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PITCAIRN: A CONTEMPORARY COMMENT

A H Angelo and Andrew Townend*******

Pitcairn is in the news, and for all the wrong reasons. Allegations of widespread sexual offending have triggered a long-running criminal investigation with, at the time of writing, no clear end in sight. These developments raise a number of significant domestic and international public law issues for Pitcairn. It is the purpose of this paper to comment on a few of those issues in the hope of stimulating further consideration of the matters of law that confront the people of this small South Pacific territory.

I INTRODUCTION

This paper examines three aspects of the present position of the British Overseas Territory of Pitcairn.[1] The first aspect, dealt with in Part II, is concerned with the criminal proceedings which have arisen from allegations of sexual offending on the island. These proceedings are noteworthy for the difficulty of knowing under what law charges have

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The views expressed here are those of the authors. Neither the Government nor the people of Pitcairn have been consulted in their formulation.

1 Pitcairn, Henderson, Ducie, and Oeno Islands lie in a remote corner of the South Pacific Ocean, just to the south of the Gambier group of French Polynesia and roughly equidistant from Los Angeles to the north and Auckland to the west. Pitcairn is the only inhabited island of the group. Its population is descended from the Bounty mutineers, who settled on the island in January 1790, and the Tahitians who accompanied them. In 1999 that population stood at 46: 17 men, 19 women, and 10 children under sixteen (*Guide to Pitcairn* (Government of the Islands of Pitcairn, Henderson, Ducie, and Oeno, 1999) 64).

On matters relating to Pitcairn generally, see UNGA Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples "Pitcairn Working Paper" (19 May 2003) UN Doc A/AC.109/2003/16.

been laid and for the unprecedented and problematic sitting of Pitcairn courts in New Zealand.

Part III advocates a programme of restorative justice for Pitcairn. The blunt instrument of the criminal law has already caused considerable disruption to the community and threatens its long-term survival unless accompanied by restorative processes sensitive to Pitcairn's unique circumstances. Restorative justice is seen as a means of addressing both historical patterns of social dysfunction and the disruption arising from the current proceedings.

These matters of trials and restorative justice bring into play the broader question of what Pitcairn's future might be. In international legal terms, Pitcairn is a non-self-governing territory under the administration of the United Kingdom. As such its inhabitants have a right to economic, social, and legal development and, ultimately, to a full measure of self-government. Never before has the decolonisation process been applied to such a small community. Part IV suggests one way in which the process might be tailored to fit the Pitcairn context.

II THE TRIALS

In late 1999 two complaints of sexual assault were made to the United Kingdom police officer serving on Pitcairn.[2] The protracted investigation that followed (Operation Unique)[3] led in April 2003 to the laying of 64 criminal charges[4] against nine men living on Pitcairn,[5] with 32 further charges[6] laid in June against four Pitcairn men living in New

2 Tim Watkin "Trials of a Faraway Island" (10 May 2003) New Zealand Herald Online <http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=3501090> (last accessed 25 September 2003).

3 Tim Watkin "Lonely Island Weathering a Storm" (25 August 2002) New Zealand Herald Online <http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=2351005> (last accessed 25 September 2003).

4 Twenty-one of rape, 41 of indecent assault (some involving teenage girls), and two of gross indecency with a child under 14.

5 Gareth Vaughan "Pitcairn Sex Case Could Go to European Court of Human Rights" (21 May 2003) *Independent* Auckland 3.

6 Including ten counts of rape.

Zealand.[7] All offences are alleged to have been committed at least five years ago, with some dating back 40 years.[8]

The investigation into alleged sexual offending on Pitcairn has been accompanied by the replacement of its relatively simple pre-1999 criminal justice system[9] with an extensive array of new laws and institutions. Approximately 40 Ordinances dealing with justice and penal matters have been made since 1999—a number equivalent to the total number of Ordinances made in the previous 33 years.[10]

In October 2002 the Governments of the United Kingdom and New Zealand concluded a treaty providing for Pitcairn courts to sit in New Zealand (in view of the logistical difficulty of holding trials on Pitcairn)[11] and for the serving of sentences in New Zealand.[12] Legislative effect was given to the treaty by the Pitcairn Trials Act 2002 (NZ)[13] and the

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7 "Four More Pitcairn Men Charged with Rape" (7 June 2003) New Zealand Herald Online <http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=3506129> (last accessed 25 September 2003).

8 At a sitting in July 2003 of the Magistrate's Court in Adamstown (the only village on Pitcairn), seven of the accused were committed for trial. In August in the Supreme Court they entered not guilty pleas and were remanded to appear again in Auckland in November for legal arguments. See "Seven Men Sent for Trial on Pitcairn Sex Charges" (8 July 2003) New Zealand Herald Online <http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=3511381> (last accessed 25 September 2003); "Pitcairn Men Enter Not Guilty Pleas" (25 August 2003) New Zealand Herald Online <http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=3519692> (last accessed 25 September 2003).

9 See the Justice Ordinance 1966 (Pit).

10 See the chronological table of Ordinances in *The Laws of Pitcairn, Henderson, Ducie and Oeno Islands* (revised ed 2001) vol I xiii.

Other changes since 1999 include the building of a three-cell "remand facility" on Pitcairn (the islanders describe it as a prison—see Tim Watkin "Lonely Island Weathering a Storm" (25 August 2002) New Zealand Herald Online <http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=2351005> (last accessed 25 September 2003)), and the establishment of a new Pitcairn Court of Appeal, under the Pitcairn Court of Appeal Order 2000 (UK), SI 2000/1341.

11 See Hon Phil Goff, MP (17 October 2002) 603 NZPD 1513.

12 Agreement between the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Trials under Pitcairn Law in New Zealand and Related Matters (11 October 2002) [2003] NZTS, no 2. The text of the Agreement may also be found in the Pitcairn Trials Act 2002 (NZ), sch 1. The Agreement came into force on 14 March 2003 in accordance with art 28(1).

13 The Act came into force on 14 March 2003 (see the Pitcairn Trials Act Commencement Order 2003 (NZ), SR 2003/11).

Judicature Amendment Ordinance 2003 (Pit). New Zealand judges and lawyers have been appointed as Pitcairn judges and lawyers,[14] and the Pitcairn Magistrate's Court has sat on two occasions in Auckland for the purpose of some pre-trial hearings.[15]

These developments have given rise to a number of interesting and complex issues, of which the following are indicative.

