

## Path dependence and jumping tracks

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## ORIGINAL ARTICLE

# Path dependence and jumping tracks: Investigating institutional continuity and change across the Tasmanian convict and pauper systems

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**Abstract**

This article uses a historical case study to significantly advance theoretical debates on path dependence in institutional change and continuity. In particular, it argues that the heuristic of ‘jumping tracks’ can be productively developed to explain how institutional arrangements can shift into different policy arenas. The historical criminological case study examines welfare provision and penalties in colonial Australia. Substantively, the case study provides historical support to current claims that the boundaries between crime, poverty and welfare are fluid. Just as the shadow of the contemporary carceral state is enlarging non-criminal pathways to punishment, it will be shown that in 19th-century Tasmania the shadow of the penal colony acted to control paupers. When the Tasmanian penal system began to be dismantled, the institutional arrangements that had developed within it jumped tracks to the pauper system. Fundamentally, the key theoretical proposition is that path dependence can work across institutions by jumping tracks.

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## KEYWORDS

carceral shadow, criminalisation of poverty, historical criminology, path dependence

## 1 | INTRODUCTION

Historical research can both reinforce and disrupt established criminological understandings of crime (Churchill, Yeomans & Channing, 2020). As such, this article will use a historical depth study to advance our understanding of how path dependence can shift or ‘jump tracks’ between institutions. This is a study of penalty and welfare provision in colonial Australia in the period following convict transportation.<sup>1</sup> Through exploring the Tasmanian institutional context,<sup>2</sup> it will be demonstrated how the practices and infrastructure of the convict system jumped tracks to the pauper system. This will be illustrated through applying an agentic and dynamic version of path dependence. The primary aim here is to use the case study to demonstrate that path dependence can jump tracks. However, this article will also make a substantive historical contribution by further challenging the traditional boundaries between crime and punishment, and poverty, welfare and charity. By analysing the historical roots of crime control and controlling ‘other’ populations in this way, it is hoped that contemporary examples will be similarly considered. For instance, the process of crimmigration (Beckett, 2018, p.239; Beckett & Murakawa, 2012; Vogl & Methven, 2020), the criminalisation of poverty (Petty, 2017; Young & Petty, 2019) and the general expansion of the carceral state.

While poverty and criminality were linked in the 19th century, so too was poverty, old age and infirmity. Roe (1976) argued that 10% of the Australian population lived in permanent poverty and approximately the same proportion lived in temporary poverty in the 19th to early 20th centuries. While aging in Australia has had some limited attention (Peel, 2001),<sup>3</sup> research on convict transportation has focused on the successes of convicts who, against the odds, settled into the colony (Nicholas, 1988; Watkins, 2020). There has been less work on those who struggled after emancipation, meaning those who were unable to support themselves in old age. That is not to say that research in this area is non-existent, works include: the impact of convictism (Brown, 1972; Hargrave, 1993; Kingston, 1988; Piper, 2003, 2004, 2009, 2010); the spread of convictism to the non-penal colony of Queensland (Evans, 1976); indoor care for convict invalids (Weidenhofer, 1990); outdoor relief (Breen, 1991); and, the sick and disabled convicts sent to New South Wales (Earnshaw, 1995). This article will build on these works by applying the theory of path dependence in order to understand how paupers were enveloped in penalty.

The article will demonstrate that it is not just how the pauper population was perceived, but also practical decisions concerning infrastructure and personnel which affected the ‘treatment’ of the population under study. In order to further our understanding of institutional continuity and change, the case for path dependence will be explored to help to understand the continuation of the convict system functioning within the inefficient pauper system. It will be argued that with the ending of transportation the convict system continued under the façade of the pauper system; where paupers were treated like convicts, were held in convict buildings, and were presided over by those who were current/former convict superintendents. This will be done by explaining the rationalities behind this jump, the heterogeneity of the Tasmania example, and the importance of key actors on the ground, before ending with an overview of how the charitable

system finally diverged from the path. First, there will be an overview of how the theory of path dependence has evolved, and the contribution to this framework that this article will make.

## 2 | LITERATURE REVIEW

### 2.1 | Theoretical framework

This section will provide an overview of the classical theory of path dependence, how this has been applied to institutions, how the theory has become more agentic and dynamic and, finally, the more recent innovation of how path dependence can jump tracks. Following this summary of the theoretical framework, the literature review will move on to outline the links between penal and welfare/charitable systems.

Path dependence is a theory which explains continuity whereby past events and decisions constrain later decisions. This has been usefully illustrated by David (1985) through the example of the QWERTY keyboard. When first developed, this keyboard design had a small market lead, which led to high cost conversion. This was enough to influence, although not guarantee, its market dominance later down the line. David (1985) explains how the provenly inefficient keyboard design became 'locked in' because of the interdependence between the design, typewriter manufacturing, and the skill of 'touch' typing. Essentially, businesses initially chose the more readily available QWERTY compatible typewriter because they had no incentive to invest in more efficient designs. As a direct result of this, touch-typists 'learnt' the QWERTY keyboard. In turn, this led these users to be more likely to choose them later down the line. This choice was influenced by a combination of preference (as they had already learnt this design), and the increased market acceptance and associated stock availability. In this way, David outlines how a path-dependent sequence can influence later outcomes because of temporally remote events, even when those events are accidental. This classical view of path dependence has since been applied to institutions.

