

conclusion are equally fallacious ; he resorts, for the solution of the question, not to any records, but to his own notes of the more heinous cases tried before himself in the Supreme Court alone, “from 1 lth of March, 1828, to the 1st of March, 1836,” “and dividing the interval into two different periods of time,” he finds that, “during a period of three years and nine months, the first division of time, the **offences** he enumerates amounted to 325 ; and during a period of four years and three months, the second period, the **offences** so enumerated amount only to 252, making a difference in favour of the latter of ‘73 cases :’” whence he concludes, “**that** crime had, in fact, decreased of late years.”

The objections, however, to this vague mode of calculation are, first, that he assumed, as the basis of his calculation, the **cases** only which he had tried, many of which comprised several criminals ; and secondly, “the occasional ill health of his colleagues and the frequent absence from the court of the chief justice,” to which he alluded, took place in the first *period of* time, and thereby cast a greater share of criminal business upon him than fell to his share during the second period ; the writer of these observations filled a seat on the bench of New South Wales during a period of three years and three months of the second period, and during that time performed his share of the duty, which rendered Mr. Justice Dowling’s more light.

From calculations, therefore, founded upon such grounds as these, it is right to turn to more certain data; and although respecting those numerous offences, which being committed by convicts, are determined by the magistrates under their summary jurisdiction, a veil of thickest obscurity has been thrown, there are not wanting proofs of a great increase in crime during the period comprised within these observations, notwithstanding all the efforts made by means of sophistry and **false** premises to conceal it. And the judicial conclusion of the committee on Transportation was perfectly correct when they state “*the criminal returns, already referred to, likewise prove that crime has increased in New South Wales in a-greater ratio than the population, and consequently in a far greater ratio than the number **OF** convicts.*” The first of these proofs is the table, entitled Return of the Number of Persons charged with Criminal **Offences**, who were committed to the different gaols in New South Wales, between the years 1829 and 1835. This, it is maintained, will afford a more correct estimate of the amount of crime committed than is to be obtained from the number of **convictions** ; since it may be assumed generally, that the magistrates have done their duty, and have not committed any one for trial without proof, **both that a crime has been** committed and some evidence of the **prisoner’s** guilt. Persons committed may for various causes, none of them

determining their innocence, be “ not prosecuted” or “ admitted to bail,;” which has been the same thing in practice, or acquitted ; but, generally speaking, no magistrate would commit any one for trial unless a crime had been committed by some one, nor would he **commit** two or more men for the same crime, unless there was some proof that it had been committed by two or more.*

The following **summary** has been framed for the purpose of showing the **number** of persons committed for trial for each class of **offences** :—

NUMBER OF PERSONS COMMITTED FOR TRIAL FOR THE UNDER-MENTIONED OFFENCES, FROM 1831 TO 1835.

	1831		1832		1833		1834		1835	
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
Total number of persons committed for trial before the Supreme Court and Courts of Quarter Sessions	524	45	556	68	656	71	903	100	959	123
OFFENCES.										
Murder	1	8	15	1	18	3	31	5	36	4
Attempt to murder, shooting at, stabbing, cutting and maiming with intent, &c. . .	12	—	15	1	18	3	31	5	38	—
Manslaughter	2	—	4	—	2	—	5	—	5	—
Rape †	5	—	3	—	1	0	9	—	24	—
Arson	5	—	6	—	1	—	1	—	7	—
Forgery	4	—	6	—	9	—	16	—	21	—
Highway robbery, bushranging, at large with fire-arms, &c. &c.	3	7	4	6	82	—	158	3	111	5
Cattle, horse, and sheep-stealing	54	2	42	—	25	—	114	1	118	1
Burglary	3	7	21	—	3	0	41	—	3	3
Perjury	7	—	1	0	12	2	19	3	8	2
Piracy and revolt.	—	—	3	4	—	—	6	—	—	—
Larceny, knowingly receiving stolen property, &c.	271	34	269	54	253	44	367	58	484	89
Misdemeanour, assault, &c.	69	9	84	11	94	19	95	23	91	20

* Only three instances, affecting five persons, came within the writer’s recollection, to the contrary The first was, where a false charge of felony was brought against a convict-overseer by his master, supported by the testimony of other convicts, evidently, as appeared in proof, for the purpose of invalidating the overseer’s credit, in a case in which he was a witness against his master; the others were cases of great hardship and oppression, in which gentlemen, some of them holding the commission of the peace as magistrates, were falsely accused (as fully appeared upon their respective trials) and committed for cattle stealing.