A Charges under What Law?

1 Sources of Pitcairn law

The primary constitutional document for Pitcairn is the Pitcairn Order 1970 (UK), made under the British Settlements Acts 1887[16] and 1945[17] and the prerogative constituent power.[18] The Order and accompanying Royal Instructions empower the Governor of Pitcairn to make "laws for the peace, order and good government of the Islands",[19] in certain cases having obtained instructions from a United Kingdom Secretary of State.[20] Laws made by the Governor are styled "Ordinances".[21]

One such Ordinance is the Judicature (Courts) Ordinance 1999 (Pit), which provides that:[22]

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14 Up to 12 New Zealanders, including at least two District Court judges, have been sworn in as Pitcairn judges, lawyers, and legal officials. District Court Judge Charles Blackie is Chief Justice of Pitcairn. See Gareth Vaughan "Kiwi Lawyers Get Their Snouts into the Pitcairn Island's Legal Trough (30 October 2002) *Independent* Auckland 3.

15 See Tim Watkin "Trials of a Faraway Island" (10 May 2003) New Zealand Herald Online <http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=3501090> (last accessed 25 September 2003); "Four More Pitcairn Men Charged with Rape" (7 June 2003) New Zealand Herald Online <http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=3506129> (last accessed 25 September 2003).

16 British Settlements Act 1887 (UK), 50 & 51 Vict, c 54.

17 British Settlements Act 1945 (UK), 9 & 10 Geo 6, c 7.

18 Pitcairn Order 1970 (UK), SI 1970/1434, preamble. On the prerogative constituent power, see Sir Kenneth Roberts-Wray *Commonwealth and Colonial Law* (Stevens, London, 1966) 151–153.

19 Pitcairn Order 1970 (UK), SI 1970/1434, s 5(1).

20 Pitcairn Royal Instructions (30 September 1970) (UK), cl 5.

21 Pitcairn Royal Instructions (30 September 1970) (UK), cl 4(1).

22 Judicature (Courts) Ordinance 1999 (Pit), s 16(1), (2).

> [T]he common law, the rules of equity and the statutes of general application as in force in and for England for the time being shall be in force in the Islands ... so far only as the local circumstances and the limits of local jurisdiction permit and subject to any existing or future ordinance ...

This provision is a statutory incorporation of the common law rule on the application of English law to settled colonies.[23] An additional source of Pitcairn law is English statutes specifically extended to Pitcairn.[24]

It is not publicly known under what law the charges that are the subject of the current legal proceedings were laid. The charges have been described in media reports as "rape", "indecent assault", and "gross indecency with a child under fourteen", but without any indication as to the specific legal foundation.[25] Even a New Zealand Cabinet memorandum on the question of trials in New Zealand is silent on this point, noting simply that:[26]

> Under Pitcairn law, ... conviction on charges such as rape and other forms of sexual violation, will in general terms lead to imprisonment.

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23 See Sir Kenneth Roberts-Wray *Commonwealth and Colonial Law* (Stevens, London, 1966) 540–541. Pitcairn is considered to fall within the dominions of the Sovereign in right of the United Kingdom as a British settlement under the British Settlements Act 1887 (UK), 50 & 51 Vict, c 54, as amended by the British Settlements Act 1945 (UK), 9 & 10 Geo 6, c 7. Roberts-Wray describes it (at 153) as an unauthorised British settlement. Its inhabitants, "with the assistance of visiting naval officers, maintained law making bodies without any authorisation from the Crown during the greater part of the history of the Island". Roberts-Wray goes on to say (at 154) in respect of unauthorised settlements that:

> [I]t is beyond doubt that in applying English law, as imported, it must be adjusted to local circumstances; and one will be on reliable ground contending for the recognition of customs gradually developed by the people and regarded by themselves as binding. It would indeed be incongruous if rules deliberately laid down by their representatives were not accorded like recognition.

24 Roberts-Wray, above, 141–142. See for example the Fugitive Offenders Act 1967 (UK), extended to Pitcairn by the Fugitive Offenders (Pitcairn) Order 1968 (UK), SI 1968/884.

25 See for example Gareth Vaughan "Pitcairn Sex Case Could Go to European Court of Human Rights" (21 May 2003) *Independent* Auckland 3; "Four More Pitcairn Men Charged with Rape" (7 June 2003) New Zealand Herald Online <http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=3506129> (last accessed 25 September 2003).

26 Office of the Attorney-General and Associate Minister of Justice "Memorandum for Cabinet External Relations and Defence Committee: Holding of Pitcairn Island Trials in New Zealand" (6 March 2002) para 22.

What is that law? Or, rather, what was it at the time of the alleged offending?

The specific provisions in the Pitcairn Ordinances at the time of the alleged offences were few. The local law relating to sexual offences consisted of a single provision:[27]

> Any male person who shall have carnal knowledge of any female child of or over the age of twelve years shall be guilty of an offence and liable to imprisonment for one hundred days.

That provision was repealed in 1999, without the substitution of any other sexual offences.[28] It is possible that some charges have been laid under it, but the description of the charges as publicly notified suggests not.

The alternative is English law, as extended to Pitcairn. Determining what that was at the time of the alleged offending is complicated by changes in the statutory formula extending English law to Pitcairn. The current provision is section 16(1) of the Judicature (Courts) Ordinance 1999 (Pit):[29]

> [T]he common law, the rules of equity and the statutes of general application as in force in and for England *for the time being* shall be in force in the Islands.

Its immediate predecessor, section 14(1) of the Judicature Ordinance 1970 (Pit), is worded in the 1985 Revised Edition of Pitcairn Laws as follows:[30]

> [T]he common law, the rules of equity and the statutes of general application as in force in and for England *on the 1st day of January, 1983*, shall be in force in the Islands.

And in the 1971 Revised Edition, section 14(1) of the 1970 Ordinance stated:[31]

> [T]he common law, the rules of equity and the statutes of general application as in force in and for England *at the commencement of this Ordinance* shall be in force in the Islands.

A further question is what the common law was at the time of the alleged offending; that is, what the common law of England was, and to what extent local circumstances permitted its extension to Pitcairn. The historical inquiry involved and the necessarily

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27 Justice Ordinance 1966 (Pit), s 88.

28 See now the Justice Ordinance 1999 (Pit), which does not specify any sexual offences. Nor are they provided for in any other local legislation.