Path dependence has been applied to understand the mechanisms behind institutional change and stasis, where historical events can set into motion institutional patterns that have deterministic properties (Peters, Pierre & King, 2005). Criminological research has largely focused on assessing the need for institutional reform, or explaining instances of such reform, but there is less focus on explaining the *stasis* of institutional practices in line with Pierson's (2004) ideas. However, it has been argued that path dependence can be used to explain the 'stickiness' of a particular institution, in the face of inefficiency and calls for reform (Clemens, 2007).

Institutional stability is ingrained through interdependence and positive feedback which can increase 'exit costs' (Levi, 1997; Pierson, 2004). The inflexibility of a positive feedback loop (e.g., the investment in personnel and their specialised skills) can force an institution to stay on a particular path even in the face of wider social change. This is because an institution can be so far down the path that it becomes locked in (Pierson, 2004). Essentially, events and decisions can constrain actions at later points in time by creating precedents and embedded working practices (as exemplified in the QWERTY example). The path then becomes increasingly difficult or costlier to exit. Accordingly, despite wider economic and social change, self-reinforcing dynamics can lead to a persistence in the institutional status quo (Pierson, 2004). However, within this institutional context, the classical view of path dependence has evolved to become more dynamic.

Rubin (2023) has summarised how path dependence not only takes account of institutional stasis and change, but can be strengthened as a framework by accounting for how institutions

are *dynamic in stasis*. Where a path is repeatedly chosen over time, this is known as ‘bounded change’ and is influenced by positive feedback as noted above. However, this is not the same as the freezing of an institutional configuration (Pierson, 2004; Thelen, 1999). To be sure, the configuration is entrenched in such a way as to make reversal very difficult, but there are still ‘choice points’ (Pierson, 2004, p.20). Moreover, these choice points are characterised by *contestation*.<sup>4</sup> While any contestation usually works out in favour of the incumbent because they have greater power and resources, this is not inevitable (Goodman, Page & Phelps, 2017). Therefore, the path chosen is neither inevitable nor uncontested (Peters, Pierre & King, 2005). Crucially, any stickiness is dynamic because it involves the production and reproduction of a given social arrangement (Clemens, 2007). A key factor of dynamic stasis is individual agency, and this will be the focus here.<sup>5</sup>

A criticism of path dependence is that it is overly deterministic (Rubin, 2023). As such, agency needs to be accounted for when exploring institutions. It is not sufficient to say that patterns persist; to be effective a theory should be capable of linking outcomes with actors and with the process that produced the outcomes (Peters, Pierre & King, 2005; Thelen, 1999). For example, key individuals can develop a political and social identity, where their self-image and their idea of their roles and duties can remain fixed even in the face of criticism. This can be due to their vested interests and viewing the system in place as *legitimate*. Under this ‘legitimation explanation’ outlined by Mahoney (2000), key individuals *actively opt for reproduction* of a given system. As such, institutional stasis can be explained through a path dependence theory which is both dynamic and agentic, rather than deterministic.

To summarise, institutions can become locked in, despite underlying conflict, because of positive feedback loops and the high cost of reversal. These factors increase the attractiveness of existing institutional arrangements, even if alternatives would be more optimal in the long run. In line with this, agents make commitments based on existing institutions and policies, thus further increasing the cost of leaving the path (Clemens, 2007).

Path dependence as an explanation for institutional *change* has also evolved. Path dependence no longer focuses on institutional change as critical junctures caused by exogenous shocks. Instead, path dependence has evolved to account for change that is incremental. Within this understanding, exogenous factors do not lead to ‘punctuated equilibria’, whereby an exogenous shock tips an institution off the path. Instead, there is the coming together of exogenous and endogenous factors beneath the surface, characterised by contestation, which work over time to shift an institution off a particular path. Rather than being wholesale or immediate, such factors allow changes to occur incrementally (Pierson, 2000). It will be illustrated in this article that path dependence can be further advanced as a framework for understanding how institutional configurations can be actively repurposed.

It will be argued that the agentic and dynamic path dependence (outlined above), can be extended to map on to other institutions (Clemens, 2007). This means that the practices and ideologies developed within one institution can jump tracks to other institutions, following dismantling of the former (Clemens, 2007; Sassen, 2006).<sup>6</sup> Moreover, an institutional configuration can jump tracks, not only between one specific institution (i.e., between prisons), but also between different policy arenas (i.e., from the penal system to the welfare/charitable system). Meaning, the rules, regulations and arrangements, as well as the infrastructure and personnel, can be repurposed for a different population (or the same population after a status change; e.g., from convict to former convict). This repurposing will be known as ‘jumping tracks’ because the practices and ideologies essentially continue down a different path. The article will now turn to the blurring of institutional and policy boundaries that this process can engender.

## 2.2 | Blurring of the boundaries

There is a blurring of the boundaries between crime control and controlling ‘other’ populations which are positioned as problematic (Garland, 1981; Wacquant, 2010). As noted above, we see this in the emergence of the shadow of the carceral state. This is not simply about mass incarceration; key institutional actors are argued to manipulate: ‘... the ostensibly discrete boundaries of civil, administrative, and criminal law, thereby creating and/or enlarging noncriminal pathways to punishment’ (Beckett, 2018, p.239). For example, there has been increased migration control in Australia through the criminalisation of ‘non-citizens’ (Walsh, 2020). Similarly, a blurring of the line between poverty and crime has long been acknowledged (Garland, 1981; Wacquant, 2010).

