critics might be hesitant to put too much emphasis on an examination of the IPPC Directive and its implementation in only two Member States, the sheer quality and rigour of the book leaves this reviewer with the firm impression that Lange has put forward a very strong argument for her critical approach to the role of law in integration.

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Justice, Legality, and the Rule of Law: Lessons from the Pitcairn Prosecutions

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Reviewed by Sue Farran
Dundee Law School, University of Dundee
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It is perhaps remarkable that a population 'generally thought to be the most isolated community in the world' (Guest, p. 187) should provide a platform for reflecting on the many important legal questions considered in this collection of essays. Pitcairn, its story, people and recently troubled past have, however, done this. Whether, along with most of the world, the contributors to this collection had never heard of the place, except in popular fiction, prior to the criminal case of *Christian and Others v. The Queen*[1] is unclear. Indeed, the Privy Councillors themselves may have had to look it up on a map or search Google. Had the Privy Council not left unconsidered aspects which it might have considered – many of which are aired in this book - there might not have been so much scope for discussion and debate. As it was, however, the criminal trials of seven men accused of sexual offences including rape, committed over an extended period of several decades, raised issues which, while relevant to the immediate case, were also fundamental to the administration of justice and our understanding of law, and in this sense remain pertinent to a wider audience. These issues include: the nature of law; law, morality and the legal system; the nature and exercise of colonial power, authority and responsibility; aspects of public international law; the rule of law and questions of blame and liability in criminal law.

Contributors to this edited collection adopt a number of different approaches. Some focus on the case itself; the history of the island as background to the prosecutions; the jurisprudential questions raised; the nature of original and contemporary colonial policy. Others focus on the body of commentary prompted by the case, both academic and non-academic; the nature of the common law and its links with customary law in different contexts; the role of public international law in the relationship between the United Kingdom and Pitcairn, particularly the extent and limits of sovereignty and the consequences for human rights; the lines which are drawn between legality and illegality in criminal law and what purposes these serve.

The collection has a Foreword by Lord Hope, one of the Privy Councillors who heard the final appeal. While Lord Hope does not go so far as apologising for the committee's cursory treatment of the case – taking only two days of a six-day booking to arrive at a decision and dismissing as irrelevant hundreds of pages of carefully prepared argument from counsel – he does acknowledge that the case raised many issues on which it would have been useful to have Privy Council views. This collection helps in part to bring into the public domain those matters which were left unsaid at the Privy Council hearing or which were, at least to those engaged in critical analysis, accepted or rejected with insufficient consideration.

The book concludes with an Afterword by Marilyn Strathern, a social anthropologist, who takes as her field study not the people of Pitcairn (although she touches on a number of issues which might have been deserving of further consideration) but the small community of academics brought together to contribute to this book, who themselves form an island, isolated in their shared area of study, but reaching out to the wider world through the readers of this book and the broader themes that the Pitcairn case raises. In particular, she draws comparisons between the 'paper trail' which was relied on by the British authorities to establish its hold over Pitcairn, including the right to bring prosecutions, and the interest of social anthropologists in the use of paper trails to form and justify governments and states. While her contribution highlights the diverse interdisciplinary perspectives that the

1 [2006] UKPC 47.

Pitcairn case might attract, one wonders if the community of lawyers, judges, police officers and others who were assembled to bring the accused to justice might not in themselves have provided an interesting ethnographical case-study.