29 (Emphasis added.)

30 (Emphasis added.)

31 (Emphasis added.) The Ordinance commenced on 27 October 1970.

subjective nature of the assessment mean that it is virtually impossible to give a definitive answer. No such answer is hazarded here.

As for an English statute, the Sexual Offences Act 1956 (UK) could potentially extend to Pitcairn as a statute of general application, though "gross indecency with a child under fourteen" (as some of the charges in the present case have been described) is not one of the offences provided for under that Act. Nor do those words appear in any other English statute.

2 *Local ignorance of law*

Working out what the law of Pitcairn was at the time of the alleged offending is a difficult task, and one that has already taken months for the lawyers involved in the current proceedings. It must be an even harder task for Pitcairners today, isolated and without full access to the relevant legal resources. For an accused 40 years ago, it would have been virtually impossible. It seems extremely unlikely that the English common law or statutes in force in Pitcairn were ever publicised on the Island, and it is difficult to see how Pitcairners could have worked out for themselves what English law applied. Writing in 1966, Roberts-Wray said:[32]

> It is permissible to wonder how far English law has in fact been effective … . [I]t seems likely that the Island's magistrates have never known much about it and have formed their own written laws sufficient for most purposes.

Statutes of general application present a particular problem, because every determination that a statute is a statute of general application (and therefore part of the law of the country concerned) is effectively an act of judicial legislation. Until the decision in the test case, it is impossible for any member of the community to know whether or not a given statute is a statute of general application.[33]

In this context, it is arguable that applying English statutes amounts to the retroactive application of that law, turning behaviour that on Pitcairn was non-criminal into criminal behaviour.[34] The argument would be that since that law was never adequately

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32 Sir Kenneth Roberts-Wray *Commonwealth and Colonial Law* (Stevens, London, 1966) 909.

33 In former (and in the case of Pitcairn, current) British dependent territories in the South Pacific statutes of general application have usually been declared to exist in private law and administrative matters, such as matrimonial causes (see for example *Banga v Waiwo* (Supreme Court of Vanuatu, app cas no 1, 1996).

34 "Retroactive" law, which changes the legal status of a past action as though the law had then been in effect, may be contrasted with "retrospective" law, which is law that attaches a new legal consequence in the present to a past action (for example, a law that enhances the penalty attaching

promulgated on the Island, no-one can be accused of having broken it. Prosecuting the accused in such a situation runs contrary to the principle *nulla poena sine lege*, enshrined in human rights documents such as the International Covenant on Civil and Political Rights:[35]

> No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence … at the time when it was committed ...

The extent to which a challenge on this basis could be pursued in a Pitcairn court depends on whether it is a principle of Pitcairn law. It may be a rule of the common law applicable to Pitcairn. It is certainly a feature of the Human Rights Act 1998 (UK).[36] Whether that statute applies to Pitcairn is unclear. It may be a statute of general application (some might ask what could be a better example), but may also be considered too United Kingdom-specific to apply in the Pitcairn context.[37]

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to a criminal act after the act has been committed) (Jeremy Waldron "Retroactive Law: How Dodgy was Duynhoven?" (Speech at the Faculty of Law, Victoria University of Wellington, Wellington, 21 August 2003)).

35 International Covenant on Civil and Political Rights (19 December 1966) 993 UNTS 3, art 15(1). This passage from Lon Fuller (*The Morality of Law* (Yale University Press, New Haven, 1964) 39) is instructive in the Pitcairn context:

> [T]here can be no rational ground for asserting that a man can have a moral obligation to obey a legal rule that does not exist, or is kept secret from him, or that came into existence only after he had acted, or was unintelligible, or was contradicted by another rule of the same system, or commended the impossible, or changed every minute ...

36 See the Human Rights Act 1998 (UK), s 1, sch 1; (European) Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) 213 UNTS 222, art 7. A further possibility in this context might be a claim under the European Convention itself.

37 See the Judicature (Courts) Ordinance 1999 (Pit), s 16(3):

> No information, charge, summons, conviction, sentence, order, bond, warrant or other document and no process or proceeding shall be quashed, set aside, or held invalid by any Court or quasi-judicial authority by reason only of any defect, irregularity, omission or want of form unless the Court or authority is satisfied that there has been a substantial miscarriage of justice.

This provision comes immediately after s 16(2), which provides that English law extends to Pitcairn only as far as local circumstances permit.

B Pitcairn Courts in New Zealand

Under section 5(2A) of the Pitcairn Order 1970 (UK), the Courts of Pitcairn (other than the Court of Appeal) may sit:[38]

> in the United Kingdom, or in such place within any other part of Her Majesty's dominions as the Governor, acting in accordance with the advice of the Chief Justice and with the concurrence of the Governor of such part of Her Majesty's dominions, may appoint.

This provision is ostensibly the authority at Pitcairn law for the sitting of Pitcairn courts in New Zealand for the purposes of the current trials. But does it include a power to sit in New Zealand?

It appears that at English law the expression "Her Majesty's dominions" may include New Zealand[39] (though the more usual approach seems to be to refer to "Commonwealth countries" and "colonies", without any reference to "dominions").[40] The Interpretation Act 1978 (UK), for example, defines "colony" as:[41]

> any part of Her Majesty's dominions outside the British Islands except … countries having fully responsible status within the Commonwealth.

But even if, for certain purposes, "dominions" might include New Zealand, is New Zealand one of the dominions referred to in section 5(2A) of the Pitcairn Order? The reference to a "Governor" suggests not.

It could be argued that "Governor" includes "Governor-General"[42] (even though New Zealand has not had a Governor since 1907),[43] and that the New Zealand Government's

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38 Pitcairn Order 1970 (UK), SI 1970/1434, s 5(2A), inserted by the Pitcairn (Amendment) Order 2000 (UK), SI 2000/1340.

39 Whereas at New Zealand law, the contrary is probably true. As an independent country, the argument would go, New Zealand no longer falls within the dominions of Her Majesty in right of the United Kingdom. Though New Zealand and the United Kingdom share the same person as head of state, Her Majesty in right of the United Kingdom is a different legal entity from Her Majesty in right of New Zealand. See Philip A Joseph *Constitutional and Administrative Law in New Zealand* (2 ed, Brookers, Wellington, 2001) 551–554.