The process of expanding the reach of the penal system is evidenced by the welfare state sanction which emerged from it (Garland, 1981). The framing of criminality and poverty as individual choice leads to deterrence and less eligibility being positioned as appropriate responses. Homelessness is a national issue in Australia with one-in-200 experiencing it at any one time, according to the 2016 census (McNamara et al., 2021). While this homelessness itself is not a crime, homeless persons positioned as disruptive are subject to systems of control that drag them into the expanding criminal justice system (CJS) (Petty, 2017; Young & Petty, 2019). For example, in Melbourne it is the *visibility* of homelessness that is at issue, leading to surveillance and criminalisation (McNamara et al., 2021; Young & Petty, 2019).<sup>7</sup> Even where antiquated laws have been repealed in Australia, they have been replaced by new offences in order to continue controlling the visible homeless (McNamara et al., 2021). It is the othering of the targeted population that creates the climate for these formal sanctions to be enacted.

Whereas expanding the law to control a population can lack legitimacy (Garland, 1981), if we look beyond crime and punishment to other non-penal policy arenas we can see how liberties are undermined. This is evidenced where a discourse of protecting society against those positioned as deviant and in need of regulation takes precedence, accompanied by a prioritisation of sanction over support (Wacquant, 2010). As Piven & Cloward (1993) have argued, poor relief and penal confinement emerged linked together. Indeed, Wacquant (2010) argues that when unemployment is high, imprisonment increases. As such, workfare and prisonfare are essentially tools to process specific populations. In this context, punitive containment has been used to relieve society from the poor (Wacquant, 2010, p.204). Encroachment upon personal liberties can be overlooked under the pretext of re-enforcing boundaries between subpopulations (i.e., segregating the deviant) (Wacquant, 2010). We see this today within the Australian carceral shadow, where the normalisation and legitimisation of ‘dobbing’ non-citizens has been enabled through repeated homogenisation and characterisation of non-citizens as undeserving intruders who endanger social order (Walsh, 2020).<sup>8</sup> This article will now explore historical precedent for these contemporary dynamics, examining the relationship between penalty and controlling the visible poor in 19th-century Tasmania.

## 3 | CASE STUDY: TASMANIAN CONVICT AND PAUPER SYSTEMS

### 3.1 | Historical context

The transportation of convicts to Australia began in the late 18th century. Tasmania was a penal colony<sup>9</sup> between 1803 and 1852, and received approximately 73,000 male, female and child convicts (Brooke & Brandon, 2005). Within this ‘open prison’, how convicts were controlled and disciplined changed over time. Initially, most convicts were assigned to free settlers for labour,

which saw women largely work as domestic servants and men as labourers. In the early period, there was variation in treatment depending on the convict's skills on arrival, but essentially it was only when they committed offences that they would be confined within a penal station.<sup>10</sup> Within penal stations like Port Arthur, there was increased surveillance, labour and a greater chance of punishment. By the 1840s convicts had to serve their initial sentence under probation for a period of time before they could progress to increasing freedom outside of labour gangs and penal stations. Therefore, penal stations loomed large as a potential threat to the freedoms of convicts across the period of convict transportation (Shaw, 1966), and this is important to note when considering the pauper population later confined within them.

In the late 1880s, Tasmanian politician, Edward Braddon, cited the 1881 census, where there were six per 1,000 of the whole population who were 80 years of age and over, as indicating: '... the health of Tasmania and longevity of its people' (Braddon 1889, p.325). However, the high proportion of elderly residents was caused by the young migrating to the mainland in a process of depopulation (between the 1850s and 1870s) (Hargrave, 1993). Furthermore, many of the aged remaining within the colony were inmates of the charitable establishments (Braddon, 1889). Terms including charitable institution, invalid depot, pauper establishment and benevolent asylum were used interchangeably in 19th-century Tasmania. Those who were 'inmates' in such institutions were paupers. 'Pauper' did not simply equate to 'poor', because some poor were able to subsist economically. While not exclusively the case, the overwhelming majority of paupers in these institutions were former convicts (emancipists). Thus, the term 'pauper-emancipist' will be used to refer to individuals who needed, or received, charitable assistance, and who were also former convicts.

Pauper-emancipists were predominantly transported from Britain and Ireland. There were proportionally fewer women, who were usually paupers because they had been widowed. This gender imbalance arose from a legacy of transporting greater numbers of male convicts.<sup>11</sup> As such, pauper-emancipists were generally male, unmarried, and aged between 55 and 70 years. Usually inmates were nearer the latter end of the age spectrum, and consequently were often classed as invalids due to age-related illness. Invalids were a subset of paupers who were unable to work due to a physical impediment (Piper, 2003). Invalid convicts were transported, but the convict system itself also created invalids through poor nutrition and health care, and forced labour. The result was that a disproportionate number of emancipists were re-institutionalised in the charitable system in later life (Earnshaw, 1995; Piper, 2003). This article will now turn to how the penal system jumped tracks to continue controlling this population under the façade of the pauper system by discussing the rationalities.

### 3.2 | Rationalities: 'othering'

Paupers were treated as if they were convicts, and the fact that most of them were, indeed, former convicts reinforced this connection. Such penal treatment was acted out by the government, administrators and benevolent societies, to greater or lesser degrees throughout the latter half of the 19th century (Piper, 2003). The penal treatment of this population was enabled due to concern that paupers had nothing to lose (Piper, 2003). It will be argued that the penal history of the colony influenced the jumping of tracks, in agreement with a long-acknowledged link between welfare and criminality. 'Punitive containment' is often used to relieve society from the poor (Wacquant, 2010, p.204). This is reflected in the Tasmanian context, but instead of bringing paupers into the penal system directly, there was a penalisation of the charitable system itself. Through

a sleight of hand, the systems (infrastructure, personnel and regulations) in place for convicts were repurposed (i.e., jumped tracks) to encompass paupers. In doing so, the very use of convict infrastructure and personnel constructed the pauper-emancipists as criminal once more.

