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Crimes committed by Bushrangers.

1. I have said, that I am aware of no necessity which exists, for an alteration to the Law as to these crimes. But, as this may be understood as implying that I am satisfied with the Law, as it stands, I think it right to explain that such is not my meaning.
2. Whether such a Law as the one proposed, be or not “necessary” depends on certain facts with which I am not acquainted. I cannot tell, whether what is called Bushranging is on the increase. If it be so I have no means of determining to what cause such increase is attributable. Neither, after diligent study of the only sources of information within my reach – the records of crime in the Supreme Court - can I say what the particular crimes are, to which Bushrangers are most prone.
3. I have prepared a table, which I annex, showing the Number of Convictions, of all such Crimes as can affect this ques [-tion,]

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-tion during the 5 Sessions which have taken place since my arrival. What conclusions may be drawn from these, I shall not in this place pretend to determine. But I must observe, that they afford no sufficient criterion of the extent of those crimes: because, as very few of them are now punishable with death, all such as fall within the second, third & fourth classes, may be in that Table & when committed by Convicts, usually are tried at the Quarter Sessions. [A.S. 1842]

4. Burglary, -(that is, according to the recent law, breaking and entering after nine o'clock at night,-) when accompanied by violence, - Robbery, when accompanied by wounding, - Stabbing, or Wounding, or Inflicting any Injury, of any kind, dangerous to life, if with intent to commit murder, - are the Crimes, which, short of Murder itself, or Treason, are now capital.* Burglary, or Robbery, (otherwise than aforesaid,) with House breaking, Stealing in a Dwelling by menaces, or putting in fear, and Shooting at a person, if no wound follow, are punishable by Transportation for life, or [as]

*I speak of course, of such crimes only as can now usually come under review.

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(as more particularly specified in the Table) for 15 or 10 years. And, in all of these cases, no distinction whatever is made, between Free Men & the twice or thrice convicted Felon, or, (with one exception, that of Robbery) between offences committed with arms & in company, and those committed without attempt at violence and by one individual alone.

5. I cannot say, that I am satisfied with such a state of the law. I have given it as my opinion, that Alterations in The Law in England, made since 1828, in England and for England, and for the very different state of things which prevails there, do not affect these Colonies. Housebreaking, by Bands of armed Men roving at large over a wild & woody territory, is there unknown; and, by Bands of armed

Convicts, would be almost impossible. But, if a different opinion on this point be entertained by my Learned Seniors, or either of them – or if (my) Laws, severer than those which prevail in England, should not generally be enforced by The Executive, - it would be useless to effect a change. Set under a Colonial Code which, as to the Convict

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Convict, makes every Sentence cumulative, of what practical avail is it, - in nine cases out of ten – to keep up, or adopt a distinction between one Term of Transportation, and another?

6. In all the instances which I have enumerated, the principle adopted seems to have been, not to take life, unless life shall have been seriously endangered, or taken. But, when applied to a Country situated as this is, I cannot feel satisfied that, if the knowledge of this difference in the punishment leads the Bushranger, occasionally, to abstain from taking life, the dread of exciting a contest does not lead many a Settler, to attempt no resistance; and hence the Country may be kept disturbed by the Banditti, until no man's dwelling or property is safe, and murder ensues at last. I say, I must not be understood as assenting to that principle, in these Colonies. For, since the Absconding of Convicts, and their keeping at large, armed, is at the root of such outrages, it may be a better principle – and in the end a more merciful one, - to seek to put down the evil, at

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at that, its first stage.

7. Such has been the course pursued in the Sister Colony; and, I presume, with continued benefit up to this day – for, by the late Acts, I perceive that the same system is pursued there, still. #

8. I had not intended to write so much; but, as it may be useful, I will illustrate my views on this difficult & painful question, by two Cases tried before myself, in November last. –

Six Convicts, (Brian, Darcy, & others) rushed suddenly into Mr. Allen's house at Piper's Creek, variously armed; one, or more, with a Fowling Piece, one with a stick, one with a tomahawk, and so on. It was nearly dark; - they robed the house, of all they chose to take away; - and because Mr. Allen resisted, they beat him cruelly. Ten days afterwards, they were, very fortunately, taken; but, being all (as I think) armed, not until after an exchange of shots, and one of them being severely wounded. Now, on this state of facts, the Crime was not "Burglary",

I annex a statement, showing the V.D.L. Law on this subject.

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"Burglary" for it was not nine at night; - it was not "Robbery", for that implies – taking from the Person, or in the Owner's presence; - and these Men were, therefore, indicted for "Stealing in the Dwelling House, & putting in fear therein"; - for which they were sentenced to 15 years Transportation, being the highest Punishment to which they were liable. The next day, I tried four other Convicts; for a Burglary, - committed in the middle of the night, by forcibly bursting in the door, - in the House of a Mr. Caswell, at Maitland. The Prisoners here were charged, with the aggravation of having beaten Mrs. Caswell, in that house; which rendered the crime Capital. These Convicts were also armed; one with a musket, the others with sticks. There were eight in company; they robbed the house of all it contained; and beat both of its Inmates severely. – The beating, however, was outside the House; and consequently the Statute did not apply. The case became, therefore, one of simple Burglary; the Prisoners received Sentence, of Transportation for Life.

