

## ARTICLES

### **A SOUTH SEAS STATE OF NATURE: THE LEGAL HISTORY OF PITCAIRN ISLAND, 1790–1900**

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#### ABSTRACT

*Pitcairn Island was uninhabited in 1790 when the mutineers of the Royal Navy's Bounty settled there with men and women from Tahiti to serve as slaves and wives for the sailors. Murders and accidents claimed the lives the leader of the mutiny, Fletcher Christian, and those of every adult male save John Adams. Adams led the remaining islanders under a benevolent dictatorship for the rest of his life, a South Seas Christian monarchy cut off from the rest of the world. After the island was rediscovered, new settlers arrived, including a delusional Englishman named Joshua Hill who took over the island and ruled the islanders by fear. After he was removed by the Royal Navy, it supervised the island for decades, its ships regularly visiting the island and its officers writing several simple legal codes for the Pitcairners. The islanders consented as they considered themselves to be English and were fervently loyal to Queen Victoria. The British administration was very light for decades, the islanders largely running their own affairs. That changed after a Pitcairner murdered two islanders in 1897. The British realized there was no way to try the defendant short of taking him to London. The solution was to place the island under the High Commissioner for the Western Pacific. The High Commissioner was a British official based in Fiji whose job was to bring law and order to a vast swath of the Pacific and suppress the slave trade among the islands. The High Commissioner*

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*arranged for a trial for the murderer, who was convicted and hanged. Pitcairn's government operated under the High Commissioner until 1952 and now is run by the British ambassador to New Zealand.*

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### I. IN THE BEGINNING: 1789

The revolutionary year of 1789—the year the American constitution took effect—is the time of our story.<sup>1</sup> Entire libraries have been written about Pitcairn Island and how it came to be peopled.<sup>2</sup> And although the current population numbers only 66 today—having peaked in 1937 at 233—Pitcairn “has always been larger than itself, a parody or a parable of something.”<sup>3</sup>

The Pitcairners are descended from the English sailors who shipped with William Bligh aboard the *Bounty* in December 1787. The *Bounty*'s mission was to bring the breadfruit tree—a cheap and nutritious food source,<sup>4</sup>—from Tahiti to the West In-

1. Dan T. Coenen, *Of Pitcairn's Island and American Constitutional Theory*, 38 WM. & MARY L. REV. 649 (1997) (comparing Pitcairn to start of American government under the Constitution as the *Bounty* mutiny happened two days before General Washington took the presidential oath).

2. For a more complete accounting of sources regarding the islands, see *Appendix A*.

3. Greg Dening, *Licensed to Land*, TLS: TIMES LITERARY SUPPLEMENT, July 25, 1997, at 10 (book review) (Eng.); DAVID SILVERMAN, PITCAIRN ISLAND 84, 92-95 (1967). See also Pitcairn Islands Study Center, *Census Data*, <http://library.puc.edu/pitcairn/pitcairn/census.shtml> (last visited November 8, 2011) (Census counts from 1790 to 2008). Cf. *First Birth in 17 Years*, 49 KEESING'S RECORD OF WORLD EVENTS 45604 (2003) (Eng.) (stating that in Sept.2003 the first baby was born on Pitcairn in seventeen years).

4. See generally JOHN ELLIS, A DESCRIPTION OF THE MANGOSTAN AND THE BREAD-FRUIT: THE FIRST, ESTEEMED ONE OF THE MOST DELICIOUS; THE OTHER

dies to feed the slaves on English sugar plantations. This mission, urged on the government by the planters, sprung from the cutoff of cheap food imports from Britain's American colonies after the American Revolutionary War<sup>5</sup> and the British trade embargo on America<sup>6</sup> Bligh had been master, i.e., navigator,<sup>7</sup> on Captain Cook's third voyage to the Pacific—the one touching America<sup>8</sup>—and Cook wrote often of Mr. Bligh in his logs, "never with dispraise."<sup>9</sup> The renowned Joseph Banks, president of the Royal Society and the naturalist on Cook's first South Seas mission, recommended him as commander of the breadfruit expedition.<sup>10</sup> When Bligh was appointed, *The Times* noted he was "a man of acknowledged probity and skill, as well as indefatigable attention to duty."<sup>11</sup>

Tahiti had a well-deserved reputation in England for free love,<sup>12</sup> as this was a place where women sold themselves for an

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THE MOST USEFUL OF THE FRUITS IN THE EAST INDIES (London, 1775), *reprinted in* WILLIAM BLIGH, LOG OF H.M.S. PROVIDENCE, 1791-1793 at 35-87 (1976).

5. Algernon E. Aspinall, *Romance of the Bread-Fruit*, 19 BULL. DEPT. AGRIC. TRIN. & TOBAGO 224, 225-27 (1922) (describing origins of mission); Algernon E. Aspinall, *The West India Committee*, THE BOOK OF THE WEST INDIES at 243 (Francis Dodsworth ed. 1904) (quoting minute book of the Committee for Feb. 7, 1775, offering a reward for transplanting breadfruit); *See generally* WILLIAM BLIGH, A VOYAGE TO THE SOUTH SEA, UNDERTAKEN BY COMMAND OF HIS MAJESTY FOR THE PURPOSE OF CONVEYING THE BREAD-FRUIT TREE TO THE WEST INDIES IN HIS MAJESTY'S SHIP THE BOUNTY, COMMANDED BY LIEUTENANT WILLIAM BLIGH, INCLUDING AN ACCOUNT OF THE MUTINY ON BOARD SAID SHIP, AND THE SUBSEQUENT VOYAGE OF PART OF THE CREW, IN THE SHIP'S BOAT, FROM TOFOA, ONE OF THE FRIENDLY ISLANDS, TO TIMOR, A DUTCH SETTLEMENT IN THE EAST INDIES 1 (George Nicol 1792) (stating purpose of *Bounty's* mission), *reprinted in* WILLIAM BLIGH ET AL., A BOOK OF THE 'BOUNTY' at 1-188 (George Mackaness ed. 1938) (Everyman's Library No. 950); Selwyn H.H. Carrington, *The American War and the British Caribbean Economy*, THE SUGAR INDUSTRY AND THE ABOLITION OF THE SLAVE TRADE, 1775-1810 ch. 2 (2002) (discussing end of food imports).

6. American Prohibitory Act, 1776, 16 Geo. 3, c. 5; Trade with America Act, 1783, 23 Geo. 3 c. 26; Trade with America Act, 1783, 23 Geo. 3 c. 39; Order-in-Council of July 2, 1783, LONDON GAZETTE, July 1-5, 1783, at 1 (LG).

7. N.A.M. RODGER, THE WOODEN WORLD: AN ANATOMY OF THE GEORGIAN NAVY 20 (1986).

8. DONALD J. ORTH, DICTIONARY OF ALASKA PLACE NAMES 238 (1967) (entry for Bligh Reef in Prince William Sound); *In re Exxon Valdez*, 270 F.3d 1215, 1221 (9th Cir. 2001) (discussing Bligh Reef, which holed the *Exxon Valdez*).

9. J.C. BEAGLEHOLE, THE JOURNALS OF CAPTAIN JAMES COOK ON HIS VOYAGES OF DISCOVERY, 1776-1780, lxxviii (J.C. Beaglehole ed. 1965) (Hakluyt Society Works Extra Series No. 35).

10. David McKay, *Banks, Bligh, and Breadfruit*, 8 N.Z.J. HIST. 61, 71 (1974).

11. DAILY UNIVERSAL REGISTER (London), May 11, 1787, at 3. *The Times* was founded in 1785 under this title and assumed its more familiar name in 1788. This same issue had items about John Adams, American minister at London, meeting with George III; the endless Warren Hastings impeachment; and Alexander Hamilton fighting the Whiskey Rebellion.

12. JOHN REINHOLD FORSTER, OBSERVATIONS MADE ON A VOYAGE AROUND THE WORLD ON PHYSICAL GEOGRAPHY, NATURAL HISTORY, AND ETHIC PHILOSOPHY 391 (London, G. Robinson 1778) (calling one Tahitian "Messalina" and speak-

iron nail.<sup>13</sup> Bligh obliged his men, and “[t]he women from shore were regularly allowed to spend the nights on board the *Bounty* in glorious Anglo-Tahitian coexistence in the fo’c’sle.”<sup>14</sup> When the *Bounty* weighed anchor in April 1789, the men faced a year on a crowded ship—without women. Soon after sailing, Bligh’s second-in-command, Fletcher Christian, suffered a nervous breakdown and led some of the crew to mutiny,<sup>15</sup> thereby committing a capital offense.<sup>16</sup> Bligh and all the loyalists who could fit in a tiny launch were set adrift and miraculously made it to Timor in the Dutch East Indies, three thousand miles away.<sup>17</sup> Bligh returned to England a hero and again went to Tahiti for breadfruit—this time successfully.<sup>18</sup> A separate expedition to the Pacific rounded up several mutineers, some of whom were hanged for their part in the mutiny.<sup>19</sup> But Bligh’s reputation was ruined in his absence through a smear campaign conducted by a perfidious law professor—Fletcher’s brother Edward.<sup>20</sup> The im-

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ing of the readiness of another to “prostitute” herself); JOSEPH BANKS, *THE ENDEAVOUR JOURNAL OF JOSEPH BANKS, 1768-1771*, at 351 (J.C. Beaglehole ed. 1963) (Banks, who visited Tahiti on Captain Cook’s first South Seas mission, reporting Tahitians enjoyed “free liberty in love without a possibility of being troubled or disturbed by its consequences”).

13. ROBERT W. KIRK, *PITCAIRN ISLAND, THE Bounty Mutineers and Their Descendants* 22 (2008).

14. IAN M. BALL, *PITCAIRN: CHILDREN OF MUTINY* at 30 (1973). See also D. Bonner Smith, *Some Remarks About the Mutiny on the Bounty*, 22 *MARINER’S MIRROR* 216-17 (1936) (Eng.) (showing from ship’s medical records the venereal diseases acquired by crew in Tahiti).

15. SVEN WALHROOS, *MUTINY AND ROMANCE IN THE SOUTH SEAS: A COMPANION TO THE BOUNTY ADVENTURE* 57-59 (1989); Harry L. Shapiro, *Pitcairnia*, 41 *NAT. HIST.* 34, 35 (1938) (calling Christian “unusually sensitive and quick to emotion”).

16. See Articles of War, 1749, 22 *Geo. 2*, c. 33 (U.K.), reprinted in JOHN BARROW, *THE MUTINY OF THE BOUNTY* 196-200 (Gavin Kennedy ed. 1980).

17. See generally Andrew David, *The Epic Open Boat Voyage*, in *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*, at 58-64, 97-102 (1989).

18. DULCIE POWELL, *THE VOYAGE OF THE PLANT NURSERY, H.M.S. PROVIDENCE, 1791-1793* (1973) (*Bulletin of the Inst. of Jam., Sci. Series*, No. 15, pt. 2), reprinted in 31 *ECON. BOTANY* 387 (1977); DOUGLAS L. OLIVER, *RETURN TO TAHITI: BLIGH’S SECOND BREADFRUIT VOYAGE* (1988). See also BLIGH, *supra* note 5 (log of successful mission);

19. See generally *THE COURT-MARTIAL OF THE ‘BOUNTY’ MUTINEERS* (Notable Trials Library 1989) (Owen Rutter ed. 1931) (transcribing minutes of court-martial).

20. See generally BALL, *supra* note 14, at 40-49 (discussing how Bligh became a villain); David Mehegan, *Captain Bligh Was Framed!*, *BOSTON GLOBE*, Oct. 13, 2003, at D1 (discussing campaign against Bligh); Clifford Longley, “*Beloved*” *Captain Bligh*, *THE TIMES* (London), Dec. 8, 1967, at 1 (reporting on commemoration of 150th anniversary of Bligh’s death and rehabilitation of his image); Michael H. Hoffheimer, *The Common Law of Edward Christian*, 53 *CAMBRIDGE L.J.* 140 (1994) (Eng.) (offering appreciative account of Christian’s legal work).

age of Bligh as a monster has ever since been perpetuated by writers and movie-makers.<sup>21</sup>

After returning to Tahiti to drop off some of the crew and take on women, the mutineers searched for a good hiding place, coming to Pitcairn in January 1790.<sup>22</sup> The volcanic island had once been peopled by Polynesians.<sup>23</sup> It was, however, uninhabited by the time a British captain discovered it in 1767. Henamed it for a young midshipman whose father led the troops that marched on Lexington and Concord and, by the rude bridge that arched the flood, fired the shots heard round the world, thus starting the war that led to Pitcairn's reoccupation.<sup>24</sup>

Those first Pitcairn settlers committed another capital offense when, after stripping her upon arrival, they burned the *Bounty*.<sup>25</sup> Thus Pitcairn's legal history begins with two hanging offenses. "Pitcairn's meagre legal history can scarcely be separated from its general history," since "[n]early all the significant events in its history have . . . legal significance."<sup>26</sup>

## II. A STATE OF NATURE: 1790

For thirty-five years the islanders existed in almost total isolation.<sup>27</sup> That apartness has been the defining characteristic of the island's story and most changes have been brought by outsid-

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21. *E.g.*, DIANA JOLLIFFE BELCHER, *MUTINEERS OF THE BOUNTY AND THEIR DESCENDANTS IN PITCAIRN AND NORFOLK ISLANDS* (New York, Harper & Bros. 1871); *MUTINY ON THE BOUNTY* (Metro-Goldwyn-Mayer 1935). *See also* Andre Sennwald, *Mutiny On The Bounty Movie Review*, N.Y. TIMES, Nov. 9, 1935 (Charles Laughton's Bligh in M.G.M.'s film is a "barbarous madman who was half god and half devil . . . [whose] penalties for minor offenses are the judgments of a maniac [and] from the swish of the lash he derives a lewd joy"). . .

22. H.E. Maude, *In Search of a Home: From the Mutiny to Pitcairn Island (1789-1790)*, 67 J. POLYNESIAN SOC'Y 103 (1953).

23. R.M. CARTER, *THE GEOLOGY OF PITCAIRN ISLAND, SOUTH PACIFIC OCEAN* 3 (1967); *see also* JARED DIAMOND, *COLLAPSE: HOW SOCIETIES CHOOSE TO FAIL OR SUCCEED* 120-135 (2005) (discussing occupation and abandonment of Pitcairn); Marshall I. Weisler, *The Settlement of Marginal Polynesia: New Evidence from Henderson Island*, 21 J. FIELD ARCHAEOLOGY 83 (1994) (discussing occupation).

24. PHILIP CARTERET, *CARTERET'S VOYAGE ROUND THE WORLD, 1766-1769*, at 149-51 (Helen Wallis ed. . 1965) (original account of the discovery and naming of island for Midshipman Robert Pitcairn); Elizabeth Baigent, *John Pitcairn, in 17 American National Biography* 563 (John A. Garraty & Mark C. Carnes eds. 1999) (profiling Robert's father).

