attitude it is understandable why Britain’s colonial administrators were accused of ignoring issues on Pitcairn.235 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.236

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


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).

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.\textsuperscript{237}

XII. THE GROWING STATUTE BOOK: 2000s

The accusations levied against the men of Pitcairn generated a passel of scandalous news stories.\textsuperscript{238} 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.\textsuperscript{239} As long ago as the 1970s, it was reported the door to the island’s jail cell had rusted into position—open.\textsuperscript{240} There had been no arrests since the 1950s.\textsuperscript{241} Not a single criminal case, not even for minor charges, had been brought

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\item \textsuperscript{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] PNSC 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).
\item \textsuperscript{240} Herbert P. Ford, Pitcairn 92–93 (1972); Ball Last Weeks, supra note 173, at 19.
\item \textsuperscript{241} Marks, supra note 220, at 30–31.
\end{itemize}
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from 1972 to 1999. An elaborate court system was erected to handle the rape accusations. Britain also negotiated a treaty with New Zealand to allow the Pitcairn courts to sit there. 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.

Pitcairn now has a statute book of 887 pages. That is up significantly from the previous code of 500 pages. 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. One

242. Id. at 193.


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.").


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. All these new laws joined existing ones on such irrelevancies as labor unions and collisions at sea. 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.”

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


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 Respect 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); MCLAUGHLIN 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).


251. METOIXOS, 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. 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. “[F]rom time immemorial the criminal law has been found an absolute necessity for the public order and for human society in general.” Jeremy Bentham long ago argued it essential to have a comprehensive body of law. 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.

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. Those laws were unknown to Pitcairners as only in 1997 was a set of the statutes delivered to the island. In contrast, within two
years of the ancien régime being toppled, France’s revolutionaries had enacted a complete penal code. Having a consolidated criminal code is an improvement for both the citizens and those who must enforce it. 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 Offenses Act of 1956 against seven Pitcairn men. The charges were twenty-one counts of rape, forty-one of indecent assault, and two of gross indecency with a child under fourteen. The incidents occurred many years, even decades, before. Among those charged were the mayor of the island and his predecessor. Two months later, similar counts were made against six Pitcairn men living in New Zealand. Some claimed sex at a young age was part of the island’s culture. However, the charges were not about

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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 (“Anthropological 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. Among the victims were an eleven-year-old and a seven-year-old.

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. "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. But these arguments were rejected by the Supreme Court, the Court of Appeals, and the Privy Council. The courts ruled that since the 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.

Cf 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'Conneide, 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?).


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).

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

The trials were held on Pitcairn in October 2004.276 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.”277 Despite the logistical difficulties, the government rejected options such as having the trials in New Zealand or aboard a visiting warship.278 Some suggested an attempt at restorative justice, something akin to South Africa’s experience following Apartheid.279 This too was rejected. The newly created Pitcairn bar consisted entirely of New Zealanders serving as judges and attorneys.280 (Staffing courts with

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).


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

277. Harvey, supra note 274, at 6.


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.\textsuperscript{281} Some of the proceedings of the Pitcairn courts took place in New Zealand.\textsuperscript{282} 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-teleconferencing.\textsuperscript{283} The rape cases in 2004 were tried by judges, not jurors\textsuperscript{284}—understandable since the

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\textsuperscript{282} \textit{See, e.g.,} \textit{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). \textit{Cf.} \textit{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, \textsuperscript{2} § 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, \textsuperscript{5} § 15 (Austl.) (permitting Supreme Court of the Territory of the Cocos (Keeling) Islands to sit anywhere in Australia); Supreme Court Ordinance, 1955, \textsuperscript{5} § 4 (Cocos (Keeling) Is. [Austl.] (same); Wake Island Code, 32 C.F.R. \textsuperscript{4} § 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, \textsuperscript{4} supra note 244 (allowing trial of the Pan Am 103 bomber); High Commissioner Law No. 46 of April 28, 1955, \textit{ALLIED KOMMANDATURA GAZETTE} 1056 (U.S. High Comm'r for Ger.) (creating American civilian court in West Berlin), \textit{reprinted in Allied Kommandantura v. Tiede} (U.S. Ct. Berlin 1979), 86 F.R.D. 227, 261–65.