While pauper-emancipates were no longer convicts, they were still seen as different and less deserving than those paupers without a convict past, and there was a resistance to see the latter in such charitable institutions. This means that institutional arrangements were geared towards former convicts, whereas outdoor assistance (provided by the Benevolent Societies or the Administrator of Charitable Funds) was reserved for paupers without a convict past (Brown, 1972; Hargrave, 1993). Increased control mechanisms for this population faced little resistance for two reasons: the linking of this subpopulation to convictism; and the belief in the need to protect society from them (Piper, 2009). While these pauper-emancipists were no longer convicts, they were positioned as a problematic population in need of control.<sup>12</sup> The othering of pauper-emancipists enabled, and, indeed, legitimised, the restriction of their individual liberties. This population was not directly brought into the convict system, rather the charitable system took on penal elements which was enabled because of how the population was perceived. Meaning the practices and ideologies of the convict system jumped tracks to the pauper system, which enabled the continued control of a population that was *technically* no longer convicts.<sup>13</sup>

The use of the term 'control' in this context refers to the process of constraining this population within charitable institutions and removing the visible nuisance of a population perceived as problematic. For example, the superintendents did not want paupers to be able to leave the depot for a certain period of time after admittance. Through this measure, it was believed that begging and drunkenness on the streets would be discouraged (Piper, 2004). However, 'control' also refers to keeping pauper-emancipists in line within the institution itself, and thereby denying them the liberties of free persons. They were subject to the rules and regulations of the institutions (which went beyond criminal law), such as punishment for not washing or talking after the silence bell (Tasmania, 1874).

There was concern over the convict past of paupers, and this led to a belief that they needed to be controlled in the same way as when they were convicts. The long-standing issue of invalids unable to earn their keep was highlighted when they became visible through begging. The number of those begging increased over time because as the population aged, they were no longer able to undertake labour-intensive roles. Rather than charitable responses, this led to calls to control this population (Piper, 2003). While the English Poor Law did not strictly operate in the colonies, the 'principle of "less eligibility"' did (Garton, 1990, p.48). For example, the Royal Commission into Charitable Institutions, 1871, denounced any attempt to make relief institutions more attractive than an honest working man could provide himself (Hargrave, 1993, p.19). Philanthropists widely believed that the poor became so due to their own shortcomings (Garton, 1990). Indeed, a committee which discussed ex-convicts described them as a taxpayer burden. Lieutenant Governor William Denison<sup>14</sup> later extended this moral judgment to all poor in 1850 (Brown, 1972). Certainly, the taint of convictism and immorality extended to those without convict pasts, but generally administrators did not want to see 'respectable' people in these depots (Hargrave, 1993). However, while pauper-emancipists were viewed negatively in many quarters and this enabled the repurposing of penal arrangements, this view was not universal.

Those in the Tasmanian population increasingly saw themselves as 'civilised' and no longer in need of penal labour. There was a growing belief that, for Tasmania to prosper, they needed to remove penal associations. As this anti-transportation sentiment grew, so did attention on the issue of pauper-emancipists. As we know, not all that is written in the media is supported by all who read it. This applies to anti-transportation rhetoric as much as to any inflammatory coverage,

but such reporting does provide us with insight into the hostility levelled at convict transportees (Pratt & Valverde, 2002). It is true that this was not the whole picture; for example, the Launceston Strangers' Friend Society in 1839 rejected moral judgments as a basis of aid. Yet, a discussion of charitable relief rarely took place without highlighting the pauper-emancipist burden, and this was linked to the imperial government's slow financial weaning of Tasmania from funding in 1836. This began with ending pauper immigrant funding, but later extended to pauper-emancipists (Brown, 1972). This, in turn, increased hostility; for example, The Irish Exile and Freedom's Advocate, 1850, referred to the 'infamy' and 'stigma' of convict transportation. Indeed, the othering of this population kept the focus on control in public discourse and thus legitimised the repurposing of control measures against them.

The negative perception of pauper-emancipists was tied up in arguments over who should maintain those who could not work. The imperial government would only pay for those with a convict status. Denison tried to extend this support but largely failed. As a result, the colonial government tightened up funds, withdrew from the provision of outdoor relief, and became stricter with institutional admittance and discharge (Brown, 1972). This led to economic ramifications, but also the increasing visibility of pauper-emancipists touched on above (Brown, 1972; Hargrave, 1993). As such, there was an increasing effort in the second half of the 19th century to move the responsibility of relief from the government to voluntary organisations. Despite this wish, the first church-sponsored institution did not open until 1879, and the public was an unreliable source of charity (Brown, 1972). In 1858, a joint committee published a report on *Charitable institutions*. Exploring the 'state and sufficiency' of government-funded aid, the report acknowledged that charity was funded through a variety of means but that establishments for the aged and infirm remained vested in the imperial government (Henty, 1858). Essentially, voluntary and government aid were tangled together, where the government provided the bulk of its services and funded 50% of voluntary agencies (Brown, 1972). Other Australian states developed their outdoor and charity-led relief more fully, but Tasmania's recent penal past and the visibility of pauper-emancipists, 'fostered an atmosphere of resentment against pauper invalids', and this was echoed in their treatment (Piper, 2003, p.51). However, it was not only the ideology surrounding convicts that jumped tracks in this way, so, too, did practices and institutional arrangements.