25. Naval Dockyards Act, 1772, 12 Geo. 3, c. 24 (U.K.) (providing death for burning man-of-war).

26. ANDREW LEWIS, *PITCAIRN'S TORTURED PAST: A LEGAL HISTORY* 39 (Dawn Oliver ed. 2009).

27. Duncan Cook, *Medical Report*, 155 COLONIAL OFF. 52 (1938).

ers.<sup>28</sup> No ships called for eighteen years after settlement and the fate of the *Bounty* was only discovered in February 1808 by the American sealer *Topaz*.<sup>29</sup> The first English vessel to touch at Pitcairn following its rediscovery was *H.M.S. Briton* in 1814.<sup>30</sup>

"The early history of the settlement is a tale of faction and murder."<sup>31</sup> The original population had been twenty-seven: nine mutineers plus eighteen Tahitians (six male, twelve female).<sup>32</sup> The islanders related to the first visitors that there had been much violence on the island and Fletcher Christian himself had been murdered by one of the Tahitian men about two years after settlement.<sup>33</sup> One of the mutineers drowned after jumping off a

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28. Donald A. McLoughlin, *An Account of the Development of the System of Government and Laws on Pitcairn Island During the Nineteenth Century*, 10 TRANS. & PROC. FIJI SOC'Y 138, 138 (1969).

29. Captain Mayhew Folger of the *Topaz* supplied information to a Royal Navy officer in Chile; word made its way to the Admiralty. Letter of Lt. William Fitzmaurice (Oct. 10, 1808), in *Mutineers of the Bounty*, 56 EUR. MAG. & LONDON REV. 50 (1809) (Eng.). Folger moved to Ohio, was the first postmaster at Massillon and his great-grandson Walter Folger Brown was Postmaster General in the Hoover Administration. See generally WALTER HAYES, THE CAPTAIN FROM NANTUCKET AND THE MUTINY ON THE BOUNTY: A RECOLLECTION OF MAYHEW FOLGER, MARINER, WHO DISCOVERED THE LAST MUTINEER AND HIS FAMILY ON PITCAIRN'S ISLAND: TOGETHER WITH LETTERS AND DOCUMENTS NEVER PREVIOUSLY PUBLISHED (1996) 46-47, 84-90. See also *Mutineers of the Bounty*, 21 NAVAL CHRON. 454 (1809) (Eng.) (extract of *Topaz* log); Letter of Adm. W. Sidney Smith to William Wellesley Pole, Sec'y of the Naval Off. (Mar. 14, 1809), in *Article II*, 3 Q. REV. 21, 23-24 (1810) (Eng.); Letter of Capt. Mayhew Folger to the Lords Commissioners of the Admiralty (Mar. 1, 1813), in *Article IV*, 13 Q. REV. 342, 376 (1815) (Eng.); *Nautical Anecdotes and Selections*, 35 NAVAL CHRON. 18-19 (1816) (Eng.); THE TIMES (London), Dec. 16, 1815, at 2. See also Amasa Delano, A NARRATIVE OF VOYAGES AND TRAVELS IN THE NORTHERN AND SOUTHERN HEMISPHERES COMPRISING THREE VOYAGES AROUND THE WORLD, TOGETHER WITH A VOYAGE OF SURVEY AND DISCOVERY IN THE PACIFIC AND ORIENTAL ISLANDS 126 (Boston 1817) (giving Folger's account). Folger moved to Ohio, was the first postmaster at Massillon and his great-grandson Walter Folger Brown was Postmaster General in the Hoover Administration. HAYES, *supra*, at 88, 90.

30. Letter from Capt. Thomas Staines, *H.M.S. Briton*, to Vice-Admiral Manley Dixon (Oct. 18, 1814) in *Article IV*, 13 Q. REV. 352, 377 (1815) (Eng.); THE SAGA OF THE BOUNTY: ITS STRANGE HISTORY AS RELATED BY THE PARTICIPANTS THEMSELVES 354-56 (Irvin Anthony ed. 1935). See generally JOHN SHILLIBEER, A NARRATIVE OF THE BRITON'S VOYAGE TO PITCAIRN'S ISLAND INCLUDING AN INTERESTING SKETCH OF THE PRESENT STATE OF THE BRAZILS AND OF SPANISH SOUTH AMERICA ch. 5 (London, Law & Whittaker 3d ed. 1818) (author was commander of the Royal Marines aboard the *Briton*); HAYES, *supra* note 29, at 68-69 (giving short account of *Briton*'s trip).

31. James Scott Neill, *Pitcairn Islands: General Administrative Report*, 155 COLONIAL OFF. 3 (1938).

32. See generally SILVERMAN, *supra* note 3, at 47-52 (profiling Tahitians); Robert Langdon, "Dusky Damsels": *Pitcairn Island's Neglected Matriarchs of the Bounty Saga*, 35 J. PAC. HIST. 29 (2000) (Austl.) (profiling women who joined mutineers).

33. See generally SILVERMAN, *supra* note 3, at 53-73. R.H. Goddard, *Captain Thomas Raine of the "Surry", 1795-1860*, 26 ROYAL AUSTR. HIST. SOC'Y J. & PROC. 277, 298-303 (1940); FREDERICK WILLIAM BEECHY, NARRATIVE OF A VOYAGE TO THE PACIFIC AND BEERING'S STRAIT, TO CO-OPERATE WITH THE POLAR EXPEDI-

cliff “in a fit of drunken delirium.”<sup>34</sup> In all, seven Englishmen and all six Tahitian men had been murdered and one Englishman died a natural death.<sup>35</sup> Out of the bloodbath, the surviving mutineer was Alexander Smith, who assumed the name John Adams.<sup>36</sup>

### III. INSTITUTED IN THE TIME OF MAN’S INNOCENCY: 1829

Initially, the islanders were governed by Adams, a benevolent despot.<sup>37</sup> He “had solved every issue of society and government by a complete fusion of morals and politics, and of church and state.”<sup>38</sup> It was lawless in every sense, a legal *terrain vague*.<sup>39</sup> Singlehandedly the unlettered seaman Adams educated his charges and created a new society, conduct that has been written of heroically:

TIONS: PERFORMED IN HIS MAJESTY’S SHIP BLOSSOM 66–95 (Philadelphia, Carey & Lea 1832), *excerpted in* WILLIAM BLIGH, *A NARRATIVE OF THE MUTINY ON BOARD HIS MAJESTY’S SHIP BOUNTY AND THE SUBSEQUENT VOYAGE OF PART OF THE CREW, IN THE SHIP’S BOAT, FROM TOFOA, ONE OF THE FRIENDLY ISLANDS, TO TIMOR, A DUTCH SETTLEMENT IN THE EAST INDIES* (London, George Nicol 1790), *reprinted in* William Bligh & Edward Christian, *The Bounty Mutiny* 235–54 (Penguin Classics 2001); an account by an islander of a later generation is ROSALIND AMELIA YOUNG, *MUTINY OF THE BOUNTY AND STORY OF PITCAIRN ISLAND, 1790–1894, 21-31* (5th ed. Mountain View, Calif., Pac. Press Publishing Ass’n 1894).

34. Charles Prestwood Lucas, *Introduction to THE PITCAIRN ISLAND REGISTER* Book 9 (1929).

35. BEECHY, *supra* note 33, at 93. *See also* Coenen, *supra* note 1, at 653–57 (summarizing early history on Pitcairn); TREVOR LUMMIS, *PITCAIRN ISLAND: LIFE AND DEATH IN EDEN* 57–74 (1997) (recounting story of bloodshed).

36. J.K. Laughton & Andrew Lambert, *John Adams*, 1 OXFORD DICTIONARY OF NATIONAL BIOGRAPHY 237 (H.C.G. Matthew & Brian Harrison eds. 2004) [hereinafter O.D.N.B.]; Brian W. Scott, *The True Identity of John Adams*, 68 MARINER’S MIRROR 31 (1982) (Eng.); Brian W. Scott, *Pitcairn: What Happened, in MANORIAL RESEARCH*, *supra* note 17, at 124–36.

37. *See* WILLIAM KEITH HANCOCK, *Politics in Pitcairn*, 109 NINETEENTH CENTURY & AFTER 575 (1931) (Eng.) (discussing Adams’s leadership), *reprinted in* WILLIAM KEITH HANCOCK, *POLITICS IN PITCAIRN AND OTHER ESSAYS* (1947); McLoughlin, *supra* note 28, at 142 (describing his leadership role); AN OLD QUARTERMASTER [JOHN BECHERVAISE], *THIRTY-SIX YEARS OF A SEAFARING LIFE* 171–74 (Portsea, W. Woodward 1839) (first-hand account of his leadership from 1825 visitor); THOMAS BOYLES MURRAY, *PITCAIRN: THE ISLAND, THE PEOPLE, AND THE PASTOR, TO WHICH IS ADDED A SHORT NOTICE OF THE ORIGINAL SETTLEMENT AND PRESENT CONDITION OF NORFOLK ISLAND* 117–24 (London, Society for Promoting Christian Knowledge 12th ed. 1860) (discussing his piety).

38. RAYMOND KEITH NOBBS, *GEORGE HUNN NOBBS, 1799-1884* 15 (1984) [hereinafter RAYMOND NOBBS].

39. Cf. Frederic E. Brown, *The Sources of the Alaska and Oregon Codes*, 2 UCLA ALASKA L. REV. 87, 88–90 (1973) (describing how there were no laws for even the most basic needs in Alaska from the United States taking possession from Russia in 1867 until Congress in 1884 applied the laws of Oregon to Alaska).

"Many notable cases of religious conversion have been recorded in the history of Christianity, but it would be difficult to find an exact parallel to that of John Adams. The facts are quite clear. There is no question as to what he was and did after all his shipmates on the island had perished. He had no human guide or counselor to turn him into the way of righteousness and to make him feel and shoulder responsibility for bringing up a group of boys and girls in the fear of God. He had a Bible and a Prayer Book to be the instruments of his endeavour, so far as education, or rather lack of education, served him. He may well have recalled to mind memories of his own childhood. But there can be only one simple and straightforward explanation of what took place, that it was the handiwork of the Almighty, whereby a sailor seasoned to crime came to himself in a far country and learnt and taught others to follow Christ."<sup>40</sup>

The Pitcairners' story thus became a "text for Victorian moralists."<sup>41</sup> The "attraction of Pitcairn's story was the miracle of God's grace triumphing over men's evil . . . where every beatitude of the gospel had become a way of life."<sup>42</sup> Pitcairners, a happy, peaceful pious people—teetotalers too!—became, in popular imagination, the proprietors of a Utopia, an Eden, a Paradise, the Elysian Fields in the South Seas.<sup>43</sup> From the earliest articles in the press their religiosity was discussed and praised.<sup>44</sup> The island's creation myth—sex, mutiny, murder, and wickedness followed by redemption, piety, goodness, and harmony—was Biblical. Inevitably the Pitcairners were held up as role models to the world.<sup>45</sup>

40. Lucas, *supra* note 34, at 15–16.

41. HARRY L. SHAPIRO, DESCENDANTS OF THE MUTINEERS OF THE BOUNTY 31 (1929).

42. Greg Dening, *Irony in Paradise*, 4950 TIMES LITERARY SUPP. 31, (book review) (Eng.). Cf. Lewis, *supra* note 26, at 48 (calling Adams's rule "a Biblical monarchy").

43. See generally Samuel Warren, *The Paradise in the Pacific*, 73 BLACKWOOD'S EDIN. MAG. 647, 656-58 (1853) (Scot.) (discussing piety of islanders), reprinted in *Samuel Warren*, 1 MISCELLANIES CRITICAL, IMAGINATIVE, AND JURIDICAL 305 (Edinburgh, William Blackwood 1855) and 38 LITTELL'S LIVING AGE 131 (1853); *A Real Utopia*, N.Y. TIMES, Dec. 17, 1878, at 4 ("this Utopia, this new Atlantis, this home of Paradisic purity"); ALFRED MCFARLAND, MUTINY IN THE "BOUNTY!" AND STORY OF THE PITCAIRN ISLANDERS 237 (Sydney, J.J. Moore 1884) (teetotalers); HUBERT HOWE BANCROFT, THE NEW PACIFIC 519 (rev. ed. 1913) (leading American historian calling it "the Terrestrial paradise of Dante").

44. E.g., *Mutineers of the Bounty*, 35 NAVAL CHRON. 17, 23 (1816) (Eng.). See also *Primitive Life in the Pacific: A Day on Pitcairn's Island During a Voyage from Australia to San Francisco*, 37 AM. NEPTUNE 66, 68 (1977) (report by 1868 visitor: "the strictness of their religious observances is one of their strongest peculiarities").

45. Louis Le Feuvre, *Pitcairn Island: A Study in the Evolution of Rascality*, 77 FORUM 903, 911 (1927) (calling it "Utopia" and tracing the path from evil to good); [NATHAN WELBY FISKE], ALECK: THE LAST OF THE MUTINEERS, OR, THE HISTORY

The first laws, “Mosaic in origin,” were enacted around the time of Adams’s death, which occurred in March 1829.<sup>46</sup> This was done at the suggestion of George Hunn Nobbs, an Irish-born former member of the Royal and Chilean navies who had arrived in November 1828 and immediately became the island’s school-teacher and pastor.<sup>47</sup> Four in number, the laws banned murder, theft, adultery, and the removal of landmarks; murder was punishable by death; adultery by whipping and marriage within three months; theft by threefold restitution.<sup>48</sup> The islanders organized themselves by electing their own magistrate and conducting trials by jury.<sup>49</sup> The islanders, though left on their own by the motherland, “consider[ed] the King of England as their sovereign.”<sup>50</sup>

Two years after Adams’s death, the islanders expressed fears of overcrowding to the British government.<sup>51</sup> As a result, in 1831 the British arranged to relocate the islanders to Tahiti.<sup>52</sup> But they found it a South Seas Vegas, full of “immorality, saloons,

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OF PITCAIRN’S ISLAND 133-38 (Amherst, Mass., J.S. & C. Adams 2d ed. 1843) (on role models).

46. FISKE, *supra* note 45, at 150. There is disagreement as to whether the laws immediately preceded or followed the death of Adams. *Id.* at 128. One source states a code of laws was signed before Adams’s death by the male heads of families. *Id.* at 150. But Captain William Waldegrave of *H.M.S. Seringapatam* reported in March 1830 the laws came after Adams died. John Barrow, *Some Recent Accounts of the Pitcairn Islanders*, 3 J. ROYAL GEOG. SOC’Y 156, 160-1 (1833) (Eng.) [hereinafter Barrow Accounts].

47. Goddard, *Raine* at 284; KIRK, *supra* note 13, at 70-72; McLoughlin, *supra* note 28, at 142. For more on Nobbs, see MURRAY, *supra* note 37, at 162-194; H.E. Maude, *George Hunn Nobbs*, 2 AUSTRALIAN DICTIONARY OF BIOGRAPHY 288 (1967); and RAYMOND NOBBS, *supra* note 38.