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9. I will add a third case; that it may be contrasted with another, which was disposed of elsewhere. In February last, a Convict named Martin, (absconded from private service,) was convicted before me, of having, in company with two others, all armed, robbed the hut of one John Salmon; and therein put him in fear. The Prisoner was at large, for above 12 months; and taken, with a loaded pistol and musket upon him. The highest punishment, it has been seen, for offences of this kind, is Transportation for 15 years. But, without having committed a single crime, or outrage, on any person, he might have been tried at The Quarter Sessions, without a Jury, - (as a Man was tried, in the same room, only three weeks ago, -) for "being an absconded Convict, at large, with arms", - & sentenced to Transportation for life. Nay, he could have received no less sentence, as I believe, for the Magistrates have not the power of mitigation. With such discrepancies, the present state of the Law is not, to my mind, a satisfactory one.

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10. I conclude, by repeating my observation made in my fifth Paragraph, that no change in the Law can be desirable, which shall not habitually be enforced. Without this practical, or only real, alteration, punishment becomes uncertain; and the law itself contemptible. I say "habitually" – an expression, by which I mean to indicate, only, the general rule; - for God forbid I should desire to restrain the fitting exercise of Mercy. But, if an alteration be resolved on, and that alteration be intended to be put down, by more severely punishing, what is called "Bushranging", - I should not discharge my duty according to my conscience, did I omit to suggest whether, if a remedy be required to protect the person, in the one case of "shooting at with intent to kill", - there be not some remedy equally expedient, for the more effectual protection of the Dwelling, in cases such as those to which I have drawn attention.

Alfred Stephen
25. June 1840

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Comparative Statement of Punishments, &c. in N.S.W. & V.D.Ld.

1. Burglary; with beating, or assaulting, intending to Murder, any person in the house Death Death
Definition of Burglary, as to time After 9 PM. After Sunset
2. Burglary; & putting any person in fear, or being armed with any offensive weapon or instrument (as Simple Burglary) Death
3. Simple Burglary. Trans. Life Trans. Life
4. Stealing in a Dwelling House, (by night or day,) & putting any one therein in fear, by menace or threat Trans 15yrs Trans. Life
5. House-Breaking, (by day) & stealing therein Ibid. Ibid.
6. Robbery, accompanied by wounding Death Death
7. Accompanied by beating, or committed with Arms Trans. Life Death

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8. Robbery, or Assaultg. with intent to Rob in Company with one or more Trans. Life Trans. Life

9. Simple Robbery – (commonly called “Highway Robbery”) Ibid. 15yrs. Ibid.

10. Assaulting with intent to rob, or Demanding any Property By menaces, or force, with intent to steal same Imprist. 3yrs Trans. Life

11. Any one of the preceding Felonies, - or any Felony, though otherwise of the degree of Larceny only, - when committed, or attempted to be committed, - by means of force, or with arms, or by putting in fear, - by an Absconded Offender, illegally at large, is punishable, in V.D.Ld. with Death.

N.B. The case of The Owner, or his Wife or any

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any other Member of his Family, or an Inmate, or Domestic, being put in fear, or wounded, or beaten, &c. outside the House, - equally in “Burglary”, as in cases of “House Breaking”, - or “Stealing in the Dwelling House”, - seems to have been wholly overlooked. Yet such aggravations, when attendant on the Principal Offence, are of as deep a die, & as much tending to loss of life, as if perpetrated within the House.

A.S.
24. June 1840.

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1839

1840
Table; Showing Convictions in Supreme Court, in May Aug. Nov. Feb. May

1. Burglary with violence; & Robbery accompanied 4* None 4 ⊗ None None by wounding. [Death]

2. Robbery, by two or more in company; or by any] violence less than wounding; or by any person] armed. Also, Simple Burglary.]
[Trans. Life to 10 years.]] 13 3 # 18 10 9 §

3. Robbery, simple; or Stealing in a Dwelling Hse.]
with menaces , or by putting in fear.]
[Trans. For 15 years to 10. Or, Imprisonment]]

4. Shooting at, with intent to kill; &c. None 4 1 3 6

* All Convicts, & Ordered for Execution. How many of the

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the other Prisoners, in this Session, were Convicts, does not appear.

In this Session, there were 5 cases of Stabbing; & 4 of Forgery – with several of Murder, or Manslaughter.

⊗ These 4 were Convicts. So were 17 out of the 18 mentioned below.

§ Of these 9, I am sorry to say that 5 were Free. The 6, next mentioned, were all Convicts. I cannot say whether they were Bushrangers, as I tried none of them.
In this Session, there were 7 Convictions of Forgery.

N.B. It is impossible to form a correct estimate of the State of “Bushranging”, or of Crime generally, without Returns from the several Courts of Quarter Sessions. For, no other Crimes need be inquired into before The Supreme Court, (not being Forgery or Perjury) than such as are Capital. And of these, as has been shown, there are now, comparatively, very few.

Alfred Stephen.

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Bushranging Question.
State of Crime. Observations.

[Transcribed by Jacqueline Lamprecht for the State Library of New South Wales]