The book opens with a preface by Dawn Oliver, the editor, outlining the justification for choosing the Pitcairn case as a vehicle for exploring the various themes that follow and then indicating in summary the scope of the book thematically. The first chapter, 'Problems on Pitcairn' by the editor, sets the scene, introducing the reader to the place, the case and the many interesting issues raised by both. Comparing a hypothetical example with what eventuated on Pitcairn, Oliver questions what the law is or ought to be, and whether legal and moral arguments can be distinguished in situations of moral ambivalence and legal uncertainty. She highlights the circularity of culture, values and law, and the challenges presented when one system encounters another that is both part of and not part of the same system. Indeed, she asks the question 'whether the common law is the same in whatever jurisdiction it operates' (p. 17), and suggests that there may be an uncomfortable relationship between legal positivism and substantive justice when one country – here a colonial power – seeks to administer law without considerations of difference. Oliver raises a theme that is taken up at various points of the book, that is, whether saying what the law is – and supporting this claim by laying a 'paper trail' to evidence the authenticity of the claim – actually makes the law as claimed. In other words, does saying it must be so make it so?

The second chapter, also by Dawn Oliver, 'The Pitcairn Prosecutions, Paper Legal Systems and the Rule of Law', focuses on the advice of the Judicial Committee of the Privy Council, in which, unusually, apart from the main advice, two other opinions were given (by Lord Hope and Lord Woolf). Looking at four key issues raised in the case – the colonial status of Pitcairn, the absence of any machinery of justice on Pitcairn (prior to the trial), the validity/invalidity of the criminal law under which the prosecutions were brought, and the abuse of process in prosecuting at all, Oliver's analysis highlights the formalistic and positivistic approach adopted by the Privy Council, drawing attention to the lack of evidentiary support for many of the claims it accepted without hearing argument. Her critique raises wider questions about judicial function and approaches; the relationship of the judiciary to the executive; the meaning of 'the rule of law' in a theoretical and applied sense; and the cultural significance of the observance or non-observance of the rule of law.

Andrew Lewis has authored the third chapter, 'Pitcairn's Tortured Past: A Legal History', in which he offers a fascinating and very well-supported insight into the background of this island, its people and the events which provide the context for many of the issues which arose on both sides in the actual case. In view of the troubled past of the island, it is striking that a community has survived in this place for so long – from 1790 until the present. While its history reveals that sexual activity and access to females were contentious from the start, and that practices of polygamy and wife-swapping were evident, there are also indications of strong female resilience and resistance. This history suggests that although the island is remote, there was sporadic contact between outsiders and Pitcairn from early on, implying deliberate abandonment or neglect by British authority over the years, except when actually called on to react. This history is interesting from another perspective. One of the repeated contentions in the case and the commentary is that either Pitcairn was lawless and without laws or it was civilised and with laws – notably English laws. This history suggests that Pitcairn occupied a middle ground and did not fit into either classification, which meant it could not neatly slot into a colonial category.

This uncomfortable misfit is taken up by Gordon Woodman in the fourth chapter, 'Pitcairn Island Law: A Peculiar Case of the Diffusion of the Common Law', in which Woodman explores the challenges posed by Pitcairn's reception of common law, its relationship with Polynesian law, and the emergence of a plural legal system with elements of both, plus a unique island law and laws accepted or imposed on it from time to time. One should, however, note that the challenges of this form of legal pluralism are by no means limited to Pitcairn, and indeed Woodman points out that questions of choice of law arising from official and popular legal cultures are relevant to other colonial and former colonial territories. The issue of choice of law, and the process that informed that choice, was pertinent in the Pitcairn case because it determined the outcome. Similarly to Oliver, Woodman asks whether 'the purported exercise of a power is enough to confirm that the power exists' (p. 79), and suggests that the high moral ground taken by the British government may have blinded it to its own moral turpitude in respect of Pitcairn, while the legal formalistic approach adopted prevented any real engagement with underlying questions.

Dino Kritsiotis and Brian Simpson in the fifth chapter, 'The Pitcairn Prosecutions: An Assessment of their Historical Context by Reference to the Provisions of Public International Law', pick up the question of

whether, if there is such a thing as Pitcairn law(s), there is Pitcairn sovereignty reflecting a separate juridical status. If so, what is the relationship between Pitcairn and the United Kingdom? This takes them on to considerations of jurisdiction, how it is defined and exercised – a fundamental issue to the United Kingdom's right to prosecute, and one not easily answered in the case of Pitcairn once the executive statement of claim is excluded. They point to the two sides of sovereignty – the exercise of power and the assumption of obligations – in national and international law.