48. Barrow *supra* note 46, at 160 (describing laws); John Barrow, *The Pitcairn Islanders*, 2 NAVAL MAG. 311, 317 (1837) [hereinafter Barrow Islanders]. *Exodus* 20:13 (“Thou shalt not kill.”); *id.* 20:14 (“Thou shalt not commit adultery.”); *id.* at 20:15 (“Thou shalt not steal.”); *Proverbs* 22:28 (“Remove not the ancient landmark.”).

49. Letter from Arthur Quintal, Jr., Chief Magistrate of Pitcairn Island, to Rev. S.C. Damon, Sandwich Islands, (Jan. 11, 1844) in FISKE, *supra* note 45, at 154. *Contra* Neill, *supra* note 31, at 4 (“After [Adams’s] death there was no settled form of government for some years”).

50. Barrow Islanders, *supra* note 48, at 317. Cf. *Advocate-Gen. of Bengal v. Ranees Surnomoye Dossee*, [1863] Moore 22 (P.C.) (appeal taken from Sup. Ct. of Calcutta) (U.K.), available at <http://www.reocities.com/englishreports/15ER811.pdf> (“Where Englishmen establish themselves in an uninhabited . . . country, they carry with them not only the laws, but the sovereignty of their own State”).

51. FISKE, *supra* note 45, at 141. See also SILVERMAN, *supra* note 3, at 92-95.

52. H.E. Maude, *Tahitian Interlude: The Migration of the Pitcairn Islanders to the Motherland in 1831*, 67 J. POLYNESIAN SOC’Y 115 (1958) (JPS), reprinted in *OF ISLANDS*, *supra* note 22, at ch. 7; WALTER BRODIE, *PITCAIRN’S ISLAND AND THE ISLANDERS IN 1850* 67-76 (London, Whitaker 3d ed. 1851) (FP) (vital for reproducing primary source documents), microformed on American Culture Series, Reel 80.3 (University Microfilms)(reproducing official correspondence on relocation); FISKE, *supra* note 45, at 141-51 (reproducing account of captain who transported islanders); Barrow Accounts, *supra* note 46, at 162-65 (same).

vile dances, gambling, and scarlet women” and returned home after six months.<sup>53</sup>

#### IV. JOSHUA HILL: 1831–7

“A small island easily falls under the domination of a boss, who crudely or subtly intimidates” all opposition.<sup>54</sup> History gives us several accounts of adventurers setting up on an island and lording over it, among them Tristan da Cunha in the South Atlantic,<sup>55</sup> Swains Island in the South Pacific,<sup>56</sup> Niuhau in the Hawaiian chain,<sup>57</sup> and the Cocos (Keeling) Islands in the Indian Ocean.<sup>58</sup> It is such a well-known trope that it even befell the Americans who survived the wreck of the *S.S. Minnow*.<sup>59</sup> And it happened on Pitcairn too.<sup>60</sup> Just after resettlement, there arrived “an interfering and slightly insane old busy body who had taken a gratuitous interest in the community and . . . took upon himself the task of correcting and organizing it to his own satisfaction.”<sup>61</sup> This was Joshua Hill—another Englishman—who claimed to have been sent by London but was self-appointed and whom the

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53. FREDERICK O'BRIEN, *ATOLLS OF THE SUN* 153 (1922); FISKE, *supra* note 45, at 143-44.

54. Arthur Lewis, *Epilogue* to JOHN MORDECAI, *FEDERATION OF THE WEST INDIES* 461 (1968). This is the American edition of a volume published in Britain as *The West Indies and the Federal Negotiations*.

55. MARGARET MACKAY, *ANGRY ISLAND: THE STORY OF TRISTAN DA CUNHA* (1506–1963) 30–32 (1964) (discussing Jonathan Lambert and Tristan); Joseph Bockrath, *Law on Remote Islands*, 27 *LEGAL STUD. F.* 21, 59–62 (2003).

56. See S. Misc. Doc. No. 68-117 (reprinting report by Secretary of State Hughes on Jennings); 1 U.S. DEP'T OF STATE, PUB. NO. 1518, *PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES, 1925*, H. DOC. 69-476, at 484 (1940) (U.S. Congressional Serial Set Vol. 8585-1) (reprinting same report), available at <http://digioll.library.wisc.edu/cgi-bin/FRUS/FRUSIdx?type=goto&id=FRUS.FRUS1925v01&isize=M&submit=Go+to+page&page=484>.

57. See Catherine Kekoa Enomoto, *On the Cusp*, *HONOLULU STAR-BULL.*, July 14, 1997, at B1 (discussing Robinson family's ownership of Niuhau).

58. See generally J.C. ROSS, *A Visit to the Cocos or Keeling's Islands*, 2 *COLBURN'S UNITED SERV. MAG. & NAVAL & MIL. J.* 113 (1844) (Eng.) (account by the adventurer himself taking over the Cocos Islands). *Islands*, 25 *J. MALAYAN BRANCH ROYAL ASIATIC SOC'Y* 1 (1953) (Sing.) (same).

59. *Gilligan's Island: The Little Dictator* (CBS television broadcast Sept. 30, 1965) (a deposed Latin American dictator is parachuted onto the island by his nation's new government, whereupon the dictator, possessing the only gun, takes command of the castaways). See also Robert M. Jarvis, *Legal Tales from Gilligan's Island*, 39 *SANTA CLARA L. REV.* 185 (1998).

60. See generally BRODIE, *supra* note 52, at 174–216 (extensively reproducing letters by Hill, Pitcairners, and British officials). See also BELCHER, *supra* note 21, at 182–94; HARRY L. SHAPIRO, *THE HERITAGE OF THE BOUNTY: THE STORY OF PITCAIRN THROUGH SIX GENERATIONS* 88-105 (1936); ROBERT B. NICOLSON, WITH BRIAN F. DAVIS, *THE PITCAIRNERS* chs. 12-13 (Univ. of Haw. Press 1997) (1965); SILVERMAN, *supra* note 3, at 119–21, 162–3; KIRK, *supra* note 13, at 82–90.

61. McLoughlin, *supra* note 28, at 145.

trusting islanders accepted.<sup>62</sup> Since he was able to convince a Royal Navy officer of his bona fides, it was understandable that the islanders, ignorant of the outside world, believed him.<sup>63</sup>

Hill proclaimed a Commonwealth with himself as President. He was assisted in his rule by a Privy Council of seven that he alone appointed.<sup>64</sup> Hill clashed with the other Englishmen: Nobbs, who in his roles as teacher and pastor was a power center, and John Buffett and John Evans, who arrived together in 1823.<sup>65</sup> Hill had Evans and Buffett publicly flogged, passed a law to prevent their children from inheriting property, and took away their right to bear arms.<sup>66</sup> With a gun under his seat, Hill lectured the islanders every Sunday, espousing Methodism and condemning the late Adams.<sup>67</sup> Nobbs, Buffett, and Evans fled to Tahiti in 1834.<sup>68</sup>

Hill was deposed by a Royal Navy captain in 1837, Edward Russell of *H.M.S. Actæon*, who revealed to the islanders that Hill had neither credentials nor authority over them.<sup>69</sup> Hill was deported the next year.<sup>70</sup> He made his way back to London, where

62. See *id.* at 145; H.E. Maude, *The History of Pitcairn Island*, ALAN STRODE CAMPBELL ROSS & ALBERT W. MOVERLEY, *THE PITCAIRNESE LANGUAGE* 72-73 (1964); SILVERMAN, *supra* note 3, at 180; SHAPIRO, *supra* note 60, ch. 4. John Buffett, *A Narrative of 20 Years Residence on Pitcairn Island*, 4 *THE FRIEND* 2, 50-51 (1846) (A first-hand account of Hill's regime from an islander)(FP). An account of Hill by Buffett's granddaughter is YOUNG, *supra* note 33, at 75-85.

63. Letter from Capt. Charles H. Freemantle, *H.M.S. Challenger*, (May 30, 1833), in Barrow Accounts, *supra* note 46, at 164-67. This officer is the namesake of the city in Western Australia.

64. McLoughlin, *supra* note 28, at 145-46. Rosalind Young refers to "four principal men to support him, to whom he gave the title of elders. These were supplemented by three sub-elders, and four cadets." YOUNG, *supra* note 33, at 76. See also W.W.B., *An Impudent Fraud: How "Lord" Hill Governed Pitcairn Is.*, 7 *PAC. IS. MONTHLY*, 37, 38 (1936); Léonce Jore, «La grande révolution à Pitcairn»: *Épilogue de la célèbre mutinerie du «Bounty»* [The Great Revolution in Pitcairn: An Epilogue to the Celebrated Mutiny on the Bounty], 102 *REVUE POLITIQUE ET PARLEMENTAIRE [POL. REV. & PARL.]* 58, 69-72 (1950) (Fr.) (discussing Hill).

65. Lucas, *supra* note 34, at 11-12; YOUNG, *supra* note 33, at 54-64.

66. McLoughlin, *supra* note 28, at 146. *Cf.* U.S. CONST., art. III, sec. 3, cl. 2 (banning punishments working corruption of the blood).

67. NOBBS, *supra* note 38, at 31.

68. BRODIE, *supra* note 52, at 192; NOBBS, *supra* note 38, at 30. See also Lucas, *supra* note 34, at 18 ("Hill . . . after the most outrageous proceedings [appears] to have practically enforced the banishment of the three Englishmen.").

69. Letter from Captain the Right Honorable Lord Edward Russell of HMS *Actæon*, in *Valparaiso to the Marquesas, Sandwich, Tahiti, and Pitcairn Islands*, 7 *NAUTICAL MAG. & NAVAL CHRON.* 514, 520-21 (1838) (Eng.) (stating Captain Russell "gave judgment against Mr. Hill, telling the natives who he was, and that he had no longer any power over them" and informed Hill "he must leave the island at the first opportunity").

70. H.W. Bruce, *Voyage of H.M.S. Imogene, Captain H.W. Bruce—Sandwich, Tahiti, and Pitcairn Islands*, 7 *NAUTICAL MAG. & NAVAL CHRON.* 737, 743 (1838) (Eng.) ("Mr. Hill . . . we brought away at his own request. He had made himself very obnoxious to the natives, having assumed a power and control over them which he

he lobbied the government to be paid for his services by way of printed pamphlets addressed to the Colonial Office and the Admiralty, writings that show clear signs of Hill's persecution complex and megalomania.<sup>71</sup> Hill's lasting contribution to the world was his contribution to literature.<sup>72</sup> Freed of Hill's dictatorship, Nobbs, Buffett, and Evans returned.<sup>73</sup>

## V. THE FLY CONSTITUTION: 1838

Pitcairn is closer to South America than Australia. Its connections to South America were strong in the early days as the Royal Navy—whose Pacific Squadron was based in Valparaiso, Chile—looked in on Pitcairn regularly.<sup>74</sup> Hill's tenure showed the need for a proper government.<sup>75</sup> As did the depredations of visiting sailors, who took advantage of the islands because there were not considered to be under the protection of Britain or any other power.<sup>76</sup>

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had neither authority to do, nor ability to execute effectually; and same being led away to side with him, the seeds of dissension among the people were thus sown.”).

71. See generally JOSHUA HILL, TO THE RIGHT HON. LORD JOHN RUSSELL, HER BRITANNIC MAJESTY'S PRINCIPAL SECRETARY OF THE COLONIAL OFFICE, THE HUMBLE MEMORIAL OF JOSHUA HILL, NOW OF LONDON, IN HIS SIXTY-NINTH YEAR, FORMERLY AN OFFICER IN THE HONOURABLE EAST INDIA COMPANY'S NAVAL SERVICE, AND LATE PASTOR AND TEACHER AT THE ISLAND OF PITCAIRN IN THE PACIFIC OCEAN (London, 1841) and JOSHUA HILL, TO THE RIGHT HON. THE LORDS COMMISSIONERS OF HER BRITANNIC MAJESTY'S ADMIRALTY, THE HUMBLE MEMORIAL OF JOSHUA HILL, NOW OF LONDON, IN HIS SIXTY-NINTH YEAR, FORMERLY AN OFFICER IN THE HONOURABLE EAST INDIA COMPANY'S NAVAL SERVICE, AND LATE PASTOR AND TEACHER AT THE ISLAND OF PITCAIRN IN THE PACIFIC OCEAN (London, 1841), both available at <http://www.jstor.org/stable/60205273> (reproducing pamphlets in Hume Tracts Vol. 130, in the library of University College, London).

72. Mark Twain, *The Great Revolution in Pitcairn*, 43 ATLANTIC MONTHLY 295 (1879), reprinted in [SAMUEL CLEMENS], MARK TWAIN: COLLECTED TALES, SKETCHES, SPEECHES & ESSAYS, VOL.1 : 1852-1890, at 710 (Louis J. Budd ed. 1992).

73. KIRK, *supra* note 13, at 87.

74. Lucas, *supra* note 34, at 5-6; McLoughlin, *supra* note 28, at 141. See generally John Bach, *The Royal Navy in the Pacific Islands*, 3 J. PAC. HIST. 3 (1968) (Austl.) (explaining role played by Royal Navy in maintaining law and order in South Pacific in Nineteenth Century). See also E.A. Binians, *The Western Pacific, 1788-1885*, in 7 [pt. 1] CAMBRIDGE HISTORY OF THE BRITISH EMPIRE (J. Holland Rose, A.P. Newton & E.A. Binians eds. 1933) 324-62 (survey of all aspects of British involvement—political, diplomatic, naval, missionary—in the Pacific Islands); JOHN MANNING WARD, *Policing the Pacific: The Role of the Royal Navy, 1805-1844*, BRITISH POLICY IN THE SOUTH PACIFIC (1786-1893) 58-71 (Greenwood Press 1976) (1950).

75. McFarland, *supra* note 43, at 138-39.

76. *Id.*; Capt. Russell Elliott, *H.M.S. Fly*, to Rear Adm. Charles Bayne Hodgson Ross, Commander-in-Chief, Pacific Station, (Jan. 25, 1839), in BRODIE, *supra* note 52, at 82-83. The originals are in the National Archives ADM 1/48 and reproduced at PCR 3-1230 to 3-1243.

One of the visiting captains remedied this problem with a document referred to both as “Pitcairn’s Magna Carta” and its first “constitution,” drafted by Captain Russell Elliott<sup>77</sup> of *H.M.S. Fly* and signed aboard his ship on November 30, 1838.<sup>78</sup> Elliott is said to have claimed the island for Queen Victoria (The islanders wrote her in 1853 saying just that.).<sup>79</sup> But it is unclear if he explicitly did so.<sup>80</sup> However, the language of the laws shows a clear intent that the island be British. The chief magistrate’s oath was:

I solemnly swear that I will execute the duties of magistrate and chief ruler of Pitcairn’s Island . . . by dispensing justice and settling any differences that may arise, zealously, fearlessly, and impartially and that I will keep a register of my proceedings and hold myself accountable for the due exercise of my office to Her Majesty the Queen . . . .<sup>81</sup>

The islanders were devoted to their sovereign. An attempt by the French to occupy the island in 1849 was rebuffed.<sup>82</sup> One visitor in the 1870’s reported the first thing he was asked on arriving was “How’s Victoria?”<sup>83</sup> The British government has publicly stated that its sovereignty over the island began with Elliott’s

77. His name is spelled as “Elliott” with a double “l” in most of the Pitcairn literature but the official Navy List spells it with a single “l.” THE NAVY LIST, CORRECTED TO THE 20TH DEC., 1834, at 15 (London, John Murray 1834) (U.K.). Correspondence from the period in the Privy Council Record repeatedly shows his name as “Elliott.” *Eg.* PCR 3-1231 (TNA ADM 1/48).