\textsuperscript{283} \textit{Pettite Islanders on Trial, supra note 228, at 25.}

\textsuperscript{284} \textit{R. v. Seven Named Accused}, [2004] PN51 1, 127 I.L.R. 232, \textsuperscript{4} ¶¶ 196–206 (Pitcairn Is. Sup. Ct.) (allowing rape trials despite lack of jury); \textit{Harvey}, \textit{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 \textit{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 \textit{Fiske}, \textit{supra note 12, at 154 (stating}}
community is so small and the entire population is related to one another.\textsuperscript{285} Reporters, previously banned from the island, were allowed to come to Pitcairn to cover the trials.\textsuperscript{286}

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.\textsuperscript{287}

All the rape defendants were convicted; four on rape charges, the others on indecent assault charges.\textsuperscript{288} The judges imposed light sentences under British law.\textsuperscript{289} 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.\textsuperscript{290} But because of the special circumstances of Pitcairn, the

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285. See generally Harvey, supra note 274 (stating in the rape cases a jury was impossible because everyone is related). Cf. \textsc{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 Pitcairners’ 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, \textit{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).


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

Among the factors argued were the long delay in prosecution, 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. 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.

The argument regarding the lack of notice of the British law the defendants were charged with violating had merit. The Pitcairn

291. *Id.* at ¶¶ 8-17.


295. Chief Justice Charles S. Blackie in 2004 denied a request to stay the prosecutions based on the 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 I PCR 1-157.


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." Only in 1997 were a set of British statutes sent to Pitcairn—but they were not made publicly available. 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." 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.

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).

300. Id.
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." 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. 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.

All the process arguments were rejected by the trial court and on appeal. 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. This was criticized as a bill of attainder and retrospective punishment. 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. 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,
regardless of whether their attackers were prosecuted. Britain also finally brought in outsiders to enforce the law, military policemen, and a Scottish officer from the Orkneys.

XIV. CONSTITUTION: 2010

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


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).


and took effect three weeks later on March 4.\textsuperscript{318} ("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.\textsuperscript{319} It is a detailed document with about as many articles as there are islanders.

The Queen is the executive.\textsuperscript{320} She nominally appoints a governor—but in reality the Foreign Office chooses for her.\textsuperscript{321} The Governor has sole legislative powers.\textsuperscript{322} There is also an Island Council.\textsuperscript{323} 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.\textsuperscript{324} The Governor, Deputy Governor, and Commissioner are all ex officio members.\textsuperscript{325} 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.\textsuperscript{326} There is an Attorney General, appointed by the Governor, who cannot be removed except for cause.\textsuperscript{327} 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.\textsuperscript{328} There is a civil service and

\begin{footnotes}
\item[320] PITCAIRN CONST., art. 33(1).
\item[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.).
\item[322] PITCAIRN CONST., art. 36.
\item[323] Id. art. 34.
\item[324] Id.
\item[325] Local Government Ordinance of 1964, § 6 (codified as amended as LAWS OF PITCAIRN, supra note 21, c. 11).
\item[326] Id. § 7.
\item[327] PITCAIRN CONST., art. 35.
\item[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
\end{footnotes}
an ombudsman. There is a Court of Appeals, a Supreme Court, a Magistrate’s Court, and a Lands Court. All of this recent legislative activity gives tiny Pitcairn an enormous amount of government for its five-dozen residents.

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.” Yet the rape prosecutions showed a dark side to the island. An American argued “[t]he legal structure . . . changes only in response to crisis,” and Pitcairn in the last decade affirms that. 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.” Britain, for decades, sailed the third course and only in the last decade, tacked to the second. Even though New Zealand would be a better fit to govern the

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] COMMONWEALTH OF AUSTRALIA. LOCAL 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.).


islands, Britain has now shown its first real interest in what is now its sole Pacific possession.\textsuperscript{337}

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."\textsuperscript{338} The 2010 charges against the mayor of Pitcairn for possessing child pornography obtained over the Internet is evidence that the principle of \textit{plus ça change} is universal and ever-lasting.\textsuperscript{339}

\section*{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 \textit{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;\textsuperscript{340} 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 \textit{Pitcairn} case. The Author has reviewed the documents only through the PCR. The archives are abbreviated thusly with the archival file numbers indicated:

\begin{itemize}
  \item 338. McLoughlin Nineteenth, supra note 177, at 138.
  \item 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; \textit{The Pitcairn Islands Study Center}, 18 PITCAIRN LOG, Sept.-Nov. 1990, at 8.
\end{itemize}
(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; (TNA) = The National Archives of the United Kingdom, Public Record Office, Kew, Richmond, Surrey, England.

“P.P.” indicates the British Parliamentary Papers. 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:


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.

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).