40 See for example the Armed Forces Discipline Act 2000 (UK), s 7; Extradition Act 1989 (UK), s 5(3); Naval Discipline Act 1957 (UK), s 135(1).

41 Interpretation Act 1978 (UK), sch 1. See also Sir Kenneth Roberts-Wray *Commonwealth and Colonial Law* (Stevens, London, 1966) 23–29.

42 It may do so in relation to colonies. See the Naval Discipline Act 1957 (UK), s 135(1): "'Governor', in relation to any colony, means the Governor-General, Governor or other officer … who is for the time being administering the government of the colony".

signing of the treaty concerning Pitcairn trials amounts to the Governor-General's "concurrence" (since by convention the Governor-General exercises executive authority only in accordance with the advice of her responsible Ministers).[44] But the usual practice in United Kingdom legislation seems to be to reserve "Governor" for colonies[45] and to use "Government" for Commonwealth countries.[46]

It is noteworthy that section 5(2A) of the Pitcairn Order was inserted in 2000.[47]If an independent country in the Commonwealth were intended, one would expect the words "Commonwealth country" and "Government" to have been included. The Fugitive Offenders (Pitcairn) Order 1968 (UK) dealt with the matter in this way:[48]

> [A] person shall not be dealt with … except in pursuance of an order of the Governor [of Pitcairn] … issued in pursuance of a request made to the Governor by or on behalf of the Government, in the case of the United Kingdom, the Republic of Ireland or a designated Commonwealth country, or the Governor in the case of a United Kingdom dependency …

A New Zealand Cabinet paper of March 2002 noted that while the section would include British Overseas Territories,[49]

> It is considered that [section 5(2A) of the Pitcairn Order] is defective in that it does not include NZ. If trials were held in NZ, then such defect would need to be remedied to avoid a jurisdictional challenge in the UK courts to venue in NZ.

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43 Philip A Joseph *Constitutional and Administrative Law in New Zealand* (2 ed, Brookers, Wellington, 2001) 161.

44 Joseph, above, 279.

45 Or, as they are now known, "Overseas Territories". See the British Overseas Territories Act 2002 (UK), s 1.

46 See for example the Extradition Act 1989 (UK), s 5(5): "[A]ny territory for the external relations of which a Commonwealth country is responsible may be treated as part of that country or, if the Government of that country so requests, as a separate country".

47 By the Pitcairn (Amendment) Order 2000 (UK), SI 2000/1340.

48 Fugitive Offenders (Pitcairn) Order 1968 (UK), SI 1968/884, sch, extending the Fugitive Offenders Act 1967 (UK) to Pitcairn. See also the Interpretation and General Clauses Ordinance 1952 (Pit), s 2(1), in which "country or territory of the Commonwealth", "Government [of Pitcairn]", and "Governor [of Pitcairn]" are all separately defined.

49 Office of the Attorney-General and Associate Minister of Justice "Memorandum for Cabinet External Relations and Defence Committee: Holding of Pitcairn Island Trials in New Zealand" (6 March 2002) para 15–16.

In December 2002 the Judicature (Courts) Ordinance 1999 (Pit) was amended (by inserting a new section 15A) to allow the Magistrate's Court and Supreme Court to sit:[50]

> in the Islands or at such other country or place as may be permitted by any law.

If the interpretation suggested above is correct, then, reading that provision consistently with the Pitcairn Order (to which it is subordinate), New Zealand cannot be such a country or place.

Nevertheless, in March 2003 the Governor of Pitcairn made an Order under section 5(2A) of the Pitcairn Order ostensibly appointing New Zealand as a place where the Magistrate's Court and Supreme Court may sit for the purposes of the current trials.[51] The preamble uses, selectively, the language of section 5(2A) of the Pitcairn Order and section 15A of the Judicature (Courts) Ordinance, omitting any reference to "Her Majesty's dominions" or "Governor":[52]

> [W]hereas it is provided [in section 5(2A) of the Pitcairn Order 1970] that the … Courts may … sit in the United Kingdom or in such place as the Governor, acting in accordance with the advice of the Chief Justice, may appoint …

III RESTORATIVE JUSTICE FOR PITCAIRN

The criminal process has had a profoundly damaging effect on the small and interdependent Pitcairn community. Island Secretary Betty Christian wrote in August 2002:[53]

> Our very existence is at stake. We are like one family, and whatever decision is made, we are the ones who will suffer. Regardless of our differences and problems, none of our people want to see Pitcairn closed down and abandoned … . Whatever the outcome, all of us will be affected as we are related to both alleged victims and alleged perpetrators.

Pitcairners are afraid that their community will die if any significant proportion of its adult male population is removed or incapacitated for any length of time, during trials or

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50 Judicature (Courts) Ordinance 1999 (Pit), s 15A, inserted by Judicature (Courts) (Amendment) Ordinance 2002 (Pit), s 2.

51 Order under section 5(2A) of the Pitcairn Order 1970 (28 March 2003) (Pit).

52 Order under section 5(2A) of the Pitcairn Order 1970 (28 March 2003) (Pit), preamble.

53 Tim Watkin "Lonely Island Weathering a Storm" (25 August 2002) New Zealand Herald Online <http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=2351005> (last accessed 25 September 2003). The Island Secretary is appointed by the Governor under the Local Government Ordinance as Clerk of the Island Council.

while serving prison sentences. The island is heavily dependent on public cooperation, and especially on its men, who do the fishing and work the longboats used to meet passing ships. Almost every major activity on the island calls for the participation of the entire community in some way.[54]

Rather than criminal trials, Pitcairners have called for "truth and reconciliation". The Island Mayor, Steve Christian, requested such a process in September 2001, in a letter to the Governor of Pitcairn, United Kingdom High Commissioner to New Zealand Richard Fell.[55] As an elected official, first elected in 1999 and re-elected in 2002, it would appear that Mr Christian speaks for the community generally:

> As Mayor of Pitcairn I wish to request a Truth and Reconciliation Commission for the people of Pitcairn Island and others involved, to resolve allegations of the current inquiry. …
>
> Legal procedures appear frightening to us all and we cannot see how a court sitting or prison term can assist alleged perpetrators to understand the implications of what they may have done or assist the victims to feel good about themselves.
>
> Our island is dependent on key male personnel to run the longboats (the life blood of the island) and handle cargo. ... Individuals and families are being destroyed by the waiting regarding allegations and the situation where families and members within families have been asked to bear witness against each other. This is mental torture. We feel we are losing control of our island and our destinies.
>
> Please help us to facilitate a reconciliation process whereby our society can be restored and our island saved.