78. Maude, *supra* note 62, at 72–73; SILVERMAN, *supra* note 3, at 180; Queen. v. Seven Named Accused, [2004] 127 I.L.R. 232, ¶¶37–49 (Pitcairn Is. Sup. Ct.). *See* BRODIE, *supra* note 52, at 82–91 (reprinting Elliott’s report and text of his laws); Bockrath, *supra* note 54, at 66–69 (reprinting laws). One source says Nobbs wrote the laws and Elliott gave sanction to them. NOBBS, *supra* note 38, at 34.

79. Letter from Arthur Quintal, Jr., Chief Magistrate, to Queen Victoria, (July 27, 1853), *in* MURRAY, *supra* note 37, at 243–4.

80. MURRAY, *supra* note 37, at 262, writes that the island’s register, which he said was in his possession, states: “This island was taken possession of by Captain Elliott, on behalf of the Crown of Great Britain, on the 29th of November, 1838.” Walter Brodie in his earlier account also states the register contains this information about claiming the island. BRODIE, *supra* note 52, at 116. However, the transcription of the register published in 1929 does not include this passage. *See* PITCAIRN ISLAND REGISTER BOOK, *supra* note 34, at 262. In the Privy Council Record is the printed transcription interlined by photoreproductions of the original, now in the possession of the National Maritime Museum, Greenwich, London. The relevant handwritten page is the same as the printed transcription. *See* PCR 3-999.

81. BRODIE, *supra* note 52, at 84.

82. MCFARLAND, *supra* note 43, at 139-40. The islanders’ feelings about the French were typically British: “We are indeed British subjects and we think it a great privilege to be considered so; and when we see the flag of Old England waving from the staff in front of the schoolhouse, we often remark to each other with grateful hearts, ‘That’s our safeguard from the ugly French!’” *Letters from the Pitcairn Islanders*, 13 CHAMBERS’ EDIN. J. 234, 234–35 (1850) (Eng.) (reprinting letter from pupils of Pitcairn school, Aug. 11, 1847).

83. *Recent History of the Pitcairn Islanders*, 52 CHAMBERS J. POPULAR LITERATURE SCI. & ARTS 730, 732 (1875) (Eng.).

action.<sup>84</sup> In 2004 efforts were made by attorneys in the first case ever held in the Pitcairn Supreme Court to elicit a ruling that Britain had not properly taken the island and therefore had no authority to bring the case.<sup>85</sup> But because the government had declared Pitcairn to be British, the courts did not disturb that finding.<sup>86</sup>

Elliott's actions were approved of by his superior officer.<sup>87</sup> The captain that deposed Hill had urged action to be taken by London: "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."<sup>88</sup> Another naval officer repeated this call in 1844: "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."<sup>89</sup> But this was met with skepticism in London, a top colonial official writing in 1846 that the island and its people were

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84. U.K. Foreign & Commw. Off. Press Release No. 15 of 1990, *reprinted in* 61 BRIT. Y.B. INT'L L. 1990, at 503 (1991) (statement issued on two-hundredth anniversary of mutineers settling on Pitcairn); U.K. FOREIGN OFF., HISTORICAL SECTION, PEACE HANDBOOK NO. 144, BRITISH POSSESSIONS IN OCEANIA 30 (1920) (stating Pitcairn was the "earliest" of its Pacific Islands, "settled by the mutineers of the *Bounty* in 1790, and formally placed under the British flag in 1838"), *reprinted in* 22 U.K. FOREIGN OFF., HISTORICAL SECTION, PEACE HANDBOOKS (Scholarly Resources 1970) (1920).

85. *See generally* Queen v. Seven Named Accused, [2004] 127 I.L.R. 232, ¶¶15–162 (Pitcairn Is. Sup. Ct.).

86. *See* Christian v. The Queen, [2006] UKPC 47 ¶9 (appeal taken from Pitcairn Is.), *citing* Coast Lines, Ltd. v. Society Nazionale di Navigazione (The *Fagernes*), [1927] P. 311 (A.C.) 324 (Eng.). *Cf.* Nyalı v. Attorney-General, [1956] 1 Q.B. 1, 15 (Eng.) ("The courts rely on the representatives of the Crown to know the limits of its jurisdiction and to keep within it. Once jurisdiction is exercised by the Crown the courts will not permit it to be challenged."); Post Off. v. Estuary Radio, Ltd. [1968] 2 Q.B. 740 at 755 (Eng.). In a case from the San Juan Islands—now a part of Washington State but then disputed between the United States and Canada—the court dismissed a sovereignty question because it was a political question for the executive to resolve. *See* Watts v. United States, 1 Wash. Terr. 288, 295–6 (1870). *See also* Legal Status of Eastern Greenland (Den. v. Nor.), 1933 P.C.I.J. (Ser. A/B) No. 53, at 46 (Apr. 5) (holding a sovereign need not exercise its powers extensively in a territory to be sovereign over it); *Clipperton Island Arbitral Award of King Victor Emmanuel III, Jan. 28, 1931*, 26 AM. J. INT'L L. 390, 393–94 (1932), *translating* 2 REPS. INT'L ARBITRAL AWARDS 1105 (holding that when a territory is uninhabited sovereignty is perfected from the moment possession is taken and no other state disputes that possession).

87. Letter from Rear Adm. Charles Bayne Hodgson Ross, Commander-in-Chief, Pacific Station, to Charles Wood, Sec'y of the Admiralty, (Feb. 8, 1839), *in* PCR 3-1244 to 3-1249 (TNA ADM 1/48).

88. Letter from Capt. Edward Russell, *H.M.S. Actaeon*, to Commodore Mason, (Jan. 1837), *in* PCR 3-1228 (TNA ADM 1/48).

89. Letter from Lt. Cmdr. Henry S. Hunt, *H.M.S. Basilisk*, to Rear Adm. Richard Thomas, Commander-in-Chief, Pacific Station, (Aug. 1, 1844), *in* PCR 3-1298 (TNA ADM 1/5561).

of no more use to the Nation at large, than if they were settled in the Interior of Africa. Yet we are constantly making them Presents, sending Ships to visit them, permitting Naval Officers to make a sort of code for their Government, & to appoint rulers over them; and, now, one of those Officers recommends that a [governor should] be appointed and a Missionary sent out to take care of this little hamlet which has, already, become too populous for the subsistence of its Inhabitants. My own opinion is that the kindest & wisest thing [would] be to convey them all, as opportunity may offer, to New South Wales, the nearest British Colony[.], or to New Zealand, where they might be very useful.<sup>90</sup>

The basic system codified by Eliott endured for generations and in 1937, a colonial officer reported that Pitcairners were “deeply attached to their system.”<sup>91</sup> Nonetheless, there was Nineteenth Century criticism of the form of government when it went to Norfolk Island with the 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.<sup>92</sup>

The constitution provided for a magistrate chosen by universal adult suffrage—making Pitcairn the first place in the world to grant women the vote.<sup>93</sup> Elections were initially held on New

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

91. Neill, *supra* note 31, at 13.

92. Extract of a Letter from Henry Wilkinson, Q.C., to Lord Augustus Loftus, Governor of Norfolk Island & New South Wales, in PAPERS RELATING TO HER MAJESTY’S COLONIAL POSSESSIONS: REPORTS FOR 1883, 1884, AND 1885, 1886, [C. (2d series) 4842], at 227–8, in 45 P.P. (1886) 1, MF 92.337–9, IUP Colonies 24 [hereinafter PAPERS 1884 AND 1885]. Other correspondence between Wilkinson and Loftus, also highly critical of the Norfolkers, is printed in that report and at PAPERS RELATING TO HER MAJESTY’S COLONIAL POSSESSIONS: REPORTS FOR 1884 AND 1885, 1884–85, [C. (2d series) 4583], at 279–88, in 52 P.P. (1884–5) 559, MF 91.413–6, IUP Colonies 24. The Governor of Norfolk in 1897 wrote similarly: “Crime is rarely punished and debts are not recoverable.” Letter from Henry Robert Brand, Viscount Hampden, Governor of Norfolk & New South Wales, Sydney, to Joseph Chamberlain, Colonial Sec’y, London, Jan. 20, 1896, in NORFOLK ISLAND: COMMUNICATIONS RELATIVE TO THE TRANSFER OF NORFOLK ISLAND TO THE GOVERNMENT OF NEW SOUTH WALES, 1897, [C. (2d series) 8358], at 3, in 61 P.P. (1897) 105, MF 103.499.

93. Donald A. McLoughlin, *Law and Order on Pitcairn’s Island: An Account of the Development of the System of Government and Laws of Pitcairn Island From 1791 to 1971*, in LAWS OF PITCAIRN, HENDERSON, DUCIE AND OENO ISLANDS 24 (rev. ed. 1974), available at <http://library.puc.edu/pitcairn/pitcairn/govt-history.shtml>;

Year's Day,<sup>94</sup> with the magistrate chosen by plurality.<sup>95</sup> To avoid a repeat of the Hill years and to check Nobbs's power, the magistrate was required to be a native-born islander.<sup>96</sup> The magistrate, who exercised judicial and executive power, governed with two councilors. One was chosen by the people, the other by the magistrate.<sup>97</sup>

The laws limited the authority of the magistrate.<sup>98</sup> They required him to keep a journal "so that no one shall plead ignorance of the law for any crime he may attempt"<sup>99</sup>, and to annually visit landmarks and replace those damaged.<sup>100</sup> It forbid the islanders from "bringing up things that are past to criminate others with a view to prevent justice with the case before the magistrate."<sup>101</sup> The laws imposed rules on dogs,<sup>102</sup> cats,<sup>103</sup> and hogs,<sup>104</sup> established a school and made education compulsory,<sup>105</sup> enacted a conservation law for timber,<sup>106</sup> forbid "bringing up things that are past to criminate others with a view to prevent justice with the case before the magistrate",<sup>107</sup> appointed churchwardens,<sup>108</sup> forbid the killing of white birds,<sup>109</sup> regulated trade with passing ships so spirits could not be brought back,<sup>110</sup> and regulated the

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Ed Howard, *Pitcairn and Norfolk: The Saga of Bounty's Children*, Oct. 1983, NAT'L GEOG. MAG. at 511, 520.

94. BRODIE, *supra* note 52, at 84 (reprinting election regulation); Emily M. McCoy, *The Pitcairn Island Miracle in Ethnology*, 57 INDEPENDENT 712, 713 (1904) (article by the daughter of Pitcairn's leader). Later elections would be held on Christmas Day. PAC. ISLANDS Y.B.301 (Stuart Inder ed., 12th ed. 1977); MURRAY, *supra* note 37, at 100; J.B. Claydon, *Report [to the Governor of Pitcairn] on Administrative Visit to Pitcairn Island, Jan. 30, 1954*, ¶163, in PCR 6-2585 (FCO PIT 2/XIII-3) (describing 1953 election, which took place at 6 a.m. on December 25).

95. BRODIE, *supra* note 52, at 84.

96. *Id.* at 85.

97. *Id.* at 84.

98. *Id.* at 85 (Law No. 1 stating magistrate governed with consent of the people and cannot assume power on own).

99. *Id.* at 86 (Law No. 1).

100. *Id.* at 90 (Law No. 8). This is the familiar English custom of "beating the bounds." See Ebenezer Cobham Brewer, BREWER'S DICTIONARY OF PHRASE & FABLE 97 (Harpercollins 15th ed. 1995).

101. *Id.* at 88-89 (Law No. 6 requiring notice be given of plans to harvest timber, forbidding the stockpiling of wood, and forbidding one from cutting down another's windbreak) and 89-90 (Law No. 7 to conserve timber).

102. *Id.* at 86 (Law No. 2).

103. *Id.* at 86-7 (Law No. 3).

104. *Id.* at 87 (Law No. 4).

105. *Id.* at 87-8 (Law No. 5).

106. *Id.* at 88-9 (Law No. 6 requiring notice be given of plans to harvest timber, forbidding the stockpiling of wood, and forbidding one from cutting down another's windbreak) and 89-90 (Law No. 7 to conserve timber).

107. *Id.* at 88-9 (Law No. 6).

108. *Id.*

109. *Id.*

110. BRODIE, *supra* note 52, at 90.

public anvil and sledgehammer.<sup>111</sup> Serious cases were to be referred to the captains of passing British warships for adjudication as were any appeals of minor cases.<sup>112</sup> The laws also made Pitcairn the first British territory to require children to attend school.<sup>113</sup>

The island was frequently visited at this time with the rise of the American whaling industry.<sup>114</sup> In some years, visiting ships came fortnightly,<sup>115</sup> as the islanders welcomed visitors in the Nineteenth Century.<sup>116</sup>

## VI. ADMIRAL MORESBY AND NORFOLK ISLAND: 1850's

Rear Admiral Fairfax Moresby, the Commander-in-Chief of the Royal Navy's Pacific Station, visited in 1853 and urged the Pitcairners to make revisions to their laws.<sup>117</sup> Among his suggestions were requiring the magistrate to be at least twenty-eight, raising the voting age to twenty, and requiring laws be approved at public meetings of heads of households and "elders."<sup>118</sup> He also recommended the magistrate try to mediate disputes before referring them to a jury of heads of households and elders.<sup>119</sup> The islanders ratified all these ideas.<sup>120</sup>

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111. *Id.* at 90–1 (Law No. 10 required return of tools else the borrower would be liable for their replacement).

112. *Pitcairn Island*, 23 NAUTICAL MAG. & NAVAL CHRON. 255, 257 (1854) (Eng.) (GB) (report by captain of *H.M.S. Dido*, who visited Nov. 1853).

113. McLoughlin, *supra* note 28, at 152.

114. *See generally* PITCAIRN'S ISLAND REGISTER BOOK 100–45 (Charles Lucas, ed. 1929) (listing every ship calling from 1808 to 1853); Everard im Thurn, *The Whaleships at Pitcairn Island*, in *id.* at 159–64 (narrative account of whalers' visits); 6 AMERICAN ACTIVITIES IN THE CENTRAL PACIFIC, 1790–1870: A HISTORY, GEOGRAPHY, AND ETHNOGRAPHY PERTAINING TO AMERICAN INVOLVEMENT AND AMERICANS IN THE PACIFIC TAKEN FROM CONTEMPORARY NEWSPAPERS 3–120 (R. Gerard Ward ed. 1967) (extracting accounts from Nineteenth Century American newspapers of Pitcairn); Nigel Erskin, *The Historical Archaeology of Settlement at Pitcairn Island, 1790–1856* ch. 3 (2004) (unpublished Ph.D. thesis, James Cook University) (*available at* <http://eprints.jcu.edu.au/1259>) (describing those years).