† The committals for another crime usually following this offence are omitted in this extract ; they afford no criterion whatever of its prevalence or otherwise,

From this recapitulation it will be evident that between the years 1831 and 1835, instead of more heinous offences having decreased in number, they were in some instances doubled, in others nearly trebled, and in some increased in a far higher proportion ; thus the number of persons committed in 1832 for murder was more than doubled in 1835 ; for rape, was eight times as great ;* for highway robbery, &c. nearly trebled; for burglary, they were increased by one half; all these are crimes of violence ; for cattle, horse, and sheep stealing, nearly trebled : whilst for the less heinous felonies, larceny, &c. they were increased by about one-nineteenth part (a very small proportion to the increase of the population); and for misdemeanours they continued nearly the same. So, comparing together the years 1833, 1834, and 1835, the result will be, as follows. The committals of men for murder were doubled ; those of women being increased by one in three; for rape, more than doubled ; for highway robbery, &c. in 1834, were nearly double, and in 1835, were increased in the proportion of rather more than two-fifths ; burglary in the proportion of one in ten. Cattle and horse stealing, &c. were increased in 1834 and 1835 to nearly five times the number in 1833, whilst the committals for the, less heinous felonies of larceny, &c. were increased in the year 1834 by about one-fourteenth, and in 1835 by about three-seventh parts, the number of misdemeanours continuing the same ; it could not, therefore, be fairly alleged, either that “ crimes of violence,” or “ the more heinous offences,” had been diminished, and those of a less serious character increased-; on the contrary, all offences had increased ; but those accompanied with violence, and those of a more serious character than ordinary larceny, out of all proportion beyond those of minor offences.

The population, however, had meanwhile been increased by fresh accessions of free persons and convicts, but in no equal proportion to the increase of crime. It consisted, on the 9th of July, 1833, according to the census, of 60,794 persons, of whom 22,798 were free males ; 13,453 free females ; 21,845 male convicts, and 2,698 female convicts. Of these, 1,128 males and 39 female convicts were at penal settlements ; so that their number within the colony must be estimated at 20,817 males, and 2,659 females.

In 1836, the population had increased to 77,096 persons ; that is, 30,285 free males ; 18,980 free females ; 25,254 male, and 2,577 female convicts. Of these there arrived in the colony, in the year

* And these by no means comprised the whole offences of that class committed.

1836 (and who consequently formed no part of the population in 1835) 1,621 free emigrants ; viz. 524 men, 807 women, and 290 children : and 3,823 convicts ;—viz. British, 2,195 males, and 274 females ; Irish, 960 males, and 394 females.

But inasmuch as amongst the free population of 1836 were reckoned those persons of the convict class who had become free by servitude and by being pardoned absolutely or conditionally, these must be subtracted from the free persons, and classed by themselves. The whole number. who were thus added to the free population from 1828 (when they were for the last time returned separately in the census) to 1836 inclusive, was 17,414; viz. 14,634 males, and 2,780 females. Their number, allowing for deductions by death and transportation, may be estimated, in 1836, at about 13,000 men, and 2,500 women.

With respect also to the number of convicts in the colony, there are to be subtracted those who were at the penal settlements, Norfolk Island and **Moreton** Bay, in 1835, which is thus ascertained ; viz. in 1836 the number was, males 1,493, and females 78 ; of whom were sent there in 1836, 435 men and 16 women, who consequently formed a part of the population in that year. These being deducted, leaves the number of 1,058 males; and 62 females, who being at the penal settlements in 1836, **did** not form part of the population within the colony in that year.

The total population of the year 1835, therefore, with respect to which the total amount of crime for the year is to be reckoned, was about 71,112; viz. free emigrants and natives, 32,724 (16,761 males, 15,673 females, and 290 children, sexes not stated) ; transported persons, free by servitude and having been pardoned absolutely or conditionally, about 13,000 males, and 2,500 females ; convicts, 21,041 males, and 1,847 **females**. — Consequently, during the time of that increase of crime which has been shown in the preceding pages, there had been no proportionate increase of the population ; that increase between 1833 and 1835 being, in **fact**, about one-sixth.