Colm O'Cinneide in the next chapter, '"A Million Mutinies Now": Why Claims of Cultural Uniqueness Cannot be Used to Justify Violations of Basic Human Rights', picks up the international theme, focusing on human rights, but moves away from the case, to critique commentary on it. Adopting a universalist perspective of human rights and a feminist pro-victim stance, O'Cinneide rejects any claim to relativism, whether based on culture, remoteness or any of the other specific circumstances that might have been relevant to Pitcairn. Here, many points of detail and critical analysis are swept away with a broad brush, and the universality of human rights – particularly the right to equality and bodily autonomy – trumps cultural defences, cultural difference, minority claims or indigenous rights, justifying the decision of the Privy Council and its reasoning. In adopting this approach, O'Cinneide perhaps inadvertently adds feminism and universalism to the imperial tool box which already includes the 'act of state doctrine' and legal formalism based on paper trails.

George Letsas in chapter seven, 'Rights and Duties on Pitcairn Island', picks up the theme of jurisdiction and the exercise of legal authority over Pitcairn in order to engage with two philosophical debates: that between cultural relativism and moral universalism; and that between legal positivism and non-positivism. As is evident from the previous chapter, views on the legitimacy of the Pitcairn prosecutions will be influenced by which side is preferred. Letsas arrives at a preference for moral universalism but not positivism. He makes some interesting distinctions between wrongness and blameworthiness, allowing that the latter may permit some cultural or circumstantial relativism. Engaging with a number of jurisprudential writings, he challenges the value neutrality of positivism.

The final chapter is contributed by Stephen Guest. 'Legality, Reciprocity, and the Criminal Law on Pitcairn' takes up the case of the defendants, questioning the legality of the prosecutions and the appropriateness of criminal prosecution as a means of changing the sexual culture of the island. In particular, he examines the nature of legality and illegality in the context of the criminal law and the relationship between Britain and Pitcairn, distinguishing a moral claim from a legal claim. He points to the lack of Privy Council discussion of colonial neglect in the context of jurisdiction and, like Letsas, is critical of the positivistic view of law and the consequent failure to recognise the disjuncture between the paper trail and the practical application of the rule of law in the case of Pitcairn. He too asks whether claiming it is so makes it so. He concludes by emphasising that 'getting it right about justifying the coercive power of the state (legal theory) . . . is of great practical importance' (p. 220).

One of the recurring features exposed by the critical analysis in the collection are the uncertain foundations on which British rule over Pitcairn, and by implication other colonies (now called dependencies and overseas territories), rests. In some respects, this should cause no surprise. Principles relating to the acquisition of such territories were, to a great extent, articulated *ex post facto* (one can think of Roberts-Wray, 1966, and Jennings, 1963). What is striking, although probably not unique, about the Pitcairn case is the exposure of incoherent government policy, communication and response, much of it within recent history. The appendices include interesting evidence of correspondence between government ministers in London and those representing the interests of Pitcairn. As a vignette of colonial policy or the operation of the Foreign and Commonwealth Office in respect of the remaining dependent overseas territories, it offers a fascinating glimpse into government ineptitude.

While there is some repetition, especially regarding salient facts of the case, there is also a degree of cross-referencing between authors, and one suspects that the debate between different points of view, between those who felt some legal sympathy for the defendants and those whose support lay with the victims, might have been quite lively! Certainly this book could provide an excellent starting point for studies in a number of areas.