115. BRODIE, *supra* note 52, at 249 (twenty ships called in 1849).

116. *The Settlement at Pitcairn's Island; Letter from Gen. Moltke Acknowledging the Receipt of the Baltimore Sword*. *Woman's Union Missionary Society Annual Meeting*, N.Y. TIMES, Feb. 27, 1871, at 5.

117. *See* Notes of Admiral Moresby's Address to the Pitcairn Islanders, (May 17, 1853), in PCR 3-1326 to 3-1341 (TNA ADM 1/5618).

118. *See generally id.* Elders were those at least twenty-eight years old who were not heads of households.

119. *Id.*

120. Letter from Arthur Quintal, Chief Magistrate, and Thomas Buffett & Edward Quintal, Councillors, to Rear Adm. Fairfax Moresby, Commander-in-Chief, Pacific Station, (May 18, 1853), in PCR 3-1342 to 3-1345 (TNA ADM 1/5618). These changes have been referred to in some sources as a new constitution. *E.g.*, Sue Far-

With renewed fears of overcrowding expressed to Admiral Moresby, the British government arranged a second exodus. This time, the entire population of 163 crossed the Pacific in 1856 for the former prison island of Norfolk,<sup>121</sup> an isolated rock between the North Island of New Zealand and New Guinea.<sup>122</sup> Again, homesickness arose and three years later, sixteen returned, followed by others in 1864.<sup>123</sup> But most of the islanders remained on Norfolk, and their descendants still live there to this day.<sup>124</sup> Today's Pitcairners are consanguine with the mutineers, with only limited outside blood having come into the community in the last 150 years.<sup>125</sup> Upon reoccupation of Pitcairn, the legal *status quo ante* resumed in 1864.<sup>126</sup>

## VII. SETTLEMENT: 1870's

Admiral Algernon Frederick Rous de Horsey visited in 1878 and reported the code had changed somewhat.<sup>127</sup> He noted:

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ran, *The "Re-Colonising" of Pitcairn*, 38 VICTORIA U. WELLINGTON L. REV. 435, 443, n.38 (2007) (N.Z.).

121. 147 PARL. DEB., H.C. (3d ser.) (1857) 1116 (U.K.) (The move cost the Treasury £5,580.).

122. See generally CORRESPONDENCE ON THE SUBJECT OF REMOVAL OF INHABITANTS OF PITCAIRN'S ISLAND TO NORFOLK ISLAND, 1857, [C. (1st ser.) 2160], in 10 P.P. (1857 Session I) 565, MF 61.81-82, IUP Australia 22; FURTHER PAPERS ON THE SUBJECT OF REMOVAL OF INHABITANTS OF PITCAIRN'S ISLAND TO NORFOLK ISLAND (pts. 1-2), 1857, [C. (1st ser.) 2242], [C. (1st ser.) 2243], in 28 P.P. (1857 Session II) 309, 319, MF 62.216, IUP Australia 22; PETER CLARKE, *HELL AND PARADISE: THE NORFOLK-BOUNTY-PITCAIRN SAGA* ch. 17 (1986); F.M. Bladen, *Settlement of the Pitcairn Islanders on Norfolk Island*, 2 ROYAL AUSTR. HIST. SOC'Y J. & PROC. 1 (1906); C.H. Curtey, *An Outline of the Story of Norfolk Island and Pitcairn's Island, 1788-1857*, 44 ROYAL AUSTR. HIST. SOC'Y J. & PROC. 325 (1958); MURRAY, *supra* note 37, at 312-24, 362-414; T.C. Roughley, *Bounty Descendants Live on Remote Norfolk Island*, NAT'L GEOG. MAG., Oct. 1960, at 559; Howard, *supra* note 93, at 530-40. For the later laws of Norfolk Island, see U.K. COLONIAL OFF., *NORFOLK ISLAND AND THE PITCAIRN ISLANDERS* 9-14 (London, Printed at the Foreign Off. by T. Harris, 1876) [hereinafter *PITCAIRN ISLANDERS*].

123. See generally A Native [Rosalind Amelia Young], *The Mutineers of the "Bounty": The Pitcairn Islanders From 1859-80*, 22 SCRIBNER'S MONTHLY 54 (1881) (describing years after return); YOUNG, *supra* note 33, at 137-87 (same).

124. CLARKE, *supra* note 122, at 147.

125. Ernest Schubert, *Pitcairn Island Today*, in ALAN STRODE CAMPBELL ROSS & ALBERT W. MOVERLEY, *THE PITCAIRNESE LANGUAGE* 26 (1964); *Pitcairn Island*, SYDNEY MORNING HERALD (Sydney, N.S.W.), June 13, 1876, at 3 (NLA) (reporting two shipwrecked sailors had joined the community). Cf. Marc T. Greene, *Lonely Isle*, 45 ASIA & THE AM. 588, 591 (1945) (stating immigration was needed for island's survival).

126. McLoughlin, *supra* note 28, at 156.

127. See U.K. COLONIAL OFF., *PITCAIRN ISLAND: REPORT RECEIVED FROM REAR-ADMIRAL DE HORSEY, COMMANDER-IN-CHIEF ON THE PACIFIC STATION 6* (London, H.M.S.O. 1878) [hereinafter *DE HORSEY*] (reprinting code). See also *A Worldlet Within the World*, 140 LITTELL'S LIVING AGE 185 (1879) (commenting on de Horsey's report); YOUNG, *supra* note 33, at 201-11 (report by islander on de Horsey's visit and quotes his report at great length).

The almost puerile simplicity of the laws is perhaps the best evidence of the good conduct of the people. The law is, in fact, merely preventive, no case of theft, fornication, or use of profane language (apparently the only three crimes contemplated as possible) having been known to occur since the laws were drawn up.<sup>128</sup>

The admiral stated the code was undated but had been drawn up by James Russell McCoy when he became magistrate,<sup>129</sup> which occurred in 1870.<sup>130</sup> The code was clearly based upon the *Fly* laws of 1838 as it began with the magistrate's oath and duties.<sup>131</sup> All lawmaking power was vested in him, but he could convene the heads of families to discuss new laws.<sup>132</sup>

The code made contempt of the magistrate an offense.<sup>133</sup> Making false claims was banned.<sup>134</sup> Blows except in self-defense were outlawed;<sup>135</sup> theft was punishable by restitution and a fine.<sup>136</sup> Lovers were fined and any offspring of the union was to be supported by the father for life.<sup>137</sup> Swearing was punishable.<sup>138</sup> So was taking coconuts from the other side of the island.<sup>139</sup> Informants got half the fines imposed on thieves, fornicators, profaners, and coconut smugglers.<sup>140</sup> There continued to be laws regulating hogs, dogs, cats, and fowl.<sup>141</sup>

Admiral de Horsey encouraged more attention be paid to Pitcairn by London because of the island's poverty, isolation, and Britishness: "Her Majesty the Queen does not I believe possess in any part of the world more loyal and affectionate subjects than this little knot of settlers."<sup>142</sup>

128. DE HORSEY, *supra* note 127, at 1.

129. *Id.*

130. NICOLSON, *supra* note 60, at 244–6.

131. DE HORSEY, *supra* note 127, at 6.

132. *Id.*

133. *Id.* (Law No. 6).

134. *Id.* (Law No. 1).

135. *Id.* (Law No. 5).

136. *Id.* (Law No. 2).

137. *Id.* (Law No. 3). On Norfolk, fornication was punished by the tremendous fine of £10! COLONIAL OFF., PITCAIRN ISLANDERS at 22 (reprinting Norfolk Island Law No. 40).

138. DE HORSEY, *supra* note 127, at 6 (Law No. 4).

139. *Id.* (Law No. 6).

140. *Id.* (Laws No. 2–4, 6).

141. *Id.* (Laws No. 8–11).

142. DE HORSEY, *supra* note 127, at ¶16. Similar reports came from Captain F.C.B. Robinson of *H.M.S. Opal*, who visited in July 1879, and reporter Kathy Marks when she visited in 2004. *Pitcairn Island*, THE ARGUS (Melbourne, Vict.), Jan. 2, 1880, at 7 (NLA), reprinting *Pitcairn Island*, DAILY TELEGRAPH (London), Nov. 19, 1879; KATHY MARKS, LOST PARADISE: FROM MUTINY ON THE BOUNTY TO A MODERN-DAY LEGACY OF SEXUAL MAYHEM, THE DARK SECRETS OF PITCAIRN ISLAND REVEALED 27 (2009).

But the admiration of de Horsey was not shared by Captain Bouverie F. Clark of *H.M.S. Sappho*, who visited in 1882. In his report, he stated the primary occupation of the island's men was thieving aboard passing ships.<sup>143</sup> He reported on the squabbling between families and was informed by the magistrate that petty larceny was rife.<sup>144</sup>

Clark said government was not working because the islanders were divided on family lines and suggested London send an outsider to take charge.<sup>145</sup> He stated their "fervent loyalty has also been much exaggerated" and claimed the Pitcairners would readily transfer their allegiance to any foreign power sending supplies.<sup>146</sup> Clark also said the utopia commonly imagined abroad was not borne out by reality.<sup>147</sup> Clark enacted a new law

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143. [U.K. COLONIAL OFF.], REPORT OF VISIT OF H.M.S. SAPPHO TO PITCAIRN ISLAND, 1882, ¶¶14 (London?, 1882), available in PCR 4-1481[hereinafter SAPPHO]. Cf. MARKS, *supra* note 145, at 35 (stating mass thievery a way of life in 1990's).

144. SAPPHO, *supra* note 143, at ¶15.

145. *Id.* at ¶20. Cf. H. H. Montgomery, THE LIGHT OF MELANESIA: A RECORD OF THIRTY-FIVE YEARS MISSION WORK IN THE SOUTH SEAS 26–27 (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").

146. SAPPHO, *supra* note 143, at ¶21. Pitcairners have more recently been reported to be interested in being annexed by France because of British slights. Simon Winchester, *Mutiny for French Bounty*, THE GUARDIAN (London), June 12, 1993, at 26; York Membery, *Bounty Island Shapes up for Final Mutiny*, SUNDAY TIMES (London), Apr. 16, 2000, at 29. But the claims of disloyalty have been denied by the Government in the House of Commons. *E.g.*, 238 PARL. DEB., H.C. (6th Ser.) (1994) 544W (U.K.).

147. SAPPHO, *supra* note 143, at ¶22. Bockrath, *Law on Remote Islands* at 80–81 suggests the Heisenberg Uncertainty Principle might be at work on Pitcairn. For example, the colonial officer H.E. Maude, there in 1940–41 to write a new code, wrote: "They had a custom which they called 'hypocriting the stranger,' which meant that they gave an appearance of strict austerity to the outside world. For instance, being Seventh-Day Adventists they naturally never touched any alcohol, and when I used to ask them why they had a bottle of brandy lying on the shelf they invariably replied that it was to run in their hair, which they alleged made it grow luxuriantly, and when we attended [a] wedding . . . no-one alluded to the fact that the bride, who was being married for the first time, had for her bridesmaids three of her children." SUSAN WOODBURN, WHERE OUR HEARTS LIE STILL: HARRY AND HONOR MAUDE IN THE PACIFIC ISLANDS 160 (2003). The islanders converted *en masse* to the Adventist faith in the 1880's. See generally YOUNG, *supra* note 33, at 229–36; Karen Nugent, *It All Started With a Crate of Pamphlets*, TELEGRAM & GAZETTE (Worcester, Mass.), Feb. 13, 2000, at A1; Herbert P. Ford & Wilona Karimabadi, *The Bounty and the Bible*, ADVENTIST WORLD, Jan. 2009, <http://www.adventistworld.org/index.php?issue=2009-1001>; P. Harry Ballis, *Religion on Pitcairn Island: The First Hundred Years*, ADVENTIST HERITAGE, Fall 1979, at 40. A reporter in 2004 made the island sound like something out of Shirley Jackson's "The Lottery" and claimed "hypocriting the stranger" was still going on, stating "the dissembling tradition" dated to John Adams's stories to the first visitors. MARKS, *supra* note 142, at 165–66. An attorney sent by the Governor of Norfolk (and of New South Wales) to investigate the Pitcairners' cousins on Norfolk Island in 1885 wrote similarly: "Here, the whole system,

at the request of the islanders: "That from henceforth, July 2, 1882, no strangers are to be allowed to settle on the island."<sup>148</sup> The captain acted because previous settlers had run amok; a decade before Clark visited another Navy captain reported that immigrants ignored the Pitcairn laws and there was no legal way to keep them from settling.<sup>149</sup>

Another captain who visited in 1884 transcribed the laws. This copy is similar to Admiral de Horsey's.<sup>150</sup> This version spells out who can vote—all adults who have reached twenty-one—and that the magistrate must be at least thirty.<sup>151</sup> There were now twenty-three laws, up from the eleven after Clark's immigration law was added.<sup>152</sup> The laws on attacking others, insulting the magistrate, coconuts, and animal control remained, but the law against stealing was missing.<sup>153</sup> A new law, dated October 1882, was added on goats.<sup>154</sup> The law against fornicators—with its reward for informants—was complemented by this provision: "No two persons of different sex are permitted to lie in bed or have any such unlawful connection, but must be tried and punished."<sup>155</sup> Making false reports "for jealousy or revenge" was punishable.<sup>156</sup>

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and everything arising from it is rotten. The whole thing is a great falsehood from John Adams's time until now. And unless an immediate stop is put to this kind of thing, the consequences will be most disastrous. It really appears to me wonderful that a small community like this should have succeeded in so completely gulling the whole world into the belief that they are an isle of saints. I believe there is more immorality of all kinds here, according to population, than in any other civilized part of the world." Extract of a Letter from Henry Wilkinson, Q.C., to Lord Augustus Loftus, Governor of Norfolk Island & New South Wales, in PAPERS RELATING TO HER MAJESTY'S COLONIAL POSSESSIONS: REPORTS FOR 1883, 1884, AND 1885, 1886, [C. (2d series) 4842], at 227–8, in 45 P.P. (1886) 1, MF 92.337–9, IUP Colonies 24. Other correspondence between Wilkinson and Loftus, also highly critical of the Norfolkans, is printed in that report, *supra*, and at PAPERS 1884 AND 1885, *supra* note 92, at 279–88.

148. SAPHO, *supra* note 143, at ¶13.

149. *Visit to Pitcairn Island*, THE TIMES (London), Nov. 19, 1879, at 5, *excerpting letter from Capt. F.C.B. Robinson, H.M.S. Opal*, to Rear Adm. Algernon Frederick Rous de Horsey, Aug. 15, 1879.