The regulations imposed on those held in pauper establishments jumped tracks from the convict system. The general rights of male invalids were curtailed in similar ways to convicts. For example, there was an unofficial censorship of invalid correspondence. While penal regulations allowed the review of prisoner mail, this was not officially the case for pauper-emancipists (Piper, 2003). Over time, regulations only tightened. By 1876 *Regulations for the Pauper and Invalid Depot for Males* for Port Arthur outlined what was expected of those in authority, but the bulk of the document referred to 'inmate' rules: all property was confiscated, absconding resulted in solitary confinement or imprisonment in gaol (with/without hard labour), an additional offence resulted in imprisonment (with/without hard labour) for up to three months, a lack of cleanliness would result in tobacco confiscation, there was a strict schedule, and they were not allowed to work for themselves without special permission (Governor in Council, 1876). This penal outlook included: the refusal to acknowledge the need for trained staff for an aging population; the separation of spouses; monotony; and a lack of privacy and dignity (Brown, 1972). Such treatment reflected the tightening of control on convicts. Convicts had always been subject to added surveillance and restrictions when compared with free persons, but powers to police and prosecute convicts increased throughout the 19th century as the colony began to see itself as too civilised for its penal associations (Watkins, 2021). This process extended to the 'care' of the invalid and aged poor in Tasmania as convict numbers decreased, but there were differences between the north and south.

### 3.3 | Heterogeneity, infrastructure & facilities

Heterogeneity must be recognised when analysing institutional change or stasis (Goodman, Page & Phelps, 2017). Just as policy and practice differs between Australian states now (Baldry et al., 2006), so they did during the 19th century (Garton, 1990). Roe (1976, p.13) argues that the colonial and penal history of the different Australian states had lasting effects on how they were governed, including social support strategies. Those colonies like Tasmania and Western Australia, which were the last to end convict transportation, are argued to have 'haunted the accountability of government and charitable endeavour'. Alternatively, Queensland and South Australia, which were never penal colonies, were less affected. Indeed, Roe argues that Victoria took social support strategies with 'proper seriousness' by taking on 'extraordinary' voluntary benevolence because it was never a penal colony (Roe, 1976, p.13). Even within 19th-century Tasmania itself, there were notable differences in practice. While convicts were accommodated in north Tasmania, the south was where most convict infrastructure remained. The penal focus of the south, and lesser focus in the north, is reflected in how welfare developed in these regions. The most common form of aid in Launceston (north Tasmania) between 1860 and 1880 was outdoor relief. This was largely because there was very little institutional accommodation (Breen, 1991). Indeed, the opening of the Launceston Invalid Depot did not occur until a ministry controlled by northern politicians gained power in the late 1860s.<sup>15</sup> Nevertheless, this depot, in similarity with the south, was characterised by indoor penal-like discipline and was reserved for 'undeserving' pauper-emancipists (Breen, 1991).<sup>16</sup> Therefore, despite some differences in practice, the dominant ideological drive and penal practices jumped tracks from the convict to the pauper system throughout Tasmania, but there were important differences from the British system which need to be acknowledged (Brundage, 2002; Hargrave, 1993).

Karstedt (2002) outlines how policies can travel across the globe, but local institutional cultures influence how they work in practice. As such, institutional models change shape when travelling into foreign structures. In line with this, the specific cultures of control of the country of arrival influences implementation (Burciu, 2023). Ideologically, the British Poor Law system was rejected in colonial Australia; it was disliked by the colonial elites because they believed it caused dependence, and feared by the poorer classes because they viewed it as harsh (Murphy, 2011). Yet, in similarity with the Tasmanian system, the British workhouses were characterised by loss of personal freedom, failure, shame and poor infrastructure. However, while there were associations between poverty and criminality in Britain, treatment of the aged was different. For example, the aged were exempt from most work requirements (Brundage, 2002). In Tasmania, however, those capable carried out such tasks as cultivating land, breaking stones, or making brooms. If skilled, they would carry out coopering, shoemaking and carpentry. Meanwhile, the women carried out washing and needlework (Piper, 2010). To exemplify this, in 1879 at New Town Charitable Institution the work carried out included: working on the Government Farm and Cemetery, maintaining roads and working in the institutional trade shops. Individuals also worked to maintain the institution as warders, cleaners, cooks, attendants and nurses (Pearce & Doyle, 2002).<sup>17</sup> It must be acknowledged that not all residents were actually *capable* of work. By the late 1880s, able-bodied workers were employed to run day-to-day activities because inmates were increasingly unable (Piper, 2010). Still, any inmates capable of work but refusing, were punished. Another case in point, while married couples had the right to visit each other when dying, it was not until 1904 that couples could be together in Tasmania (Pearce & Doyle, 2002). However, in England, families were separated until 1840, after which married couples aged over 60 years were entitled

to a shared room (Brundage, 2002). Indeed, in the 1840s Lieutenant Governor Eardley-Wilmot stopped Tasmanian rations. Instead, those in need were offered admission to New Norfolk. Such less-eligibility practices *were* reminiscent of the Poor Law system. However, the English system never wholly outlawed outdoor relief (Brown, 1972). Essentially, the system that jumped tracks in Tasmania saw the implementation of harsher restrictions compared with the British system.