Although it makes a claim to a wide interdisciplinary readership, it is primarily a book written for those interested in the law in its widest sense. There is, for example, much to interest the student of legal pluralism, or those concerned with the relationship between culture and laws, the constitutionalist, criminal lawyer or human rights advocate. For those interested in researching further, each chapter has a range of useful and diverse references in both footnotes and chapter references given at the end, along with the transcript of the Privy Council hearing and extracts of

correspondence pertinent to arguments raised. It is perhaps regrettable that there was no contribution from a sociological or ethnological perspective (leaving aside the Afterword of Marilyn Strathern), and that none of those immediately involved in the case could be prevailed upon to add their insight into the prosecutorial process. A view from the Antipodes might have added a further dimension to the multifaceted (but essentially legal) approaches collected here. Similarly, a legal anthropologist's perspective might have enlarged comment on the role and relevance of Pitcairn customs, culture and customary laws, as well as adding an interesting comparative dimension to the customary nature of the common law (Woodman, p. 73).

Many themes and questions relating to law, justice, culture, human rights, social organisation, questions of sovereignty and the exercise of power are canvassed in this collection. Others are raised and lend themselves to further comment. Among the latter are whether and to what extent the Court is or will be prepared to accept the 'act of state' doctrine, in situations (as in the case of Pitcairn) where an executive statement is present as conclusive evidence of the status of a country or a state of affairs. Will courts, for example the new Supreme Court, be more active in subjecting such claims to judicial review? Indeed, the case raises questions about the very theory and rationale of the 'act of state' doctrine (Kritisiotis and Simpson, p. 107). The question of whether, and if not, why not, the Human Rights Act 1998 is a statute of general application to overseas dependent territories, remains unanswered, although in the case of Pitcairn, the 2010 Pitcairn Constitution Order, No. 244, suggests that indirectly it applies to the interpretation of the fundamental rights now found in Part 2 of the Order. The thorny and controversial subject of cultural defence in criminal law still has to be more openly addressed in English law: 'The British legal system . . . has barely acknowledged culture in its substantive criminal law' (O'Cinneide, p. 145, quoting Power, 2007). While it may be rejected, in a multicultural society which includes the cultures of the remaining colonies, the defence at least deserves consideration within criminal law, while 'cultural particularism' (O'Cinneide, pp. 145–46), may be worthy of attention within the wider legal system. In her Afterword, Strathern raises a number of points which could have been further considered, for example, the nature of the islanders' own normative order, including their sexual mores, the gendering of authority, the role of religion and the internal perception of contact with outsiders (including their laws). Other areas which might have been explored were the ways in which evidence was collected and presented, whether there were differences of approach in dealing with victims and witnesses on the island and those who were resident elsewhere, such as New Zealand, Australia and Norfolk Island, and indeed whether the problems which beset the prosecution of rape or sexual assault within the UK were considered when that prosecution was taking place in different and distinct circumstances. Although perhaps a departure from the central starting point of the book, which is the Privy Council decision, more might also have been made of distinguishing the narratives of victims no longer living in the community, who may have been less concerned with the continuing integrity of the community and whose own mores and norms may have been influenced by the enculturation of living elsewhere, from the narratives of victims still on the island, including the views of indirect victims, that is, the spouses, siblings, partners and parents of direct victims, most of whom are likely to be or to have been interrelated.

Now that sovereign might has been brought to bear on Pitcairn and its people, to redress its wrongs, improve its administration and ensure it had a prison fit for purpose, the island and its inhabitants will probably disappear from public view for the foreseeable future, just as they did in the past. Besides the fact that this small island has prompted a book full of challenging questions and penetrating analysis, it is quite remarkable that Pitcairn has survived at all, and it could be argued that this has not been because of British intervention, but rather in spite of it. While to some this speck of land might appear like a minute specimen under the microscope being examined with some fascination by a few academics, it is important to remember two points. First, Pitcairn is a real place with real people: the accused and their families, the victims and their families, the wider community of Pitcairners both living on Pitcairn and elsewhere, and now the various 'officials' based on Pitcairn. It is not, and never was, a scientific experiment, although at times the unreality of the Pitcairn trials has obscured this point. Second, geographical remoteness does not have to mean intellectual dismissal and academic neglect. The interest and reflection evident in these essays demonstrate a spirit of enquiry that should reach to all corners of the world, however small, however distant: what happens on islands can be central to mainstream concerns and relevant to all of us.