150. See Letter of Capt. F. Proby Doughty, *H.M.S. Constance*, to Rear Adm. Algernon McLennan Lyons, Commander-in-Chief, Pacific Station, (Mar. 31, 1884), in U.K. COLONIAL OFF., CORRESPONDENCE RELATING TO THE CONDITION OF THE PITCAIRN ISLANDERS, 1899, [C. (2d ser.) 9148], at 7, in 59 P.P. (1899) 563, MF 105.516[hereinafter *CONDITION*].

151. *Id.*

152. *Id.* at 7–8.

153. See *id.*

154. *Id.* at 8 (Law No. 22). An attorney who visited in 1937 to review the legal code found that "[i]n reading [the goat law] one breathes the very air of Pitcairn." JAMES SCOTT NEILL, *TEN YEARS IN TONGA* 184–85 (1955).

155. *CONDITION*, *supra* note 150, at 7, 8 (Laws No. 2, 8).

156. *Id.* at 8 (Law No. 12).

By the terms of a law enacted by the British Parliament in 1887, Pitcairn was deemed a "settlement," as it was a British possession acquired through neither conquest nor cession.<sup>157</sup> But that status had no immediate effect on Pitcairn Island.

### VIII. PARLIAMENTARY PROCEDURE: 1893

In October 1892, Captain Eustace Rooke of *H.M.S. Champion* drafted a new code.<sup>158</sup> He suggested enlarging the number of officials, and the islanders agreed:

Whereas, We have witnessed in the past, that, thro' lack of strength and firmness, on the part of government officers, some evil has resulted, and,

Whereas, We believe that a larger number of officers would tend to make a stronger government, and that plans for the public welfare would be executed with better success, therefore,

Resolved, That we heartily indorse the plan of having a government consisting of a parliament of seven, with power to legislate, to plan for the public good, to execute all decisions of the court, and to see that all public demands are attended to without any unnecessary delay.<sup>159</sup>

The new system was a parliamentary form of government effective January 1, 1893; it consisted of a seven member legislature elected annually with a president, vice-president, secretary, and judge chosen from the parliamentarians.<sup>160</sup> Decisions of the

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157. British Settlements Act, 1887, 50 & 51 Vict., c. 54; U.K. COLONIAL OFF., *BRITISH ISLANDS IN THE SOUTHERN HEMISPHERE, 1945-1951*, 1951, Cmd. 8230, ¶294, *in* 26 P.P. (1950-51) 195 [hereinafter *BRITISH ISLANDS*] (stating Pitcairn was colony by settlement); KENNETH O. ROBERTS-WRAY, *COMMONWEALTH AND COLONIAL LAW* 908 (1966) (stating Pitcairn was "generally assumed . . . to be a British Settlement for purposes of the [1887 Act] and this assumption appears to be correct."); U.K. FOREIGN & COMMW. OFF., *PARTNERSHIP FOR PROGRESS AND PROSPERITY: BRITAIN AND THE OVERSEAS TERRITORIES, 1999*, Cm. 4264, at 62 ("Pitcairn is a British settlement under the British Settlements Act of 1887"); Neill, *supra* note 31, at 4 ("The island is a British colony by settlement"); *Seven*, 127 I.L.R. 232, ¶94 (finding Pitcairn was a British settlement or possession by time of 1887 act).

158. SHAPIRO, *supra* note 60, at 289. Several sources, e.g., *Seven*, [2004] 127 I.L.R. 232, ¶96-8, give the officer's name as "Rookes," but the Navy's official roster has "Rooke." FRANCIS LEAN, *LEAN'S ROYAL NAVY LIST OF THE OFFICERS OF THE ROYAL NAVY AND ROYAL MARINES ON THE ACTIVE AND RETIRED LISTS* 156 (London, Witherby 1893).

159. SHAPIRO, *supra* note 60, at 289. The original page of the Pitcairn Civil Recorder showing this resolution is at PCR 4-1503. The original is in FCOA PIT 1/II. A first-hand account of the adoption of this government is YOUNG, *supra* note 33, at 251-52.

160. SILVERMAN, *supra* note 3, at 182-3; SHAPIRO, *supra* note 60, at 289-91 (reproducing laws); U.K. COLONIAL OFF., *COLONIAL OFF. REPS. MISC. NO. 30, PIT-*

judge were appealable to the island's parliament, as in England at the time.<sup>161</sup> Sex was on the mind for Rooke's codified laws on bastardy, adultery, fornication, and voyeurism.<sup>162</sup> Two laws dealt with making false accusations.<sup>163</sup> Wife beating was outlawed.<sup>164</sup> Parents were responsible for thefts committed by their children.<sup>165</sup> Attacking others was criminal, but self-defense was codified, as was carrying a concealed weapon.<sup>166</sup> Shooting in the village was banned.<sup>167</sup> The laws also protected animals from cruelty.<sup>168</sup> The coconut law reappeared, plus a new one to protect sugar cane.<sup>169</sup> Those "staying around, meddling, or interfering with [public officials] in their business, and thus hindering work, or in any way causing trouble" could be punished.<sup>170</sup> Labor on public works was expected of males fourteen and up.<sup>171</sup>

## IX. THE WESTERN PACIFIC HIGH COMMISSION: 1898

Two murders on Pitcairn in 1897 prompted action to put the Pitcairn government on a firmer legal footing. So he could marry another, Henry Albert "Harry" Christian slit the throats of his

CAIRN ISLAND: REPORT BY MR. R.T. SIMONS, 1905, [Cd. 2397], at 3, in 53 P.P. (1905) 55, MF 111.481; Report of George F.S. Knowling, Commander, *H.M.S. Icarus*, Mar. 31, 1901, in U.K. COLONIAL OFF., FURTHER CORRESPONDENCE RELATING TO THE CONDITIONS OF THE PITCAIRN ISLANDERS, 1901, [Cd. 754], at 7, in 46 P.P. (1901) 285, MF 107.405 (listing the seven officials at the time).

161. SHAPIRO, *supra* note 60, at 291 (reproducing 1892 laws); ALBANY DE FONBLANQUE, *HOW WE ARE GOVERNED: A HANDBOOK OF THE CONSTITUTION, GOVERNMENT, LAWS AND POWER OF THE BRITISH EMPIRE* 22 (W.J. Gordon ed. 16th ed. London, Frederick Warne 1889) (noting House of Lords was then the court of last resort). The separation of the judiciary from Parliament occurred in Britain in 2010. Constitutional Reform Act, 2005, c. 4, § 23 (U.K.) (creating U.K. Supreme Court).

162. SHAPIRO, *supra* note 60, at 292 (reprinting Law 4, criminalizing fornication); *id.* at 292 (reprinting Laws 5 and 6, criminalizing adultery); *id.* at 292–93 (reprinting Law 7, criminalizing fornication: "It shall be unlawful for two persons of the opposite sex to associate together . . . to create scandal, or to endanger the morals of the rising generation by their evil example."); *id.* at 293 (reprinting Law 8, criminalizing voyeurism: "It shall be unlawful for anyone of the opposite sex to intentionally remain near the place where the women and girls do their washing.").

163. SHAPIRO, *supra* note 60, at 293 (reprinting Law 9, making it an offense "to raise a fake report against his neighbor out of malice or revenge" and Law 12, making it an offense to "bring forward any charges against anyone, said charge . . . having a month previous to the time of its being made known to the parliament, and produced for the sake of malice or revenge").

164. *Id.* at 294 (reprinting Law 13).

165. *Id.* at 293 (reprinting Law 11).

166. *Id.* at 294 (reprinting Laws 14 and 15).

167. *Id.* at 295 (reprinting Law 21).

168. *Id.* at 295–6 (reprinting Laws 16 and 17).

169. *Id.* at 296–7 (reprinting Laws 24 and 25). See also *Pitcairn Islands: Sad State of Affairs*, BARRIER MINER (Broken Hill, N.S.W.), Mar. 27, 1899, at 3 (NLA) (finding humor in laws on coconuts, dogs, and cats).

170. SHAPIRO, *supra* note 60, at 297 (reprinting Law 27).

171. *Id.* (reprinting Law 26).

lover and their child and cast their bodies into the sea.<sup>172</sup> British officials debated what to do, and one thought the only solution was to bring Christian to London for trial at the Old Bailey.<sup>173</sup> The Attorney-General and Solicitor-General recommended to the Colonial Secretary that Pitcairn be brought under the authority of the High Commissioner for the Western Pacific so that Christian might be tried in the High Commissioner's Court.<sup>174</sup>

The Western Pacific High Commission<sup>175</sup> (W.P.H.C.) was created in 1877.<sup>176</sup> Britain's goal for the High Commission was to better provide for government and justice in the Pacific after earlier laws had proven ineffective.<sup>177</sup> A principal evil the High

172. Letter from Capt. Henry H. Dyke, H.M.S. Comus, to the Sec'y of the Admiralty, Nov. 10, 1897, in PRC 4-1615. *See also Tragedy at Pitcairn Island*, THE MERCURY (Hobart, Tas.), Aug. 16, 1898, at 2 (NLA); *Murder by Pitcairn Islander*, THE ARGUS (Melbourne, Vict.), Oct. 17, 1898, at 4 (NLA).

173. Minute of Edward Wingfield, Permanent Undersec'y of State, Colonial Off., Feb. 14, 1898, in PCR 4-1628 to 4-1629 (TNA ADM 1/5618). The Offences Against the Person Act, 1861, 24 & 25 Vict., c. 100, § 9 (Eng.) states: "Where any murder or manslaughter shall be committed on land outside of the United Kingdom . . . every offence committed by any subject of Her Majesty . . . may be dealt with . . . in England or Ireland . . . as if such offence had been committed" there). The entire debate in London is in documents at PCR 4-1618 to 4-1680 (TNA CO 225/55).

174. Letter from Richard E. Webster, Attorney-Gen'l, & Robert B. Finlay, Solicitor-Gen'l, to Joseph Chamberlain, Colonial Sec'y, (Mar. 4, 1898), *reprinted in* D.P. O'CONNELL & ANN RIORDAN, *OPINIONS ON IMPERIAL CONSTITUTIONAL LAW* 11-13 (1971). One contemporary source incorrectly stated Pitcairn was under the Governor of New South Wales at that time. *See* T.J. LAWRENCE, *THE PRINCIPLES OF INTERNATIONAL LAW* 59 (2d ed. London, Macmillan 1895).

175. *See generally* JERRY DUPONT, *THE COMMON LAW ABROAD 1182-85* (2000) (short history of W.P.H.C.); W. ROSS JOHNSTON, *Western Pacific High Commission*, in *HISTORICAL DICTIONARY OF OCEANIA* 327-9 (Robert D. Craig & Frank P. King eds. 1981) (same); DERYCK SCARR, *FRAGMENTS OF EMPIRE: A HISTORY OF THE WESTERN PACIFIC HIGH COMMISSION, 1877-1914* (1967) (longer history); WARD, *supra* note 74, at 261-94, 324-30 (discussing creation of W.P.H.C., problems with its operations in 1870's and 1880's, and the 1893 rewriting of its charter).

176. Western Pacific Order, 1877, § 7, 68 B.S.P. 328, 14 H.C.T. 871, *issued pursuant to authority granted by* Pacific Islanders Protection Act, 1877, 38 & 39 Vict., c. 51, § 6. *See also* Pacific Islander Protection Act, 1872, 35 & 36 Vict., c. 19 (earlier statute with same purpose) Revisions were made in the Western Pacific Order, 1877, by the Western Pacific Order, 1879, 70 B.S.P. 277, 14 H.C.T. 1245; and Western Pacific Order, 1880, 71 B.S.P. 294, 15 H.C.T. 752. All were superseded by the Pacific Order, 1893.

177. *E.g.*, Offences at Sea Act, 1806, 46 Geo. 3, c. 54 (providing for prosecution of crimes at sea, itself a response to the ineffectiveness of the Offences at Sea Act, 1586, 28 Hen. 8, c. 15, and Piracy Act, 1698, 11 Will. 3, c. 7); Murders Abroad Act, 1817, 57 Geo. 3, c. 58 (providing for criminal prosecution); New South Wales Act, 1823, 4 Geo. 4, c. 96, § 2 (giving jurisdiction to try offenses in the Pacific to Supreme Courts of New South Wales and Van Dieman's Land [Tasmania]); Australian Courts Act, 1828, 9 Geo. 4, c. 83, § 4 (continuing that jurisdiction). The background for the 1817 act is discussed in WARD, *supra* note 74, at 31-40. The 1586, 1698, and 1817 laws are discussed in 2 FRANCIS PIGOTT TAYLOR, *NATIONALITY, INCLUDING NATURALIZATION AND ENGLISH LAW ON THE HIGH SEAS AND BEYOND THE REALM* 89-90 (1907).

Commissioner was to combat was the kidnapping and enslavement of Pacific natives by ruthless planters in Peru, Queensland, and elsewhere.<sup>178</sup> (America was partly to blame because its Civil War drove cotton prices higher and led to new plantings of that crop worked by slaves.)<sup>179</sup> An extensive documentary record had been laid before Parliament about these problems.<sup>180</sup>

The W.P.H.C. was based in Fiji, 3,320 nautical miles from Pitcairn.<sup>181</sup> (French Polynesia occupies most of the space between the two.)<sup>182</sup> Arthur Gordon, Fiji's governor in the 1870's, had been a strong advocate for creating the High Commission to bring law and order to the Pacific.<sup>183</sup>

The High Commissioners—with one exception—were concurrently Governors of Fiji until the two posts were separated in 1952.<sup>184</sup> Though the Fiji Legislative Council as early as 1908

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178. See generally William PARKER MORRELL, *The Labour Trade, the Kidnapping Acts, and the Western Pacific Order in Council*, in BRITAIN IN THE PACIFIC ISLANDS 171, 171–86 (1960) (discussing background for why Protection Acts and Western Pacific Order were enacted); GUY H. SCHOLEFIED, *The Labour Trade, in THE PACIFIC: ITS PAST AND FUTURE AND THE POLICY OF THE GREAT POWERS FROM THE EIGHTEENTH CENTURY* 50, 50–74 (1919) (same); WARD, *supra* note 74, at 218–37 (discussing kidnapping with a focus on slavers for Queensland and Fiji); W. ROSS JOHNSTON, SOVEREIGNTY AND PROTECTION: A STUDY OF BRITISH JURISDICTIONAL IMPERIALISM IN THE LATE NINETEENTH CENTURY 83–166 (1973) (chapters “Sovereign in the Pacific” and “The Law Hardens” on the endless arguments between bureaucrats in London on how to provide for law and order in the Pacific, culminating in creating the W.P.H.C.); Johnston, *supra* note 178, at 152–53 (discussing blackbirding briefly); H.E. MAUDE, SLAVERS IN PARADISE: THE PERUVIAN SLAVE TRADE IN POLYNESIA, 1862–1864 (1981) (discussing it at length).