What the Mayor referred to as "truth and reconciliation" is known generally elsewhere as "restorative justice". Restorative justice has been described as "a system or practice which emphasises the healing of wounds suffered by victims, offenders, and communities that are caused or revealed by offending conduct."[56] Unlike the criminal justice system, which seeks to inflict punishment in proportion to the gravity of the offence and, in

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54 *Guide to Pitcairn* (Government of the Islands of Pitcairn, Henderson, Ducie, and Oeno, 1999) 27.

55 Steve Christian, Mayor of Pitcairn (Presentation to UN Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples Pacific Regional Seminar to Review the Political, Economic and Social Conditions in the Non-Self-Governing Territories, Nadi, Fiji, 14–16 May 2002) UN Doc PRS.2002/DP.6, attachment 2.

56 Donald J Schmid "Restorative Justice: A New Paradigm for Criminal Justice Policy" (2003) 34 VUWLR 91, 93.

appropriate cases, to incapacitate particular offenders, the overall purpose of restorative justice is "the restoration into safe communities of victims and offenders who have resolved their conflicts".[57] How this is done depends on the case at hand.

A restorative justice process was advocated during the New Zealand parliamentary debates on the Pitcairn Trials Bill by Keith Locke, MP:[58]

> With the Pitcairn community, both on the island and in New Zealand, being so small and intimate, the combination of a healing, restorative justice approach with appropriate trials makes a lot of sense.
>
> The impression I get from Pitcairn community members is that they want to deal with any historical issues of sex abuse. They want a community process whereby they can speak openly to each other about the issues, deal with them, and move forward as a community.

Such an approach would not be foreign to the Pitcairn legal system. As long ago as 1893, the courts of British colonies in the South Pacific had the power to "promote reconciliation, and encourage and facilitate the settlement in an amicable way of any suit or proceeding pending before [them]".[59] Current Pitcairn law grants similar jurisdiction to the Magistrate's Court in civil cases and in minor criminal proceedings.[60]

The United Kingdom Government did consider whether to adopt a different approach from police investigations followed by criminal trials.[61] Amnesty for alleged offenders who acknowledged the offensive nature of their past conduct and a process of "social reconstruction" were considered. But it was concluded that the pattern of dysfunctional conduct could continue if a full police investigation were not undertaken. It was also thought that by failing to implement a criminal justice approach, the United Kingdom might be seen to be treating the alleged offending as less serious because it occurred in an

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57 D W Van Ness "New Wine and Old Wineskins: Four Challenges of Restorative Justice" (1993) 4 Crim L Forum 251, 258. See also Schmid, above, 94.

58 (10 December 2002) 605 NZPD 2629.

59 Pacific Order in Council 1893 (UK), SR & O Rev 1948, VIII, Foreign Jurisdiction, 597, art 34. This instrument was extended to Pitcairn in 1898 in Instructions to the High Commissioner for the Western Pacific pursuant to the Pacific Order in Council, arts 4, 6 (see [1898] *Fiji Royal Gazette* 215).

60 See Judicature (Courts) Ordinance 1999 (Pit), s 15. Some amendment of Pitcairn law might be required if an alternative to the criminal justice process were to be available where the charge is one of serious sexual offending.

61 Office of the Attorney-General and Associate Minister of Justice "Memorandum for Cabinet External Relations and Defence Committee: Holding of Pitcairn Island Trials in New Zealand" (6 March 2002) para 12.

Overseas Territory. Similar concerns were raised by members of both main political parties in New Zealand during debates on the Pitcairn Trials Bill.[62]

This concern is understandable given the subject matter of the current proceedings. The charges are numerous and serious. Some of them relate to children. They warrant the most rigorous attention. It is significant that since the current investigations began in 1999, no one has denied that undesirable sexual practices have been a feature of Pitcairn life. Most islanders, according to one Pitcairner now living in New Zealand and interviewed by the New Zealand Herald in May 2003, recognise that their way of life was wrong and must change.[63] But it seems short-sighted to address this serious social problem simply by singling out individual offenders for punishment. No-one denies that there is a serious problem in Pitcairn society, nor that something needs to be done about it. But dogged adherence to orthodox measures when those measures may destroy the fabric of the community itself is not the way to approach the matter.

The actions of individual offenders cannot be excused; nor can they be addressed in a vacuum. Indeed, there is always the chance of a nolle prosequi, or of the criminal proceedings foundering on due process grounds, or, ultimately, of an acquittal. Any one of these would leave Pitcairn's social problems unresolved. The need for a restorative approach would be as great as ever.

An appropriate restorative justice approach for Pitcairn could be the community conference, a model applied in various settings in New Zealand, Canada, and elsewhere.[64] While its use has until now generally been restricted to less-serious offending, in principle it would seem to offer much to the Pitcairn situation. Participants would include victims, offenders, and other Pitcairners living on the island and overseas. Expatriates would bring a particularly valuable perspective, given their understanding of island life and their appreciation of the standards of behaviour expected of a 21st century community.[65]

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62 Martin Gallagher, MP (Labour) (10 December 2002) 605 NZPD 2632; Hon Dr Lockwood Smith, MP (National) (11 December 2002) 605 NZPD 2690. See also Jill Pettis, MP (Labour) (17 October 2002) 603 NZPD 1518; Hon Dr Lockwood Smith, MP (17 December 2002) 605 NZPD 2784.

63 See Tim Watkin "Lonely Island Weathering a Storm" (25 August 2002) New Zealand Herald Online <http://www.nzherald.co.nz/storydisplay.cfm?thesection=news&thesubsection=&storyID=2351005> (last accessed 25 September 2003).