As the Tasmanian convict system was dismantled, aged and invalid paupers were brought within increasingly formalised and controlled institutions. This deinstitutionalisation instigated the jumping of tracks, whereby the infrastructure and personnel were repurposed. This led to a welfare system, which was orientated towards institutionalised care (Hargrave, 1993). This meant that the charitable establishments were institutions whose spaces had been constructed under the direct control of the Convict Department. Bringing the pauper population into convict buildings further linked this population with convictism (Piper, 2003). To exemplify, Brickfields Invalid Depot (operated between 1859 and 1882) was formerly a convict Hiring Depot, and the female paupers were housed in the old gaol itself. The buildings were old, unsuitable and of convict origin (Brown, 1972). Over time, additions and changes were made to existing buildings, but the initial penal infrastructure and the belief in economy led to few improvements. This meant that the dormitories previously used for convicts continued to be used for paupers (Hargrave, 1993; Piper, 2003).<sup>18</sup> That is not to say that the care and accommodation provided previously was necessarily better, but that the nature was less controlling. For example, in 1833 New Norfolk hospital housed paupers, and prior to this a house was utilised. Unlike institutional regulations later implemented, residents of these earlier establishments had the freedom to hire themselves out for odd jobs (Brown, 1972). It was not only the infrastructure and regulations that jumped tracks, this jump came hand-in-hand with the key personnel and their skills and beliefs.

### 3.4 | Personnel: responsible actors

The investment of 'specialised' skills which developed in the convict system, jumped tracks. The learning of these skills was a start-up cost which resulted in an incentive for others dealing with the same population to follow suit. The entrenched relationships, learning effects and adaptive expectations from the convict system led to other social actors making decisions based on existing practices, which led the pauper institution further down the penal path. In this way there was continuity, but that does not mean that it was not repeatedly tested. As noted in the theory section above, path dependence has been criticised as being overly deterministic. This is why the importance of agency in this case study will now be turned to.

It was key responsible actors on the ground who were able to reproduce the status quo in the face of criticism (Clemens, 2007). In responding to the invalid crisis of the 1850s–1860s, for example, the use of Port Arthur as an invalid depot was described as 'too harsh an imposition on invalids, particularly given its penal function' (Piper, 2003, p.130). This was because this penal station had a reputation as particularly severe and continued to house convicts (Weidenhofer, 1990). At this time, newspapers maintained that provision for the infirm and destitute was 'flawed' (Piper, 2003, p.297). On the ground, however, those charged with running these charitable institutions wanted increasing control. For example, Robert Andrew Mather (member of the Hobart General Hospital Board and the executive committee of the Hobart Benevolent Society) did not want paupers to be able to leave the depot until a given period after admittance. Both John Withrington (Superintendent of Brickfields and a member of the executive committee of

the Hobart Benevolent Society) and Austin Atkins (Superintendent of the Cascades) agreed and sought enhanced powers to confine and punish 'offending' paupers (Piper, 2009). Meanwhile the government's position was that this would increase public expense (Piper, 2009).

The status quo persisted despite calls for improvement from several quarters. For example, a Dr Crowther pointed to the lack of *quality* of the establishments (Hargrave, 1993). Nevertheless, the 1871 Royal Commission responded to criticism over conditions, stating that: 'Our opinion is that it was quite adequate for the class ...' – a view the 1888 commission did not reverse (Brown, 1972, p.80). By the 1890s the government began to acknowledge that it was responsible for the entirety of the population regardless of 'moral values'. Meanwhile, the Hobart Benevolent Society continued to see a clear distinction between the deserving and underserving poor (Piper, 2003). Here we can see an agentic and dynamic path dependence in action where the following aspects apply: vested interests (Pierson, 2004; Thelen, 1999); the legitimacy explanation (Mahoney, 2000); underlying conflict (Peters, Pierre & King, 2005); and institutional re-enforcement (Pierson, 2000). It was in the vested interest of such societies, and key agents within them, to maintain their control over how, and to whom, they distributed funds, and this was tied to their ideas of legitimacy. Hence, conflict and dissensus existed, but choices were made which kept the institutions on the penal path. This led to the institutional stability being re-enforced and further developed, rather than being static and fixed.

Key responsible actors within the charitable system had a vested interest in staying on the penal path. As well as skills, those who had worked in the convict system had developed a political and social identity as a 'convict superintendent'. This was exemplified by Withrington, who was the overseer of the Female House of Correction before he took up his superintendence of Brickfields Pauper Depot in 1859, followed by a superintendence of New Town Pauper Establishment (Pearce & Doyle, 2002). The fact that he began his bureaucratic career at a penal establishment is significant because it influenced how he ran the technically non-penal establishment for paupers. Penal connections are a theme that repeatedly arises, and it is linked to how pauper-emancipists were viewed and treated. Withrington's ideas about pauper-emancipists – as an underserving population which needed to be controlled – were combined with his insistence on economy (Brown, 1972). Withrington actively maintained the status quo by not employing trained staff (despite opposition) because he had a vested interest in economising. Indeed, he asked for a retiring allowance, arguing that he had saved the colony money on pauper maintenance (Brown, 1972; Hargrave, 1993). Consequently, trained nurses were not employed at New Town Pauper Establishment until after Withrington retired. His perspective, which reflected his role in the convict system, fed into the regulations and operation of the pauper institutions he oversaw. He saw this as the legitimate way to deal with this population. Meanwhile, in northern Tasmania there was no pretence of changing titles, male invalids were overseen by the Superintendent of Launceston's Penal Establishment (Piper, 2003). As such, path adherence can be explained here through a 'legitimation explanation' (Mahoney, 2000).