Nor was the result of the committals for trial before the Supreme **Court** and courts of Quarter Sessions, **during** the two following years, 1836 and 1837, scarcely less formidable in numbers, neither had the more serious and heinous **offences** materially diminished.

The total number of persons so committed was, in 1836, 1064 males, and 139 females ; in 18 37, 961 males, and 113 females. *

* These accounts are derived from the same source as those laid before **Parliament** to the year 1835, viz. the sheriff's returns of persons committed to his custody.

The nature of the charges against them will appear from the following summary :—

	1836.		1337.	
	iv.	F.	M.	F.
Murder	29	1	27	0
Attempt to murder, shooting, stabbing, &c.....	30	2	26	4
Manslaughter	13	0	4	0
Rape*	15	0	9	0
Arson	0	0	11	2
Forgery	1	15	1	22
Highway robbery, bush-ranging, &c. &c.	78	1	77	2
Cattle, horse, and sheep-stealing	144,	2	134	0
Burglary	42	3	50	0
Perjury	12	3	16	5
Piracy and revolt	4	0	11	0
Larceny and receiving, &c.	562	115	450	89
Misdemeanours and the like	106	11	112	10
Sentence of death passed on prisoners	32	0	23	0
‘Transportation	254	42	164	16
Labour and imprisonment	299	22	315	35
Executed	26	0	12	0

Great as this catalogue of crime must be considered, it unhappily does not comprehend the whole, since it refers only to the grave crimes for which persons charged with them are formally committed for trial, before the Supreme Court and Courts of Quarter Sessions, there are yet to be taken into account those which are of summary cognizance by the magistrates in petty sessions, as those which relate to both free and convict, breaches of police regulations, disorderly conduct, &c. and those which relate exclusively to convicts, and comprise theft under the value of five pounds, drunkenness, absconding, neglect of work, insubordination, and the like, in respect of which the magistrates have power to inflict summary punishment of confinement, with hard labour in irons on the public roads, from six months to two years, or whipping to the extent, of 100 lashes ; in the case of females, to labour in any gaol or factory for the above period., and to solitary confinement on bread and water to the extent of one month. Of the number of persons upon whom these several degrees of punishment have been inflicted in New South Wales, *no returns were laid before the Committee on Transportation*, although it would have been most important in proof of the state of crime amongst the convict class, and therefore material to be shown as an answer to the statement of the petitioners, that “ crime had fearfully increased,” which has been before referred to.

* A crime usually following this is omitted.

“ Unfortunately (say the committee) your committee have not ‘been able to obtain any returns of any importance with regard to summary convictions in New South Wales. In 1835, the number of convicts in that colony was about 28,000, and the summary convictions in that year were estimated to be about 22,900. In one month, in 1833, as has already been stated, 247 convicts were flogged, and 9,784 lashes inflicted, which would make for the whole year 2,964 floggings, and above 108,000 lashes.” *

The male convicts within the colony in that year did not exceed the whole number, male and female being (as already stated) 22,888. This omission on the part of the local government arose, it is believed, *from the impossibility* of making up the records of the different police offices; or **sufficient** indication of the amount of business transacted by the magistrate in petty sessions: from the same cause the writer is unable to supply the deficiency ; but, some estimate having been given above, of the amount of floggings inflicted upon male convicts during one month in the year 1835, the number of female convicts upon whom sentence of solitary confinement was passed by one of the benches of the colony, viz. that of Maitland, during the year 1837, may be taken as affording a fair criterion of the general conduct of persons of that class ; the number of convict women sentenced was eighty-four, their offences were chiefly drunkenness, insolence, disorderly conduct, and absconding, two were sentenced to six months’ imprisonment each, and eighty-two to various terms of solitary **confinement**, from seven to twenty-eight days, averaging in the whole fifteen days to each.

The women thus punished were about **one-half** of the whole number ‘of female convicts within reach of the bench at Maitland ; and it may be stated, in fact, that about the same proportion of the whole of the **convict** women in the colony are usually confined in the different gaols, cells, factories, and penitentiaries appropriated to such persons.

The vast amount of crime which is chargeable on the colony, however, almost entirely proceeds from its unreformed convict population, for whose moral improvement and proper restraint little has, at any period of its history, been done, and, of the former at least, little in comparison with the necessity is even yet in progress.