64 See Donald J Schmid "Restorative Justice: A New Paradigm for Criminal Justice Policy" (2003) 34 VUWLR 91, 99–113.

65 The conference would need the guidance of independent mediators, with experience in community conferencing and, ideally, some understanding of the Pitcairn context. New Zealanders are regarded as prime movers in the restorative justice field (Bruce E Barnes "Building

A useful technique in the Pitcairn context could be "reintegrative shaming"—that is, a process whereby the offender is first brought to realise, through expressions of disapproval and hurt and of the irresponsibility of the act, that he or she has done an unthinkable thing, and is then reintegrated "back into the community of law-abiding citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant".[66] There might also be, given the apparently widespread nature of the alleged offending, the general tolerance of it, and the high proportion of islanders charged, a degree of collective shaming by the Pitcairn community of itself.[67]

The success of the conference, including the United Kingdom Government's confidence in it, would hinge on getting prior acknowledgement from Pitcairners that there is a problem to be confronted, that they are generally in favour of the Mayor's request for truth and reconciliation, and that the community conference is a model they feel they can trust. Input from islanders and expatriates regarding local protocol and dispute resolution processes would be essential.[68] Agreement should be obtained from all parties at the conclusion of the conference as to the steps to be taken to heal the victims, the offenders, and the community, and to prevent dysfunctional behaviour in the future. A programme of ongoing monitoring and support would need to follow, to ensure that those steps were being implemented and to ease the Pitcairners out of this intrusion into their lives.

Conflict Resolution Infrastructure in the Central and South Pacific: Indigenous Populations and Their Conflicts with Governments" (2002) 19 Conflict Resolution Quarterly 345, 348), and may be seen by Pitcairners as relatively neutral. There may also be suitable expertise on Norfolk Island. Given the general antipathy of the islanders towards United Kingdom personnel, it would be preferable if such personnel were not involved, other than perhaps in an observing role. The United Kingdom military police currently stationed on the island should be play no part in the conference.

66 J Braithwaite *Crime, Shame and Reintegration* (Cambridge University Press, Cambridge, 1989) 100–101; Sally Kift "Victims and Offenders: Beyond the Mediation Paradigm?" (1996) 7 ADRJ 71, 77. See also Barbara Hudson "Restorative Justice: The Challenge of Sexual and Racial Violence" (1998) 25 J Law & Soc 237, 249.

67 Specific matters to be discussed at the conference should include the extent of offending within the community, the underlying cause of the offending (including, perhaps, a lack of moral guidance from the United Kingdom Government and the Church—see Steve Christian, Mayor of Pitcairn (Presentation to United Nations Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples Pacific Regional Seminar to Review the Political, Economic and Social Conditions in the Non-Self-Governing Territories, Nadi, Fiji, 14–16 May 2002) UN Doc PRS.2002/DP.6, attachment 2), and the impact of the offending on victims, families, and community life.

68 Pitcairners may well feel more comfortable talking about community affairs in Pitkern, their part-18th century English, part-Tahitian vernacular.

The people of Pitcairn are justifiably afraid that the current investigation and pending trials will bring about the death of their community; they want a restorative approach instead. Pitcairn needs a unique solution, not Operation Unique.

IV A FULL MEASURE OF SELF-GOVERNMENT FOR PITCAIRN

A Background

International law speaks in Article 73 of the United Nations Charter of the development of full self-government in non-self-governing territories and, in various resolutions of the General Assembly,[69] of the possible outcomes of decolonisation as independence,[70] association with another state,[71] or integration with another state.[72] These are longstanding principles.[73]

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69 See especially UNGA Res 742 (VIII) (27 November 1953), 1514 (XV) (14 December 1960), 1541 (XV) (15 December 1960), and 2625 (XXV) (24 October 1970).

70 Independence has been the preferred decolonisation option at international law. Despite the small size of most of the remaining non-self-governing territories, it is also a self-determination option for them. The fact that they may be resourceless and lack the population base and the economic capacity to look after themselves does not preclude independence. A strategically situated territory might, for instance, attract the interest and support of a well disposed independent state which would be prepared, in the context of a exercise of the right to self-determination, to enter into a treaty of friendship with the self-determining territory. Such a treaty might well provide the necessary human and economic resources for the territory to operate as an independent state at international law.

71 The status of free association with an independent state (typically the former administering power) is the second most commonly chosen outcome upon self-determination. There are several examples in the Pacific region, including the Cook Islands, Niue, and the Marshall Islands. This status typically provides for the continuation of many of the features of the status quo in an ongoing relationship between the territory and the administering power. It also typically provides the former non-self-governing territory with the advantage of a substantial degree of freedom in its governing of itself and with economic and constitutional and international legal advantages.

72 The integration option is rarely discussed in depth and apparently not favoured generally, either by non-self-governing territories or by administering powers. An exception to this pattern is the situation of the Cocos (Keeling) Islands, where the Commonwealth of Australia clearly favoured integration as the self-determination option for the territory and the islanders themselves voted overwhelmingly for that option. On integration generally see A H Angelo "To Be or Not To Be ... Integrated, That Is the Problem of Islands (2002) RJP (numéro 2 hors serie) 87.

73 In the last half-century more than 80 current members of the United Nations have achieved a full measure of self-government (UNGA "Report of the Secretary-General on the International Decade for the Eradication of Colonialism" (20 October 2000) UN Doc A/55/497). For those non-self-governing territories that remain and for the powers that administer them, the pressure is perhaps greater now in this Second International Decade for the Eradication of Colonialism (2001–2010—see UNGA Res 55/146 (8 December 2000)) than it has been in the recent past. There is currently a

For small territories, associated statehood or integration might appear to be the most obvious status for the future. But consideration of the issue in a particular context, whether it be American Samoa, Tokelau, or Pitcairn, immediately discloses that the content of these options is vague and almost infinitely variable from case to case.[74] In all but a very few situations, the conditions that a territory might wish to have for its future can be brought within a framework that might ultimately be described as integration, free association, or independence. The label given to the style of self-government that a non-self-governing territory chooses for itself can perhaps be described as a political rather than a legal matter.

B The Optimum Approach

1 The substance

For a non-self-governing territory the best way to approach the question of decolonisation is first to consider the characteristics of the future that the territory may wish for itself. For this Pitcairn would need to consider what, apart from the greatest possible level of self-government (if indeed it would wish some local autonomy), might be wanted in terms of a relationship with a metropolitan state.

There is no indication that Pitcairn has addressed this matter. Pitcairn has not had a history of extensive intervention by the administering power in its economic, social, or political affairs. In fact Pitcairn has very much been left to itself, and, amazingly, has been substantially self-funding over a long period.[75] A reading of the Pitcairn story would suggest that the following may be some of the prime concerns of the Pitcairners today.[76]

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strong sense in the international community that the remaining aspects of colonialism should be ended within the decade and the work of the Special Committee on the situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples completed.

