CONSTRUCTING A COLONIAL CHIEF JUSTICE:
JOHN LEWES PEDDER IN VAN DIEMEN’S LAND, 1824-1854

Jacqueline Fox BA (Hons)

Submitted in fulfilment of the requirements of the
Degree of Doctor of Philosophy

University of Tasmania
May 2012
COPYRIGHT STATEMENT

This thesis may be made available for loan. Copying and communication of any part of this thesis is prohibited for two years from the date this statement was signed; after that time limited copying and communication is permitted in accordance with the Copyright Act 1968.

........................................................................

Jacqueline Fox
14 May 2012
DECLARATION

This thesis contains no material which has been accepted for a degree or diploma by any tertiary institution nor, so far as I am aware, any material published or written by another person, except where due reference is made in the text of the thesis, nor does it contain any material that infringes copyright.

Jacqueline Fox
14 May 2012
ABSTRACT

Foundation Chief Justice of Van Diemen’s Land, Sir John Lewes Pedder (1793-1859) was appointed by the Colonial Office to administer English law in the colony from 1824. As an official member of the Executive and Legislative Councils, he also provided policy advice and certified local legislation. Until his retirement in 1854, Pedder was a central figure in the colonial administration and settler community.

Contributing to the emerging fields of settler colonial studies and comparative colonial legal history, this thesis situates Pedder within the Anglophone colonial world at a significant period of transition from empire to nation-state. Engaging constructively with Philip Girard’s ‘window on an age’ model for writing the lives of colonial judges, it also broadens the focus from the presentist, professional concerns of conventional judicial biography to a more historically sensitive reading of the archive. Reconstructing Pedder’s life-world in the metropolis and the colony reveals how his formative experiences and personal connections shaped his values and professional practices. His repatriation to England in retirement also clearly identifies Pedder as an expatriate professional, rather than a settler-colonist.

From this biographically informed base, the thesis contextualises and tests three enduring popular and scholarly constructions of the chief justice: as a ‘hanging judge’, a puppet of government, and a champion of the Aboriginal people of Van Diemen’s Land. Building on a long literary tradition in which frontier judges were recast as judicial murderers, the tabloid press posthumously constructed Pedder as a Tasmanian Judge Jeffreys. Colonial case law and press commentary are used to demonstrate that mandatory sentencing and community expectations of retributive justice gave Pedder little scope for judicial discretion.
during the dying decade of the ‘bloody code’.

Inflected by the aspirational rule-of-law rhetoric of settler activists, Pedder’s construction as a puppet of government obscures the complex relationships between his judicial, executive and legislative roles. Comparative judicial biography reveals that colonial judges were routinely appointed ‘at pleasure’ by the imperial executive, and were expected to perform a range of extra-judicial functions. Linking Pedder’s experience in Van Diemen’s Land to current scholarship in other Anglophone settler polities, this thesis demonstrates that Pedder saw no essential conflict between his duties. Moreover, professional and political conservatism ensured that his primary loyalty was not to settler interests, but to the law and the Crown.

Pedder’s benevolent construction as a champion of the island’s Indigenous inhabitants centres on his 1831 objection to the policy of banishing all survivors of the Black War to the islands of Bass Strait. His concern that the exiles would ‘pine away when they found their situation one of hopeless imprisonment’ has been read as a rare challenge to the genocidal impulses of settler colonialism. Yet Pedder’s faith in the potential for a negotiated settlement to hostilities was underpinned by the assertion of settler sovereignty and the imperative to displace Indigenous people from prescribed zones of the island. Moreover, having facilitated the capital conviction of four Indigenes in the Supreme Court between 1824 and 1826, Pedder’s decisive role in the judicial denial of Aboriginal sovereignty is not compatible with his reputation as an Indigenous champion.
ACKNOWLEDGEMENTS

This thesis was made possible by funding from an Australian Postgraduate Award. At the University of Tasmania (UTAS), I gratefully acknowledge the support of the School of History and Classics, and the Colonialism and Its Aftermath (CAIA) research centre. Thanks also go to Nicholas Brown, the National Museum of Australia’s Centre for Historical Research and the National Centre for Biography at ANU, for supporting my participation in ‘Using Lives: a postgraduate workshop in biography’ in 2010.

The support of many individuals has made completing my doctoral thesis a rewarding experience. I thank my supervisors: Stefan Petrow, for his invaluable guidance and super-efficient feedback; and Peter Chapman, who originally suggested Pedder as a subject for my thesis, but retired early in the project. Along the way, fellow postgrads have provided much-needed moral and practical support. I thank all my colleagues at UTAS, fellow participants in ‘Using Lives’, and Tony Earls at Macquarie Law School, who generously shared insights from his doctoral prosopography and offered constructive comments on an early draft chapter. At Riawunna Aboriginal Studies Centre at UTAS, I have been welcomed into informal reading and writing groups with postgraduate candidates and staff. I particularly thank Kris Harman, Mitchell Rolls and Leonn Satterthwaite for helping me to engage with new interdisciplinary perspectives and develop greater sensitivity to Indigenous issues. Special thanks go to core members of the writing group – Grant Finlay, Helena Kajlich, Pauline Marsh and James Parker – for their generous ‘peer supervision’. Without their constructive criticism and encouragement, this thesis would have been very much poorer.