### 3.5 | Leaving the path

While wider societal beliefs about the institutionalisation of aged and invalid paupers in Tasmania changed over time, it was not until key individuals who had a vested interest in staying on the path (due to their ideas of legitimacy and self-image discussed above) were replaced, that the path was incrementally left. Conflict and struggle may not have led to change immediately, but after contes-

tation actors who failed remained and drove incremental change (Goodman, Page & Phelps, 2017; Thelen, 1999).<sup>19</sup> Agency and wider societal shifts both played a role in the deinstitutionalisation process, but path adherence delayed their effects. For example, from the early 1880s it was cheaper to provide outdoor relief than maintain paupers within an institution (Piper, 2004). Yet, as the numbers within institutions declined, beds opened up which had effectively already been paid for. As such, even though outdoor relief was cheaper, and believed to be better, resource had already been spent on these indoor spaces. This ensured a continuation of institutionalisation for those positioned as undeserving (Piper, 2003). Moreover, this is an example of the inflexibility of a positive feedback loop (Goodman, Page & Phelps, 2017): the institution was so far down the penal path that it became locked in causing path inefficiency (Pierson, 2004). It was the collision of exogenous and endogenous factors that finally led to the deinstitutionalisation of pauper and invalid welfare.

It was the coming together of a number of exogenous and endogenous factors which saw the institution shift from the path incrementally (Pierson, 2000).<sup>20</sup> For example, by 1901 fewer invalids were kept in institutional space, and increasing numbers of the aged poor were kept on outdoor relief schemes. Essentially, institutionalisation was seen by the wider community as inappropriate. The depression had affected families of all classes and there was a growing awareness of the lack of culpability associated with poverty. The popularity of medicalisation, combined with middle-class humanitarian concerns, led to perceptions of, and subsequently treatment of, the aged poor to change (Piper, 2003). As well as penal similarities, investigations had found that care in these institutions was inhumane (Garton, 1990). 'Better' treatment for this group was increasingly called for, which saw a shift from positioning this population as undeserving to a general consensus that they were deserving. This was partly driven by an emergence of control mechanisms in the form of classification and specialised bureaucracy. Nevertheless, the depression led to a recognition that individuals were not always at fault, and this helped shift the response to one of outdoor relief over time (Piper, 2003).

Individual agency, combined with wider societal views, took invalid and aged care off the penal path (Mahoney, 2000). For example, Withrington finally retired in 1889 (from the New Town Pauper Establishment) and was roundly criticised by his deputy before the Royal Commission because he was dissatisfied with the status quo Withrington had set. Withrington was replaced by George Richardson, who later became Administrator of Charitable Grants and Secretary of the Neglected Children's Department. Richardson introduced changes as far as finances allowed. For example, gas was installed in the institution in 1890, a garden was created for female inmates, and four paid wardens replaced aged inmate workers (Brown, 1972). Not all changes happened immediately: female nurses did not arrive until 1895 in New Town, and males not until the turn of the century (Hargrave, 1993). Yet, the diet was progressively improved, warmer clothing provided, brighter decorations used and visitors were increasingly allowed (Brown, 1972). Withrington's deputy had favoured a less-penal approach and while his contestations did not lead to immediate ruptures, they left windows of opportunity for the challengers to unseat the influence of the incumbents<sup>21</sup> and to instil their views of how the system should work later down the line. Essentially, the incumbents drifted out of the dominant position. Nevertheless, while there was a clear shift, no change took place without considerable debate (Hargrave, 1993). Indeed, there is never a distinct dominant guiding policy, instead there is a messiness which characterises these transitions. Contestation is at the heart of cultural and political ideas, which, in turn, influences practice (Loader & Sparks, 2004). Struggle and contestation *did* produce new configurations (e.g., medicalisation/surveillance), but they were coincident with old ideas and practices (i.e., outdoor care increased but indoor care remained) (Goodman, Page & Phelps, 2017).

## 4 | CONCLUSION

This article offers both substantive and theoretical contributions. First, the article makes a substantive contribution in advancing knowledge of poverty and penalty, and their connection, in colonial Tasmania. Churchill (2019) points out that to understand the multiple rhythms of crime control (and I would expand this to include social control more broadly), we need a sustained engagement with the empirical record over long periods. Building on the work of historians, the article has aimed to achieve this by considering the mechanisms underlying, and driving, practices which affected the day-to-day lives of pauper-emancipists.

Second, what the case study tells us about institutional change and stasis is that in applying path dependence, there needs to be a sensitivity to agency when looking at the mechanisms underpinning continuity. An emerging conception of path dependence has been applied here; one which is agentic and dynamic and not deterministic. This application demonstrates that there is a difference between 'reigning theory' and official representation, and on-the-ground practice (Rubin, 2019). This is evidenced by changes in wider Tasmanian society's views towards the elderly, preceding the charitable system implementation of such ideology. In essence, practice does not reflect widespread beliefs, rather they are reflective of key individuals (or incumbents).

Last, the main theoretical contribution is the proposal that path dependence can jump tracks between institutions and policy arenas. This is where practices and ideologies are repurposed within another institution. It is demonstrated in the article how, and why, the convict system jumped tracks to the pauper system. In presenting this case example, it is hoped it will be considered in other contexts. For example, turning to contemporary debates, we could consider the ability of path dependence to jump tracks in the process of crimmigration. As touched on above, the policies and practices of the CJS are being utilised to control immigrants (Beckett & Murakawa, 2012). This is a process which is happening without the need of the initial institution to deinstitutionalise first. We could also apply this theoretical framework to other historical processes. For example, Oshinsky (1997) and Lichtenstein (1996) explored how convict leasing and chain gangs were used in the southern United States after slavery was abolished. There are possibilities here to apply path dependence within such a context to explain how practices may have jumped tracks in order to continue exploiting the labour of this population. In short, it is argued here that there is wider potential for this theoretical innovation within, and beyond, analysis of the CJS.

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## ENDNOTES

<sup>1</sup> Convict transportation: the relocation of convicted individuals, and in this case the relocation was to a colonial territory.