That society is visited with great and manifold evils in consequence, **must** neither be denied nor concealed. The judicial experience of the

* This amount does not embrace one-third of the convicts convicted summarily, but only those sentenced to be flogged ; there yet remains to be added those who were sentenced to other degrees of punishment, as of males to the ironed gangs,, treadmill, &c. and females to the factory, solitary cells, &c.

writer, the history of the crimes committed, their frequently appalling **circumstances**, and the scenes which in the course of their investigation have been as vividly described, as though they were transacted before his eyes, the **examination** of many thousand witnesses, and these of all classes and from every part of the colony, have disclosed to his mind a state of depravity amongst those by whom this body of iniquity has been committed, and their associates, which can scarcely be over-rated. Individual instances might illustrate this, but the cause of truth does not appear to require their production, since on this point no inadequate idea has been presented to the public, but rather one of too general a kind. The catalogue of crimes against property and person proves too clearly that both are exposed to the apprehension of attack in a greater degree, perhaps, than in any part of the world which is not the receptacle of convicts.

Happily the grosser injuries, those affecting life and chastity, are, for the most part, confined to the equally worthless associates of those guilty of them. Instances have indeed occurred, within the writer's own knowledge, judicial. and personal, and those, alas ! of extraordinary turpitude, where vice has been permitted, under the inscrutable but unerring arrangements of Divine Providence, to triumph in the ruin of innocence, of either sex, the most undoubted ! but so rarely as to have formed a subject of reflection and much thankfulness, that vicious men have been permitted to have so little power, except *over* one another, and to give additional assurance to the faith and confidence of the **believer** in His protection, who, when he was permitted to fall into the hands of cruel and wicked men, said, " Thou **couldst** have no power at all against me, unless it were given thee from above !"

For this reliance there is indeed great cause, as in it there is the only sure protection : no day or hour but may witness the escape from some of the various places of confinement of a gang of desperate and hardened villains, who, armed with deadly weapons, (and they never rob without them,) surprise the distant settler in the dead of night, and spoil him of his goods, and put in fear and jeopardy, if they do not take away life. No habitation can be said to be secure from the burglar: increasing property increases the objects of dishonest desire, and increasing populousness in the town facilitates escape from detection;

The banditti indeed, whose plunder is obtained in the most violent *ways, rarely evade for long the reach of justice ; they are sure to be tracked by the very means they must resort to for subsistence, and being at last overtaken, either end their lives on the scaffold, or are

transported to the penal settlement of Norfolk Island ; generally according as their **offences** have been accompanied with' shedding **of** blood, or personal violence, or not.

Thus the unreformed condition of the convict class, whether still under sentence or free from it, re-acts upon society in a variety of shapes, as if in retribution for the neglect of that moral culture which alone could render them safely admissible within its pale. There, however, they are festering in its very bosom ; imbittering, endangering, and frequently destroying **altogether**, the peace and security of domestic life. Apart from mere dishonesty, against which the wary may provide, the convict vices manifest themselves continually in the lower order—that of servants of either sex, and **labourers** especially, in a total absence of good **principle**—in language profane, disgusting, and unclean, and in suspicions of each other and of those around them most odious—the offspring only of minds impure. The several places of confinement for female prisoners, containing some **fifty**, and one of them from **500** to "700 depraved women, are so' many colleges from which these missionaries of evil go forth disseminating the poison of their influence, and the venom of their lips into every portion of the colony, amongst all who will receive them into their service ; and scarcely ever for many weeks absent, they return to the same place of common resort, laden with the results of their travels, which they pass **their** time in recounting to each other. Many who have **from** choice (an unhappy one) or from necessity (most hard), adopted into their domestic circles this species of **labour**, have reaped—and it will ever **be** so—their **full** amount of tares.

The corrupting influence of this class had extended, indeed, before **the** recent emigration of virtuous families, to the almost total ruin of **-domestic** servants, and naturally and necessarily has infected, **through** them, in a proportionate degree, the rising generation.

It is time, **however**, as it will be some relief, to turn from the unwelcome **labour** of scrutinizing criminal records, and weighing their results, **and to** devote a few sentences more to a point already adverted to at **the outset, namely, by** whom has the amount of crime in the **colony** been committed ? The **writer** is enabled, from having preserved all his own notes, both official and personal, the calendars **laid** before him by the high sheriff at each criminal session of the supreme court, and his notes of cases he has tried, to arrive at what he trusts is a very correct judgment in this matter, and thereby to rescue the deserving part of the colonists from unmerited censure.