I am very grateful to Ian Duffield for sharing his insights into the historiography of African-diaspora convicts. I thank Rosie Davidson and Toni Sherwood at the
Friends of the Orphan Schools for supplying a transcription of Maria Pedder's tombstone, and Richard Ely for co-opting Andrew Turner at the University of Melbourne to decipher its damaged Latin inscription. Warm thanks also go to clinical counsellor, Berry Dunston, for her valuable insights into aspects of Pedder's psychology. Margaret Farrar tackled the Phoenix company archive at the Cambridge University Library, while Michael Saxby very generously checked genealogical records in Brighton and London, and photographed sites with a Pedder connection. Members of the WAFHS kindly transcribed correspondence in the Battye Library, and Peter Mayberry responded helpfully to my queries about African-diaspora convicts on his website. Thanks also go to Christine Payne at the Sussex Family History Group for her help in a (so far) unsuccessful search for Pedder’s tombstone.

I thank the helpful staff at the Tasmanian Archive and Heritage Office (TAHO), State Reference Library, and Document Delivery service at UTAS, and gratefully acknowledge TAHO, the State Library of New South Wales, and the National Army Museum in London for permission to reproduce images from their collections. My gratitude is also extended to Ron Cosens for supplying the image of Jane Pedder reproduced in Chapter 2, and to Rebecca Kippen for kind permission to quote from an unpublished conference paper.

Last but not least, I am indebted to my family and friends for their interest and encouragement, and to my companion animals for making me laugh and putting it all in perspective. I am especially grateful to my mother, Jill, for her support. This thesis was written during the final illnesses of my father and grandfather.

In Memoriam
H.B. Rattle (1917-2010)
J.D. Fox (1949-2011)
## TABLE OF CONTENTS

Abstract .................................................................................................................................................. iv
Acknowledgements ............................................................................................................................... vi
List of Figures ......................................................................................................................................... x
List of Tables .......................................................................................................................................... xi
Abbreviations ......................................................................................................................................... xii

INTRODUCTION ................................................................................................................................. 1
Methodology and sources ....................................................................................................................... 8
Structural summary ............................................................................................................................... 15
A note on terminology ............................................................................................................................ 19

PART I: PEDDER’S LIFE-WORLD ......................................................................................................... 21
1. From the City of London to Hobart Town ......................................................................................... 23
   1.1 A metropolitan professional: background and early career ................................................. 24
   1.2 An ‘applicant for the vacant Office of Judge at Van Diemen’s Land’ ............................ 35
   1.3 Connections and patronage: appointment to the colonial judiciary ................................. 45
   Conclusions ..................................................................................................................................... 55
2. Family dynamics: husband, brother, uncle ..................................................................................... 57
   2.1 John and Maria: a companionate marriage ......................................................................... 60
   2.2 An illegitimate niece and nephew ...................................................................................... 72
   Conclusions ..................................................................................................................................... 88
3. Pedder in colonial society: judge and gentleman ........................................................................... 90
   3.1 Drawing boundaries: circles of colonial acquaintance ....................................................... 93
   3.2 Pedder’s inner circle ............................................................................................................... 117
   Conclusions ..................................................................................................................................... 129
4. A model of respectability ................................................................................................................. 131
   4.1 Material culture: keeping up appearances ......................................................................... 132
   4.2 ‘Upright’ and ‘liberal’: character and philanthropy ......................................................... 155
   Conclusions ..................................................................................................................................... 176

PART II: ‘BOUND BY EVERY TIE OF DUTY’ ..................................................................................... 179
5. A Tasmanian Judge Jeffreys? .......................................................................................................... 182
   5.1 Background: the ‘bloody code’ in Van Diemen’s Land ....................................................... 188
5.2 ‘If ever there was a hanging Judge, that Judge was John Lewis [sic] Pedder’. 208
5.3 ‘His Honor [sic] wept’: the hanging judge as a man of feeling ............................. 223
Conclusions .......................................................................................................................... 221
6. A puppet of government? ........................................................................................................ 233
6.1 Judicial duty: independence without separation of powers? ................................. 236
6.2 Trial by jury: ‘I am not at liberty to adopt’ the ‘opinion of others’ ....................... 253
6.3 Pedder and the repugnancy rule: nadir to apotheosis ............................................. 267
Conclusions .......................................................................................................................... 282

PART III: A CHAMPION OF THE ABORIGINAL PEOPLE OF VAN DIEMEN’S LAND? …… 284
7. R. v. Tibbs [1824]: a case of mistaken identity ............................................................... 287
7.1 Tibbs’ case: the counter-narrative .................................................................................. 289
7.2 Non-Indigenous blacks: people of colour in Van Diemen’s Land .............................. 291
7.3 Identifying John Jackson: life and death in the archives of empire ......................... 295
7.4 The equal application of the law? .................................................................................. 305
Conclusions .......................................................................................................................... 311
8. Indigenous prisoners in the Supreme Court: Pedder’s judicial denial of Aboriginal
sovereignty ................................................................................................................................. 313
8.1 Precedents from the parent colony ................................................................................. 317
8.2 R. v. Mosquito and Black Jack [1824]: a ‘most extraordinary precedent’ ……… 324
8.3 R. v. Jack and Dick [1826]: a ‘second legal outrage’ .................................................. 336
Conclusions .......................................................................................................................... 347
9.1 Pedder’s responses to the expulsion proclamation: ‘hostile’ versus
‘harmless’ Indigenes ................................................................................................................ 352
9.2 Opposing exile: Pedder’s dissenting voice ................................................................. 366
Conclusions .......................................................................................................................... 378

CONCLUSION .......................................................................................................................... 381
Findings and implications ........................................................................................................ 382
Avenues for future research ...................................................................................................... 387
Conclusion ............................................................................................................................... 389

BIBLIOGRAPHY ....................................................................................................................... 390