<sup>2</sup> The name Tasmania will be used throughout to avoid confusion, but the island was known as Van Diemen's Land (VDL) until 1856.

<sup>3</sup> Another major contribution to this literature is the aptly named 'Ageing', which was published within the *Journal of Australian Cultural History* (see Walker & Garton, 1995).

<sup>4</sup> In line with this, Goodman, Page & Phelps (2015) argue that the penal landscape is characterised by 'endemic conflict rather than waves of consensus and rupture' (p.328).

- <sup>5</sup>This is something that is addressed by Rubin (2021) using the idea of ‘personal institutionalisation’ in her work on the Eastern State Penitentiary (ESP) in Philadelphia. The ESP administrators resisted a move to a more widely used system of regulation because of the unique status theirs gave them. Using institutionalisation in terms of Philip Selznick’s (1949, 1957) work, where once an organisation is formed it takes on a life of its own, Rubin (2021) argued that external forces were countered by the internal momentum of the institution. This enabled efficient means to be resisted out of self-interest. For ESP, it was not about wider social change, rather it was internal agency which shaped trends. This highlights that for a theory to have explanatory power, decision making and the roles played by actors within institutions must be incorporated (Peters, Pierre & King, 2005).
- <sup>6</sup>Rubin (2019) has similarly considered the copying of systems through the use of templates. Rubin stressed that templates are not adopted because of their effectiveness, but rather because they grant legitimacy. While individual practices may differ, the use of an existing template can shape expectations about what is acceptable. Rubin applies this process within one specific institution (i.e., between prisons), whereas this article investigates an expansive convict system and how it shaped subsequent institutional forms. Therefore, rather than using the borrowed-template metaphor, path dependence is used to explain how institutional arrangements can jump tracks to enable social control of a different population. Nevertheless, there are similar ideas at play including legitimacy, agency and conflict, which will be further explored throughout this article.
- <sup>7</sup>This is not new, Piper & Nagy (2018) argue that the high number of imprisoned women in 19th-century Australia resulted from policing public places to control women of lower orders.
- <sup>8</sup>Dobbing: an informal Australian term meaning to inform on someone.
- <sup>9</sup>Penal colony: distant or overseas settlement established for punishing criminals by forced labour and isolation from society.
- <sup>10</sup>Penal station: a place of increased restriction of liberties within a penal colony. While prison cells are used, those confined in these stations often leave the stations to carry out labour. Such penal stations were therefore more porous than the prisons we are more familiar with today or, indeed, in 19th-century England.
- <sup>11</sup>For example, there were 100 convict males for every 45 convict females in 1843 (Ewing 1843, pp.x–xi).
- <sup>12</sup>In line with arguments put forward by Garland (1981) and Wacquant (2010).
- <sup>13</sup>As Dunk (2022) has pointed out, it was not only *charitable* institutions which interfered with the boundaries of individual and social rights, so too did lunatic asylums. However, there was a greater fear in the general public of wrongful confinement within such institutions, where the public/media were not interested with improving conditions but were instead troubled with the wrongful confinement of ordinary settlers. They wanted to make it harder to be confined in such institutions, but this was not the case for charitable institutions. Instead, the ‘visibility’ of paupers led to calls for ‘proper care’, that is, institutionalisation.
- <sup>14</sup>Lieutenant Governor of Van Diemen’s Land from 1847 to 1855, he took over from John Eardley-Wilmot.
- <sup>15</sup>With the exception of two small, short-lived voluntary projects (the Longford Asylum for the Aged and the New Town Almshouse), the later 1840s and 1850s institutional care of the aged and the infirm was a government domain (Brown, 1972).
- <sup>16</sup>For example, those on the Launceston Invalid Depot admission books were mainly former convicts; of the 112 inmates in 1871, only seven were free men, all the rest were either free-by-servitude or conditionally pardoned. Similarly, of the nine females sent to the Launceston House of Correction in the same year, six were free-by-servitude and the remaining were of an undetermined status (Breen, 1991).
- <sup>17</sup>This was also the case in another former convict colony, New South Wales. When highlighting the difficulties of the disabled population, including amputees, eye defects and those suffering chronic illness and mental impairment, Earnshaw (1995) states that such convicts would be put to work regardless of their condition.
- <sup>18</sup>Economisation was the focus; for example, there were no water mains in Brickfields Invalid Depot (Piper, 2003). There was inadequate sanitation; for example, running water did not arrive until 1872, followed by lavatories in 1878, and tubs were used at the end of each ward and this continued at night time, even after installation, until the 1890s. Ventilation was also poor and inmates were said to be infested with vermin (Hargrave, 1993).
- <sup>19</sup>See the work of Goodman, Page & Phelps (2017) for arguments about the role of contestation in the eventual instigation of change, and Churchill (2019) for his work on the ‘penal game’ made up of multilayered web of governance.
- <sup>20</sup>Rather than being wholesale or immediate changes trickle in incrementally (Pierson, 2000). The actors/incumbents fighting for the status quo have most of the resources and also benefit from feedback effects that entrench their position further. Meaning, they already have the infrastructure, the staff and the

orientation in place. Due to the advantages in capital that incumbents have, changes take place over long periods because the challengers have to work hard to exert change; this is why we have incremental change rather than dramatic ruptures. The 'fissures' that challengers create over long periods enable change to eventually take place under the right circumstances (Goodman, Page & Phelps, 2017).

<sup>21</sup>Incumbents: responsible actors/agents already in a position of authority/power (Goodman, Page & Phelps, 2017).

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