Not to **incumber** the subject with too great length of details, he

has selected the calendars of the Sydney gaol during the years already 'referred to, 1833, 1835, and 1836,* being those for which the amount of population has been already stated, and which he has no doubt present a fair view of the 'question.

The number of prisoners in the Sydney calendar for 1833 was, males, 551, females, 35 ; of these, six came free to the colony, nine m&s and **two** females were born in the colony ; **233** males and 19 females had been convicts, become free by servitude and pardon ; 286 males and **13** females **were convicts** under sentence ; one male was an aboriginal native, and **17** males and one female were of unknown condition.*

In 1835, the total number of prisoners was 547 males, and 39 females ; of whom 58 males and six females came free ; 16 males and one female were born in the colony ; 191 males and 15 females were **free** by servitude, &c. ; **253** males and 17 females were convicts ; two were soldiers, 26 were aboriginal natives, and three men were **unknown**.†

In 1836, the total number of prisoners was, males 573, females 43, **of whom** 50 males and six females came free; 30 males and three females were born in the colony ; 229 males and 23 females were free by, servitude, &c. ; 251 males and seven females were convicts ; six males and **one** female were aboriginal natives ; seven males and three females were **unknown**.†

Again, between the years 1833 and 1838, both inclusive, there were tried before the writer, for various offences, **827** males and 26 females ; **of** these 50 males and 15 females came free, 30 males were born in the colony, 241 males and eight females were free by servitude, &c. 450 males and two females were convicts, **25** were soldiers, 14 were aboriginal natives, and **17** men and one woman were unknown.

But further, of those who came **free**, six were tried for a conspiracy **to defraud** the government, by combining together to keep down the **price** of lands set up to be sold at public auction ; six were sailors on board ship, who had "revolted" (according to the legal construction of **the offence**) from their captain's authority ; two were for conspiracy to defraud creditors; one was for libel ; one upon a criminal information, **for** provoking to a breach of the peace, by placarding a challenge ; two were for gaming ; one was for manslaughter, committed at New Zealand ; and **one was a captain of** a ship, for "forcing a sailor on shore in foreign parts"—the whole number of these, whose **offences** could not be

* All the others, from 1833 to Feb. 1839 (except **one** for May, 1838), are in the writer's possession, and show the same results.

† It is believed they belonged to the **class** free by servitude, &c.

numbered amongst those of the “ more serious” or “ heinous offences,” being 20.

Of those born in the colony, 13 were for horse and sheep and cattle stealing ; four for burglary ; five for robbery ; one for maliciously stabbing ; one for conspiracy to defraud creditors ; one upon a **criminal** information for an assault ; three for knowingly receiving stolen goods, and two for larceny ; being the whole number tried, viz. 30.

The result of these data-and the writer can have no doubt that the cases tried before him present a fair criterion of those tried before the other judges-is to show how very small a proportion of the persons committed for trial, and actually tried before the supreme court, were emigrants and natives of the colony, in comparison to those of the convict classes, and how few of these were charged with atrocious offences.

Respecting those indeed who are noted as having “ come free,” he is strongly persuaded that all of these men, except four or five, and those whose offences have been particularly enumerated, had been previously under sentence at Van Diemen’s Land; the women were, without exception, emigrants of the earlier importation, abandoned women from England, or had been convicts. Respecting the natives of the colony, it will be observed, that there was not one of them ever tried before the writer for any of those atrocious crimes which are attributed to their country, but belong only to the convict class ; nor did he ever hear or know of any person born in the colony, being tried for, or even charged with, either the offence of rape, or any other licentious crime ; nor has he ever found any offence committed by any one of them, such as to call upon him to pronounce sentence of death ; and no such sentence has ever been passed within his knowledge, or any crime committed with such a degree of violence as to justify it.

He has good right, therefore, when the result of his own experience has been that out of 851 persons tried before him, only sixty-five came free to the colony, and of these fifteen were abandoned women in England, or had been convicts, upwards of twenty were tried for misdemeanour ; and when out of the same number of persons, only thirty were born in the colony, and none of those had committed any atrocious offence ; when he knows this to be a fair average of what has occurred before the other judges, to conclude as he did in a former paper,* that “ there has ever been a considerable free and virtuous population in the colony,” and to justify all that has been alleged in

* On the Constitution of the Government of New South Wales, No. 3, p. 332.