179. Binians, *Western Pacific* at 347; E. Grimley, *Cotton*, 9 QUEENSL. AGRIC. J. 113, 113 (1909) (Austl.).

180. E.g., CORRESPONDENCE REGARDING THE REMOVAL OF INHABITANTS OF POLYNESIAN ISLANDS TO PERU, 1864, [C. (1st ser.) 3307], in 66 P.P. (1864) 607, MF 70.547; CORRESPONDENCE RELATING TO THE IMPORTATION OF SOUTH SEA ISLANDERS INTO QUEENSLAND, 1867–68, H.C. 391, in 48 P.P. (1867–8) 537, MF 74.582–3, IUP Australia 25; CORRESPONDENCE RESPECTING OUTRAGES COMMITTED UPON NATIVES OF THE SOUTH SEAS, 1874, H.C. 232, in 45 P.P. (1874) 507, MF 80.386–7.

181. McLoughlin, *supra* note 28, at 139.

182. For the French proclamation of March 10, 1882, claiming Tahiti, see 79 B.F.S.P. 152. An account by the British consul at Tahiti at the time of the French move on the islands in the 1840's is GEORGE PRITCHARD, *THE AGGRESSIONS OF THE FRENCH AT TAHITI* (Paul de Deckker ed. 1983).

183. See generally J.K. CHAPMAN, *THE CAREER OF ARTHUR HAMILTON GORDON, FIRST LORD STANMORE, 1829–1912* ch. 7 (1964) (detailing efforts by Gordon, second governor of Fiji and first W.P.H.C., in promoting the creation of W.P.H.C.). See also COPIES OF ORDINANCES INTRODUCED BY SIR ARTHUR GORDON TO REGULATE THE TREATMENT OF POLYNESIAN LABOURERS, AND THE INTRODUCTION OF INDIAN COOLIES INTO FIJI; AND OF CORRESPONDENCE RELATING TO THESE ORDINANCES BETWEEN THE COLONIAL OFFICE AND THE GOVERNMENT OF FIJI, 1878, H.C. 111, 55 P.P. (1878) 241, MF 84.418–9 (reprinting Gordon's responses to labor trade).

184. MARTIN WIGHT, *BRITISH COLONIAL CONSTITUTIONS*, 1947 76 (1952); 262 PARL. DEB., H.C. (3d ser.) (1881) 1115–16 (stating first W.P.H.C. and second governor of Fiji kept W.P.H.C. post when he went to New Zealand as its governor in

called for the posts be severed because Fiji needed a full-time administrator but was ignored.<sup>185</sup> The High Commissioners superintended a collection of islands, most lightly populated, strung across a vast span of the Pacific.<sup>186</sup> It was an area “greater than that occupied by the Russian Empire.”<sup>187</sup> In addition to his duties as Governor of Fiji,<sup>188</sup> the High Commissioner at various times oversaw many other islands operating under a hodgepodge of constitutional arrangements.<sup>189</sup> Among these islands were the Gilbert and Ellice Islands, modern Kiribati and Tuvalu;<sup>190</sup> the Union Islands, now Tokelau;<sup>191</sup> the protectorate over Tonga;<sup>192</sup> the British Solomon Islands Protectorate;<sup>193</sup> the Cook Islands,<sup>194</sup> the Anglo-French condominium of the New Hebrides, now Vanuatu;<sup>195</sup> and the Anglo-American condominium over Canton and Enderbury Islands in the Central Pacific.<sup>196</sup> Even today,

1880); Mark Francis, *Arthur Charles Hamilton Gordon, First Baron Stanmore*, 22 THE OXFORD DICTIONARY OF NATIONAL BIOGRAPHY 860 (2004).

185. FIJI LEGISLATIVE COUNCIL DEBATES, SECOND SESSION, 1907, at 31–32 (1909).

186. Alexander Pulling, *Pacific Islands*, 10 ENCYCLOPÆDIA OF THE LAWS OF ENGLAND WITH FORMS AND PRECEDENTS 245 (A. Wood Renton & Max A. Robertson eds. 2d ed. 1908); HARRY C. LUKE, FROM A SOUTH SEAS DIARY, 1938–1942, at 9 (1945) (Luke was High Commissioner 1938–42); WIGHT, *supra* note 184, at 77; ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, VIA PORTS: FROM HONG KONG TO HONG KONG 78 (1965) (Grantham was High Commissioner 1945–7); ROBERTS-WRAY, *supra* note 157, at 895; 522 PARL. DEB., H.C. (5th ser.) (1953) 356 (stating that after the move to Honiara, the High Commissioner governed 60 main islands and the furthest of his domains, the Line Islands, were 3,000 miles from his headquarters).

187. G. WILLIAM DES VŒUX, MY COLONIAL SERVICE IN BRITISH GUIANA, ST. LUCIA, TRINIDAD, FIJI, AUSTRALIA, NEWFOUNDLAND, AND HONG KONG WITH INTERLUDES 353 (Nabu Press 2010) (1903) (author was Acting Governor of Fiji, 1878–79, but not acting W.P.H.C. as the Chief Justice of the High Commissioner’s Court served as acting W.P.H.C. under the Western Pacific Order). For an excellent map showing the breadth of the W.P.H.C.’s territory *see* BRITISH ISLANDS, *supra* note 157, at 47.

188. *See generally* CORRESPONDENCE RESPECTING THE CESSION OF FIJI AND THE PROVISIONAL ARRANGEMENTS MADE FOR ADMINISTERING THE GOVERNMENT, 1875, Cm. 1114 (continuing Paper 1011, July, 1874); MORRELL, *supra* note 181, at 361–400; William David McIntyre, *Anglo-American Rivalry in the Pacific: The British Annexation of the Fiji Islands in 1874*, 29 PAC. HIST. REV. 361 (1960).

189. SCHOLEFIED, *supra* note 178, at 301–2.

190. *See generally* Pacific Order, 1893, § 6(1); MORRELL, *supra* note 181, at 269–79.

191. *See generally* Pacific Order, 1893, § 6(1).

192. *See generally* Pacific Order, 1893, § 6(1) (referring to Tonga by its older name, “the Friendly Islands”); MORRELL, *supra* note 178, at 310–29.

193. *See generally* Pacific Order, 1893, § 6(1) (speaking of Solomon and Santa Cruz Islands); MORRELL, *supra* note 178, at 330–49.

194. MORRELL, *supra* note 178, at 280–97.

195. *Id.* at 349–60.

196. For the competing claims, *compare* Order-in-Council Under the Colonial Boundaries Act (58 & 59 Vict. c. 34) Annexing Certain Islands to the Gilbert & Ellice Islands Colony, 1937, S.I. 1937/226, 1937 London Gazette 1990 (LG), 9 Stat.

most of these islands are thinly populated, e.g. Tuvalu, a chain 360 miles long with ten square miles of land, has 10,500 residents.<sup>197</sup> “Despite the great scope of the Western Pacific High Commission’s responsibilities and their vast geographic sweep, the W.P.H.C. office in Fiji was a modest, one might say pinchpenny operation,” with only eleven employees in the 1930’s to govern the entire British Pacific.<sup>198</sup>

Pitcairn was outside the ambit of the W.P.H.C. as originally constituted.<sup>199</sup> But Britain’s Colonial Secretary possessed authority to extend the High Commissioner’s jurisdiction.<sup>200</sup> To prosecute Christian, the Colonial Secretary on May 3, 1898, followed the Law Officers’ advice and placed Pitcairn under the W.P.H.C.<sup>201</sup> In practice, the High Commissioner for decades delegated his authority for Pitcairn to the British consul at Tahiti.<sup>202</sup>

All judges of the Supreme Court of Fiji were Judicial Commissioners for the Western Pacific for purposes of trial in the High Commissioner’s Court for the Western Pacific. Appeals

R. & O. 665 (3d ed. 1948) (U.K.) (claiming islands for Britain) *with* Exec. Order No. 7,528, 3 Fed. Reg. 525 (Mar. 8, 1938), 3 C.F.R. 366 (1936–9 supp.) (U.S.) (claiming islands for the United States).

197. WORLD ALMANAC 2011 843 (2010) (Sarah Janssen & M.L. Liu eds., 2010).

198. JERRY DUPONT, THE COMMON LAW ABROAD: CONSTITUTIONAL AND LEGAL LEGACY OF THE BRITISH EMPIRE 1183, n.6 (2001) (*citing* U.K. WESTERN PACIFIC HIGH COMMISSIONER, REPORT ON THE PUBLIC SERVICES (1938), *microformed on* LLMC 97-332 (Law Lib. Microfilm Consortium)).

199. Pacific Order, 1893, § 5, 1893 London Gazette 5119 (LG), 5 Stat. R. & O., Foreign Jurisdiction sec. at 484 (2d ed. 1904), 85 B.F.S.P. 1053, 19 H.C.T. 570. The 1893 order was reprinted as amended at 8 Stat. R. & O. 597 (3d ed. 1948). It was further amended by the Pacific (Amendment) Order, 1953, S.I. 1953/1909 (U.K.); Pacific (Amendment) Order, 1955, S.I. 1955/551 (U.K.); and Pacific (Amendment) Order, 1958, S.I. 1958/1519 (U.K.). *See also* ROBERTS-WRAY, *supra* note 157, at 176–78 (discussing the 1893 order). The 1893 order exercised powers granted by the British Settlements Act, 1887, the Foreign Jurisdiction Act, 1890, 53 & 54 Vict., c. 37, and the Pacific Islanders Protection Acts.

200. Pacific Order, 1893, § 6.

201. Instructions to the High Commissioner, Western Pacific, from Joseph Chamberlain, Colonial Sec’y, 1898 Fiji Royal Gazette 215, *reprinted in* *Seven Named*, [2004] PNCS 1, ¶109; *Christian*, [2005] PNCS 1, ¶59 (stating reason for instructions). Around the same time, issues of law and order on Norfolk Island—including a murder there—led the British government to give the island to New South Wales to save the British government from the trouble and expense of taking care of the problems in Norfolk Island. AUSTL. ROYAL COMMISSION INTO MATTERS RELATING TO NORFOLK ISLAND, NORFOLK ISLAND: ROYAL COMMISSION REPORT 330–31 (1976).

202. *See* DUPONT, *supra* note 175, at 1206. For examples of these appointments, see 83 U.K. FOREIGN OFF., 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); *id.* at 369 (noting Robert Teesdale Simons, appointed consul at Tahiti in 1894, was also appointed Deputy Commissioner for the Western Pacific in 1903); 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”).

went to the Supreme Court of Fiji.<sup>203</sup> After the Colonial Secretary put Pitcairn under the High Commissioner, the Christian murder was referred to the High Commissioner's Court.<sup>204</sup> The chief police magistrate of Fiji, Hamilton Hunter, was made a judicial commissioner to try the matter<sup>205</sup> and was sent to Pitcairn aboard *H.M.S. Royalist* to hold court on the island.<sup>206</sup> Christian was tried before Hunter and two officers of the *Royalist* sitting as assessors.<sup>207</sup> The court returned a conviction and a sentence of death; Christian was removed to Fiji where he was hanged.<sup>208</sup>

## X. THE REST OF THE STORY

Things had come full circle. Mutiny begat hangings "from the highest yardarm in the British fleet"<sup>209</sup> and the Pitcairn kill-

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203. Pacific Order, 1893, §§ 8, 15; CHARLES HENRY HUBERICH, *THE COMMERCIAL LAW OF AUSTRALIA, NEW ZEALAND, FIJI, AND THE PACIFIC ISLANDS*, in 18 COMMERCIAL LAWS OF THE WORLD 795–96 (Brit. ed. William Bowstead ed. 1914) (PA) (discussing justice in Pacific).

204. Under the Offenses Against the Person Act, § 9, British courts had jurisdiction since the defendant was a British subject. The correspondence noted above at note xxx contained suggestions the prosecution be made under the Offences at Sea Act, 1806, and the Murders Abroad Act, 1817.

205. SCARR, *supra* note 175, at 278. Authority for the High Commissioner to appoint additional judicial commissioners was provided by the Pacific Order, 1893, § 8(2). Hamilton's judicial commission from High Commissioner George Thomas Michael O'Brien is at PCR 4-1683 (WPA WPHC 10/VII). Later, all administrative officers of the High Commissioner's staff would be, as a matter of routine, made Deputy High Commissioners so they could hold court throughout the Pacific. BRITISH ISLANDS, *supra* note 157, at ¶299.

206. CONDITION, *supra* note 156, at 11–16 (reports of Hunter and *Royalist's* commander). This course of action—instead of dispatching a warship to Pitcairn to take everyone to Fiji and then return the witnesses—was recommended by the Admiralty and accepted by the Colonial Office. See PRC 4-1668 to 4-1679. See PRC 4-1668 to 4-1679.

207. *Our Fiji Letter*, SYDNEY MORNING HERALD, Oct. 19, 1898, at 4 (NLA); *Pitcairn Islander Sentenced to Death*, THE TIMES (London), Nov. 8, 1898, at 4; *Return of H.M.S. Royalist*, SYDNEY MORNING HERALD, May 19, 1899, at 6 (NLA). The record of *R. v. Christian* is in the Western Pacific Archive WPHC 2/IV and reprinted in PCR 4-1684 to 4-1723. For the English practice of sitting with assessors, see S.H. BAILEY, JANE CHING, M.J. GUNN & DAVID ORMEROD, SMITH, BAILEY, AND GUNN ON THE MODERN ENGLISH LEGAL SYSTEM 1039–41 (4th ed. 2002).

208. *R. v. Christian*, [2005] PNCS 1, [2006] 1 L.R.C. 745, ¶¶59–60 (Pitcairn Is. Sup. Ct.). One of the islanders recalled in 2004 that his father, born in 1883, told him of the trial: "[My father] was a young man of about fourteen years old, and he said that the thing that stuck to his mind . . . is when the judge came out into the hall wearing the hood on his head and he pronounced the man as being guilty and he will be taken to Fiji and hung." Transcript of Arguments at 33, *Queen v. Seven Named Accused*, Pit. Sup. Ct. Nos. 1–55/2003 (testimony of Thomas Christian), in PCR 2-619.