74 See for example the Northern Mariana Islands, which is described in domestic law as a "Commonwealth in political union with the United States of America" (Constitution of the Commonwealth of the Northern Mariana Islands, preamble) and has characteristics indicative of both integration (funds administered by the United States Department of the Interior) and freely-associated statehood (no voting in United States presidential elections).

75 Sales of postage stamps, coins, and internet addresses have been the main source of income in the past. Accumulation of net surpluses up until the mid 1980s allowed the establishment of a Pitcairn Investment Fund, out of which budget shortfalls have been met in recent years. The fund is now in steep decline.

76 The extent to which they might be achievable is, of course, another question. The intention here, given the dearth of writing on the subject, is to suggest what Pitcairn's priorities might be.

Transport and communications are likely to be at the top of the list.[77] A self-governing Pitcairn might wish to have external assurances about these matters. The importance of good transport and communications is obvious for any small and remote Pacific community. But these needs are heightened in the Pitcairn context given the tiny population and its reliance on container ship traffic.

Related to the need for reliable transport is the need for a secure *energy supply*. Pitcairn relies on gas and diesel for its power generation. The provision of essential services makes it essential to have sufficient stock and guaranteed supply.

A third possible priority is the protection of *natural resources*. Henderson Island, a World Heritage Site, is one of the world's last remaining untouched atolls with four endemic land birds and ten endemic plants.[78] For the security of their economic future, the people of Pitcairn might wish to have a greater involvement in matters concerning the resources of the islands and strategic interests in the area.

Next may be assurances concerning *education and health services*. At present the New Zealand education syllabus is used at the junior level, and Pitcairners travel to New Zealand for secondary and tertiary education. Pitcairn children are usually born in New Zealand. Pitcairners would presumably wish to retain at least the current levels of service.

Citizenship of a metropolitan state is necessary in order to provide the people of a small community with international mobility and the capacity to interact in a more equal way with the rest of the world. Pitcairners have United Kingdom citizenship,[79] but would have to negotiate future arrangements depending on the outcome of the decolonisation process.

In many small territories *economic security* is at the top of the list of needs. It may also be the top of the Pitcairn list[80] but there is no external evidence of that at the present. As

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77 In a statement on small territories delivered in the United Nations General Assembly Fourth Committee on 13 December 1963 ((December 1966) XVI External Affairs Review 31), the New Zealand Representative noted that on Pitcairn:

> [T]he problem of manning the surfboat which is the only link the 90 [as there then were] islanders have with passing ships looms much larger, for example, than mastering the techniques of cabinet government or endeavouring to establish the precise relationship between resolution 1514 (XV) and resolution 1541 (XV).

78 UNESCO World Heritage Centre <http://whc.unesco.org/sites/487.htm> (last accessed 25 September 2003).

79 Under the British Overseas Territories Act 2002 (UK).

80 The current events in Pitcairn have directed attention to the level of autonomy that the community enjoys and to the need for capital works support from outside.

understanding of the decolonisation process increases and the people of Pitcairn focus on the issues relating to their future, it may well be that economic security and budgetary support from external sources will become a priority for them too.

2 *Partners*

Having identified the key aspects of its future, the next question for a non-self-governing territory is to identify how that particular set of conditions might play out in terms of state partners, the necessary international or constitutional instruments,[81] and ultimately in the categorisation of the relationship by the international community.

In the context of integration or associated statehood the first thought is to an individual state with which Pitcairn might form a relationship. A relationship with a single state has clearly been the decolonisation pattern in the past, for geographical if no other reason. But there is no necessary reason why the relationship should be so limited. Imagine for instance that the United Kingdom and New Zealand formalised a relationship in respect of Pitcairn to provide an ongoing and secure basis for the medical and educational access of Pitcairners to New Zealand and for New Zealand to be a transport dispatch point. The United Kingdom and France might make a similar agreement in respect of health and transport and access matters between French Polynesia and Pitcairn. While Pitcairn continued under the United Kingdom it might benefit from those treaty arrangements. In the event that it chose independence or a status of free association it could potentially still benefit from those arrangements.[82] A condominium might also be a possibility. The facts are so different that the New Hebrides is not necessarily a negative precedent.[83]

If Pitcairn were integrated into the state of New Zealand,[84] it would be expected that the people of Pitcairn would become New Zealand citizens, would be within an electoral

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81 The range of such instruments is wide. See in relation to the Cook Islands, for example, the Cook Islands Constitution Act 1964 (NZ/CI), the Kirk/Henry letters of 1973, and the 2001 Joint Centenary Declaration of the Principles of the Relationship between New Zealand and the Cook Islands.

82 This would be either because the state with which it was freely associated was a provider of that security, or because, at the time of self-determination, Pitcairn succeeded to the treaty rights. On the succession of non-self-governing territories to treaty rights and obligations see IA Shearer *Starke's International Law* (11 ed, Butterworths, London, 1994) 297–299.

83 Vanuatu, formerly the New Hebrides, was an Anglo-French condominium from 1906 to 1980.

84 This possibility was adverted to by Wayne Mapp, MP during parliamentary debates on the Pitcairn Trials Bill ((11 December 2002) 605 NZPD 2684), but has since been dismissed by Bill Rammell, a junior minister in the Foreign and Commonwealth Office with responsibility for Pacific policy (see Nevil Gibson "UK Hangs On to Pitcairn" (22 August 2003) *National Business*

constituency for the New Zealand House of Representatives and that they would have freedom of movement to and from New Zealand. Equally, probably, the main fiscal systems of New Zealand would apply and, with that, New Zealand social welfare regimes.[85] Also likely, though of a less critical nature to the condition of integration, would be that the main body of legislation of the state of New Zealand would apply in Pitcairn. In most areas this would cause no difficulty for Pitcairn, given the nature of the legislation currently applicable there.

If Pitcairn were a state in free association with New Zealand, it may be anticipated, on the basis of the pattern of Niue and the Cook Islands, that the people of Pitcairn would be New Zealand citizens with freedom of movement to and from the metropole, that New Zealand would have a special role in respect of the foreign affairs and defence of Pitcairn, that New Zealand fiscal legislation and welfare benefits would not extend to Pitcairn, and that Pitcairners would not vote in New Zealand elections for the New Zealand House of Representatives. There would generally be total freedom for Pitcairn to govern itself internally and to decide on its own laws, and probably also to terminate its relationship with New Zealand if it so decided.