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Law in the Pursuit of Development: Principles into Practice

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Reviewed by Gerhard Anders
Department of Social and Cultural Anthropology, University of Zurich
DOI: 10.1017/S1744552310000200

Once declared moribund, Law and Development (L&D) has made a remarkable comeback since the 1990s. The advent of good governance and the promotion of the rule of law, as well as the growing regulation of economic transactions and intellectual property, have brought law back to the centre of debates about economic development. Policies and projects range from the reform of the judiciary on the African continent and constitutional reforms in Latin America to drafting legislation on foreign direct investment and the distribution of generic drugs. Lawyers and legal experts are in high demand, eclipsing in some areas even the long-dominant economic experts. In fact, it has become very difficult to keep abreast of developments in the quickly expanding field of L&D. Anyone who quickly wants assistance in getting an overview of this highly dynamic and important field of development will therefore welcome *Law in the Pursuit of Development*, edited by Amanda Perry-Kessaris. The book features fourteen chapters covering various aspects of current L&D, ranging from topics rarely found in discussions about L&D such as the potential of political consumerism (Wheeler) and women in Kenyan horticulture (Stewart) to more familiar themes such as the accountability mechanisms of multilateral development banks (Nanwani) and the World Bank's rule-of-law assistance (Faundez, Hammergren, Decker).

The target audience of the volume are primarily 'law and development generalists', as Perry-Kessaris states in her brief introduction. This is also reflected in the composition of the authors, which includes academics, consultants and activists, most of them with a legal background. The volume focuses on three themes: (i) the relationship between the private sector and public interest (Chapters 2–6); (ii) the importance of participation and accountability (Chapters 7–9); and (iii) the 'rule of law as fundamental building block of development' (p. 1) (Chapters 10–15). This quotation from Perry-Kessaris's introduction indicates that she has little patience with those critics who have been mounting a fundamental critique of rule of law policies, such as Nader and Mattei (2008). By contrast, her volume advances a squarely applied perspective to L&D. Her five-step plan is a fairly conventional implementation model beginning with Assessment of the existing law, then Building capacity in the form of infrastructure and human resources, followed by Contesting 'existing and future rights and duties' (p. 5), Delegation of tasks and responsibilities for legal reform projects, concluding with Evaluation. Whether this ABC is actually the magic bullet seems rather doubtful considering the troubled history of development interventions. More reflection on the well-known problems surrounding project design and implementation would not have been a superfluous exercise, even or perhaps especially in a more hands-on volume mainly addressed to a non-academic audience.

The volume would have benefited greatly from at least a brief review of the sprawling literature on L&D in the introduction. Only two chapters (Faundez and Taylor) engage with L&D scholarship while the majority of the other chapters adopt a more applied perspective. A systematic review of the relevant literature would have made the volume's contribution to L&D scholarship more explicit. L&D scholarship is a highly heterogeneous and dynamic amalgam of researchers and practitioners of various political stripes, which 'remains singularly refractory to bounding exercises' (Newton, 2006, p. 177). Perry-Kessaris laments the lack of coherence and a 'systematic way of classifying our discussions' (p. 4). A first step towards achieving this would be to tell the story of L&D as is done, for instance, in a recent volume co-edited by one of the leading scholars in L&D (Trubek and Santos, 2006). Other publications that come to mind are Tamanaha's comprehensive review article on L&D (1995) or Rose's elucidating study of the 'New' L&D in Vietnam (1998), not to mention Trubek and Galanter's seminal article (1974) considered by many to be L&D's epitaph – rather prematurely as it turned out. It is this volume's main drawback that these and other influential publications are barely discussed.

One exception is Taylor's analysis of the current rule-of-law moment in Japan in the tenth chapter. Taylor's chapter is one of the strongest in the volume.