209. In the 1935 film, Captain Bligh, played by Charles Laughton, shouts at Christian (Clark Gable) as he is cast adrift: "Casting me adrift 3,500 miles from a port of call! You're sending me to my doom, eh? Well—you're—wrong—Christian! I'll take this boat as she floats—to England, if I must! I'll live to see you—all of you!—hanging from the highest yardarm in the British fleet!" LESLIE HALLIWELL,

ing spree of the 1790's led to a new society. The murders of the 1890's led to another lawful hanging and placing a new British administration over Pitcairn. A lawyer sent in 1937 to review the island code was struck by how the Pitcairn laws were "interesting for the good sense which prompted them and for the very simplicity of the language in which they [we]re framed. The Pitcairners ha[d] done a good job on their island."<sup>210</sup>

The Western Pacific High Commissioner continued to oversee Pitcairn until 1952, when Pitcairn received its own colonial government.<sup>211</sup> But the Governor of Fiji continued to concurrently serve as Governor of Pitcairn until Fiji's independence in 1970.<sup>212</sup> Since then, the British ambassador to New Zealand has been Governor of Pitcairn and the administration of the island has been conducted from the British consulate in Auckland.<sup>213</sup>

In 1904, the British consul at Tahiti and Deputy Western Pacific High Commissioner rewrote the laws and ended the parliamentary system by returning the island to the previous magistrate system.<sup>214</sup> The laws were rewritten in 1940 by another Deputy High Commissioner, but the old ways survived and were simply recodified.<sup>215</sup> The island today elects a mayor, a deputy mayor, and a council who have limited authority.<sup>216</sup> Ultimately, legislative power rests solely in the governor's hands.<sup>217</sup> The governor has exercised this power frequently in the past decade, so that Pitcairn now has a statute book of 797 pages.<sup>218</sup> The flurry of lawmaking came as most of the adult men on Pitcairn were charged with having systematically raped the girls of the island

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HALLIWELL'S FILM, VIDEO & DVD GUIDE 2005, at 595 (John Walker ed. 20th ed. 2004) (the Author has repunctuated the text from Halliwell to reflect Laughton's delivery).

210. NEILL, *supra* note 154, at 185–86.

211. Pitcairn Order, 1952, S.I. 1952/459, § 5 (U.K.), *amended by* Pitcairn (Amendment) Order, 1963, S.I. 1963/368 (U.K.), *superseded by* Pitcairn Order, 1970, S.I. 1970/1434 (U.K.).

212. Fiji Independence Act, 1970, c. 50 (U.K.); Fiji Independence Order, 1970, [1970] 3 S.I. 6630 (U.K.).

213. FOREIGN & COMMW. OFF., PARTNERSHIP at 62; Salt v. Fell, [2008] 3 N.Z.L.R. 193, ¶¶4-5 (litigation between island commissioner, Salt, and Pitcairn governor, Fell).

214. See generally SIMONS, *supra* note 160.

215. See Pitcairn Island Government Regulations, 1940, 1941 W. Pac. High Comm'n Gazette 359 (Fiji).

216. Local Government Ordinance, 1967 § 3 (Pitcairn Is.) (codified as amended at LAWS OF PITCAIRN, HENDERSON, DUCIE AND OENO ISLANDS ch. 11 (Paul Julian Treadwell comp. 2010), available at <http://government.pn/Laws/index.html>) [hereinafter LAWS].

217. PITCAIRN CONST., art. 36(3) (Governor may legislate without consulting Island Council).

218. See *Chronological Table of Ordinances*, in LAWS, *supra* note 217, at xiii-xix (listing all laws enacted from 1952 to 2010 shows few laws passed for decades and then many passed in last fifteen years).

for decades.<sup>219</sup> And in 2010 another big change arrived—an elaborate constitution with as many articles as there were inhabitants of Pitcairn.<sup>220</sup> This is a big change from the 19th Century, when a visitor claimed the islanders “have laid down a rule for themselves—a golden one—NEVER TO MAKE A LAW UNTIL IT IS WANTED.”<sup>221</sup>

“For generations [Pitcairn’s] name has been a synonym for isolation, its people the children of loneliness. A little world that sprang into being amid violence and bloodshed it worked out its own destiny.”<sup>222</sup> After decades of minimal involvement by Britain, it took the legal conundrum of how to prosecute a murderer to bring the island into an organized government. But once the murderer Harry Christian was hanged, Britain again took a *laissez-faire* approach to the island for a century until crime once more spurred it to action.<sup>223</sup> And now in its third century, the legal pendulum on Pitcairn has swung far in the opposite direction. The British government, with its heavy-handed and undemocratic approach toward the island’s affairs, seems to have taken cues from Charles Laughton’s Bligh.

The island began with mutiny and murder and its story “has been transformed over time into near myth, casting a spell of its own on poets, historians, and Hollywood producers in its passage from dark adventure to pastoral idyll.” Supposedly “[f]rom [Pitcairn’s] petty history the philosopher of another planet could reconstruct the whole of human society.” An overstatement, surely, but its story does give us a remarkable example of the law in miniature.

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219. See generally *Christian v. The Queen*, [2006] UKPC 47, [2007] 2 A.C. 400, [2007] 1 L.R.C. 726, 130 I.L.R. 696 (appeal taken from Pitcairn Is.), *aff’g* *R. v. Christian*, [2006] PNCA 1, [2006] 4 L.R.C. 746 (Pitcairn Is. Ct. App.), *aff’g* [2005] PNSC 1, [2006] 1 L.R.C. 745, 75 BRIT. Y.B. INT’L L. 2004, at 428 (Pitcairn Is. Sup. Ct.); MARKS, *supra* note 142.

220. Pitcairn Constitution Order, 2010, S.I. 2010/244 (U.K.), reprinted in LAWS at xxvii. See generally Anthony H. Angelo & Ricarda Kessebohm, *The New Constitution of Pitcairn: A Primer*, 7 N.Z. Y.B. INT’L L. 2009, at 285 (2010); Michael O. Eshleman, *The New Pitcairn Islands Constitution: Plenty of Strong (and Empty) Words for Britain’s Smallest Colony* (in manuscript).

221. ΜΕΤΟΙΧΟΣ, *Pitcairn’s Island*, SYDNEY MORNING HERALD (Sydney, N.S.W.), Oct. 19, 1850, at 3 (NLA). The same rule is stated—*sans* capitals—in MURRAY, *supra* note 37, at 255.

222. ROBERT J. CASEY, *EASTER ISLAND: HOME OF THE SCORNFUL GODS* 71 (1931).

223. Cf. 428 PARL. DEB., H.L. (5th ser.) (1982) 179 (U.K.) (remarks of Lord McNair) (stating one course of action for the British government toward Pitcairn was to do nothing and buy for time as things got desperate there).

### APPENDIX A: OTHER SOURCES ON THE PITCAIRN ISLANDS

The author recommends the following sources for general legal history of the Pitcairn Islands:

- David Silverman, *Pitcairn Island* (1967), and ROBERT W. KIRK, *PITCAIRN ISLAND, THE Bounty Mutineers and Their Descendants* (2008) (both are among the best histories of the Pitcairn Islands).
- [JOHN BARROW], *THE EVENTFUL HISTORY OF THE MUTINY AND PIRATICAL SEIZURE OF H.M.S. BOUNTY: ITS CAUSE AND CONSEQUENCES* (London, John Murray 1831) (author had access to all official papers), *reprinted in an abridged and illustrated edition as THE MUTINY OF THE BOUNTY* (Gavin Kennedy ed. David Godine 1980) (the first book-length account after Blight's);
- William Bligh, *A Narrative of the Mutiny on Board His Majesty's Ship Bounty and the Subsequent Voyage of Part of the Crew, in the Ship's Boat, from Tofoa, One of the Friendly Islands, to Timor, a Dutch Settlement in the East Indies* (London, George Nicol 1790), *reprinted in* William Bligh & Edward Christian, *The Bounty Mutiny 1-66* (Penguin Classics 2001) (Captain Bligh's published account of the mutiny);
- Donald J. Orth, *Dictionary of Alaska Place Names 108* (1967) (U.S. Geological Survey Professional Paper No. 567) (Sir John Barrow, Second Secretary—the chief civil servant—of the Admiralty for four decades, was a promoter of Royal Navy polar exploration and is the namesake of America's northernmost city);
- D. Bonner Smith, *Some Remarks About the Mutiny on the Bounty*, 22 *MARINER'S MIRROR* 200-201 (1936) (Eng.)(barrow's book is the foundation upon which all later works draw).
- Sven Walhroos, *Mutiny and Romance in the South Seas: A Companion to the Bounty Adventure 289* (1989) (an extremely useful book with a narrative chronology and an encyclopedia of all people and things connected with the mutiny and Pitcairn).

The author also found the following works on Pitcairn Island possessing noteworthy historical significance (they are listed in chronological order):

- [NATHAN WELBY FISKE], *ALECK: THE LAST OF THE MUTINEERS, OR, THE HISTORY OF PITCAIRN'S ISLAND 133-38* (Amherst, Mass., J.S. & C. Adams 2d ed. 1843) (ostensibly

a biography of the last of the mutineers but focusing more on the mutiny and the islanders);

- Walter Brodie, *Pitcairn's Island and the Islanders in 1850* 67-76 (London, Whitaker 3d ed. 1851) (FP) (vital for reproducing primary source documents), *microformed on American Culture Series*, Reel 80.3 (University Microfilms);
- Thomas Boyles Murray, *Pitcairn: The Island, the People, and the Pastor, to Which Is Added a Short Notice of the Original Settlement and Present Condition of Norfolk Island* 117-24 (London, Society for Promoting Christian Knowledge 12th ed. 1860) (Murray was a top official of S.P.C.K. and his book continued to be revised and reprinted as late as 1909);
- Diana Jolliffe Belcher, *Mutineers of the Bounty and Their Descendants in Pitcairn and Norfolk Islands* (New York, Harper & Bros. 1871) (best-selling, biased account—Belcher's stepfather was convicted of mutiny against Bligh—that brought the notion of Bligh as monster to a new generation);
- Alfred McFarland, *Mutiny in the "Bounty!" and Story of the Pitcairn Islanders* 237 (Sydney, J.J. Moore 1884) (account written by New South Wales judge);
- Rosalind Amelia Young, *Mutiny of the Bounty and Story of Pitcairn Island, 1790-1894*, 21-31 (5th ed. Mountain View, Calif., Pac. Press Publishing Ass'n 1894) (the only book-length account by a native of the island);
- Harry L. Shapiro, *The Heritage of the Bounty: The Story of Pitcairn Through Six Generations* 88-105 (1936) (account by American anthropologist particularly useful for reproducing legal texts);
- Luis Marden, *I Found the Bones of the Bounty*, NAT'L GEOG. MAG., Dec. 1957, at 725 (lengthy article with excellent contemporary material on Pitcairn);
- H.E. Maude, *The History of Pitcairn Island*, ALAN STRODE CAMPBELL ROSS & ALBERT W. MOVERLEY, *THE PITCAIRNESE LANGUAGE* 45-101 (1964) (comprehensive account by colonial officer—who became a highly respected Pacific historian—who spent months there in 1940's);
- ROBERT B. NICOLSON, WITH BRIAN F. DAVIS, *THE PITCAIRNERS* (Univ. of Haw. Press 1997) (1965) (excellent account by an Australian);
- IAN M. BALL, *PITCAIRN: CHILDREN OF MUTINY AT 30* (1973) (study by the Australian-born New York correspondent of London's *Daily Telegraph* focusing on daily

life of the Pitcairners from personal experiences and interviews);

- SPENCER MURRAY, *PITCAIRN ISLAND, THE FIRST 200 YEARS* (1992) (good account of Twentieth Century history, usually neglected in the Pitcairn literature);
- Trevor Lummis, *Pitcairn Island: Life and Death In Eden* (1997) LUMMIS (recounting story from settlement to removal to Norfolk in 1856 and which was heavily relied on by judges in the 2004 rape prosecutions);
- H. H. Montgomery, *THE LIGHT OF MELANESIA: A RECORD OF THIRTY-FIVE YEARS MISSION WORK IN THE SOUTH SEAS* (1896) (account by journalist who covered the 2004 rape trials).

## APPENDIX B: A NOTE ON SOURCES

*Bluebook* states that “a parallel citation to an Internet source with identical content may be provided if it will substantially improve access to the source cited.”<sup>224</sup> Many printed sources relied upon by the Author are available online. This is indicated by an abbreviation following the print citation rather than clutter the footnotes with addresses that are impossible to retype.<sup>225</sup> These abbreviations are:

(AO)=Project Archive, [www.Archive.org](http://www.Archive.org);

(FP)=Fateful Pitcairn, [www.pitcairn.fatefulvoyage.com](http://www.pitcairn.fatefulvoyage.com);

(GB)=Google Books, [www.books.google.com](http://www.books.google.com);

(JPS)=*Journal of the Polynesian Society*, [www.jps.auckland.ac.nz](http://www.jps.auckland.ac.nz);

(LG)=*London Gazette*, [www.london-gazette.co.uk](http://www.london-gazette.co.uk);

(NLA)=National Library of Australia’s “Trove” website for newspapers <http://trove.nla.gov.au/newspaper>;

(PG)=Project Gutenberg, <http://gutenberg.org>.

A number of items cited are from archives. The archives are abbreviated with the archival record numbers indicated where known:

(FCOA)=Foreign and Commonwealth Office Archives, Hanslope Park, Hanslope, Milton Keynes, Buckinghamshire, England.

(WPA)=Western Pacific Archives, Special Collections, University of Auckland Library, Auckland, New Zealand.<sup>226</sup>

(TNA)=The National Archives of the United Kingdom, Public Record Office, Kew, Richmond, Surrey, England.

The archival documents cited herein were reproduced in the appellate record submitted to the Judicial Committee of the Privy Council in its consideration of *Christian v. The Queen*.<sup>227</sup> These items are cited as PCR (“Privy Council Record”) followed by a two-part page number, e.g., 1-150 means volume one, page 150. (N.B. The pagination is continuous through all volumes.) The archival file numbers were supplied by Ned Fletcher, a New Zealand barrister who worked for the prosecution on the Pit-

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224. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 169 (Columbia Law Review Ass’n et al. eds., 19th ed. 2010).

225. *Id.* at 168 (stating exact addresses should not be used if “long, unwieldy, or full of nontextual characters”).

226. See A.I. Diamond, *The Central Archives of Fiji and the Western Pacific High Commission*, 1 J. PAC. HIST. 204 (1966) (Austl.); 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).

227. [2006] UKPC 47, [2007] 2 A.C. 400, [2007] 1 L.R.C. 726, 130 I.L.R. 696 (appeal taken from Pitcairn Is.).

cairn case. The Author has reviewed the documents only through the PCR. Because the PCR is not readily available to scholars, the Author has deposited electronic copies with the Pitcairn Islands Study Center, Pacific Union College, Angwin, California;<sup>228</sup> the Pacific Collection, Thomas Hale Hamilton Library, University of Hawaii, Honolulu; and the Center for Adventist Research, James White Library, Andrews University, Berrien Springs, Michigan.

“P.P.” indicates the British Parliamentary Papers, some of which have been filmed by Chadwyck-Healey in its House of Commons Parliamentary Papers Series. The cite “61 P.P. (1897) 161, MF 103.499–500” means the document was at page 161 of volume 61 of the *Session Papers*—akin to the *U.S. Congressional Serial Set*—for the 1897 session of the House of Commons, and the document is on microfiche numbers 103.499 and 103.500 of the Chadwyck-Healey edition.<sup>229</sup> In some years, there were multiple sessions of Parliament, which are marked thusly: (1857 Session I). “IUP” refers to the selective *Irish University Press 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*, a.k.a. *Hansard*, are 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).

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228. See *Book on Pitcairn Given to PUC Library*, 153 ADVENTIST REV. & SABBATH HERALD 1338 (1976).

229. See 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*).