The largest group of descendants of the *Bounty* are now located in Norfolk Island, a Territory of the Commonwealth of Australia (though physically closer to New Zealand than to Australia). Because of that link, the Commonwealth of Australia might also be a candidate for free association or integration from the point of view of the Pitcairn Islanders.[86]

Review Wellington 10). For the material certainty of a sustained autonomy, there is no reason why a number of different states might not be involved. Should the concern be with defence, citizenship, or international relations, it is more difficult to conceive of more than one state's being involved. A relationship of integration or of free association with any other state such as France, the United Kingdom, or Australia (given their historical or geographical links with Pitcairn) may equally be predicted to be influenced by the current patterns of relationships to territories and former territories of those states. The patterns vary significantly as the relationships of French Polynesia to France, the Cook Islands to New Zealand, the Chatham Islands to New Zealand, Norfolk Island to Australia, and various countries of the Caribbean to the United Kingdom illustrate.

85 For a consideration of this in the Niue context see R Q Quentin-Baxter "Report to the Niue Island Assembly on the Constitutional Development of Niue" [1971] II AJHR A4 paras 26–27.

86 How well that would suit the Norfolk Islanders, however, is another question given their continuing debates with the federal government in Canberra about the status and rights of Norfolk Island.

French Polynesia is not on the list of territories scheduled for decolonisation under United Nations aegis. A question of any future relationship with French Polynesia would therefore very clearly raise the question of a relationship with France and the application of the very particular external relations powers in the statute of autonomy of French Polynesia.[87]

3 Local government

What the international and constitutional labels do not address, and what focusing on the main items of future concern does not address, is domestic government. That question—the domestic delivery of services—is an abiding feature of any concern about the future.

Pitcairn has had domestic self-government for generations and is proud of its Island Council.[88] The Island Council of Pitcairn has been the de facto government of Pitcairn. The United Kingdom and the Governor have, at least until recently, been seen as remote and non-interventionist. In a large country, self-determination discussions tend not to be concerned with day-to-day matters. In Pitcairn things are different because there is only Adamstown (the sole village on Pitcairn). The local is the national. There is no sense, as there is in Tokelau and other very small communities, of each village being different from the nation.

Development of full self-government in Pitcairn will therefore require the development of new capacities in the Island Council. Also, given the limited human resource on Pitcairn, it will require the ability to draw on outside expertise regularly and with confidence, particularly on matters which involve Pitcairn's interaction with the world outside. It is here that specially tailored mechanisms or institutions need to be devised to meet the specifics of the Pitcairn situation. One institution that may warrant consideration is the trust.[89]

A trust corporation could assist in the management of Pitcairn and provide the technical expertise that the territory lacks. It would be important to acknowledge the size of the islands and the territorial sea, the size of the population, its isolation, and its natural

87 See Marc Joyau "The External Relations of the Territory of French Polynesia" (2003) 9 RJP 35.

88 See the Local Government Ordinance 1964 (Pit).

89 International law has made good use of private law analogies in the past in respect of territorial matters, as leasing (for example Hong Kong) and interstate easements demonstrate. The notion of "trust" is already known to the field of decolonisation in relation to the (now obsolete) International Trusteeship System, established under the Charter of the United Nations, ch XII.

resources. It would also be important to administer the trust with due regard for traditional ways of life. Building on the experience of investment trusts it would be possible to utilise a management trust, vesting the assets of the territory on trust with specialist professional managers who could deal with external issues, while the local community would maintain government at the domestic level. The income from the assets would pay for the costs of the trust and provide revenue for distribution and for the maintenance of local government activities.

Apart from providing a management and investment structure, an advantage of this concept would be that it could compensate for the lack of local expertise on important external issues. A very small community like Pitcairn does not itself have all the expertise necessary for viable self-government.

The subject matter of such a trust would be all the public property of Pitcairn—for instance, the rights associated with the exclusive economic zone, and public facilities such as docking facilities, warehouses, the medical centre, and where land is not held in private ownership, the land. This property would vest in the trustees of whom there could be five. Two would be elected by the residents of Pitcairn from among the residents and at least two appointed by settlors (for example, the United Kingdom as administering power, probably the non-self-governing territory, and at least one other state (if by treaty)[90]); another member could be an independent expert with experience in international affairs, designated, for example, by the Secretary-General of the United Nations.

The trustees would hold the assets in accordance with and for the advancement of the policies set out in the trust deed. The trustees would advise the local government as and when requested and would manage the external affairs of the territory. In particular, the trust would employ specialists, external to the territory, who would be expert in their fields and include, for instance, an economist, an international affairs expert, and a lawyer. Where the trust required management expertise of a particular kind (for example, fisheries, ecology, or tourism), it would employ somebody with that particular knowledge. The purpose of the trust would be to benefit Pitcairn and in particular to support the local government. That local government would run all the domestic affairs of the territory and would liaise closely at the administrative level with the trust in respect of all matters where there was an interrelationship of the domestic government and the management of external affairs.

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90 The trust could be set up either privately or by international treaty. In the context of self-determination it may be most appropriate that this be done by international treaty, because that would give it a degree of independence from any specific domestic system of law.

Amendment of the trust document could be by the settlors on the advice of the trustees and after consultation with the local government. Any legislation for internal affairs would be made by the local government. Any legislation necessary for external matters would be made on the basis of a proposal initiated in either the trust or the local government body, or jointly, and approved by both in accordance with their own rule-making procedures.

The activities of the trust would be managed to cover the costs of the trust itself, to provide grants to local government for the operation of local government, and to support an investment trust of the standard international kind.[91]

V CONCLUSION

The situation of Pitcairn presents many challenges. The way forward is to look beyond the current criminal trials to a positive resolution of the underlying social problems and to identify the necessary material conditions for a viable community which in the future would have the resources and resilience itself to manage problems of the present kind. It is necessary to establish a governance model attuned to the needs of this unique community. Pitcairn's extraordinary circumstances call for sensitivity, and for lateral thinking.

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91 There are a number of international trust funds whose purpose is to provide revenue supplementation for specific purposes or for the national budget. They are much more limited in operation than the proposal here, which is substantially a management trust. It might however include, and would fit very well with, an investment trust of the type known in Tuvalu and Kiribati. Other possible analogies from New Zealand are the commonly used family trusts and the Chatham Islands Trust (a trust set up by the New Zealand Government to manage a fund and Chatham Islands commercial activities).