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THE RISE OF CRIME IN THE PERIOD 1830-1860

PAUL DOLAN¹

One of the most absorbing subjects of the great middle period in American history is the social transition which was effected. The scope of such movement would demand greater treatment that could even be thought of in a brief survey, but perhaps a somewhat superficial discussion of one particular phase of this general topic may aid a bit in comprehending the full force of the movement.

The chief characteristic of this period seems to be the relentless surge of man against his natural surroundings—especially that to the west of him, the great ever-present, ever-diminishing country “over yonder.” This constant surging, disgourging, and engourging mass movement could not help but leave its mark. We are not interested here with effects in the long run or evidences pointing to what was finally accomplished by this westward drive, but rather let us look at one of the phases of the movement, somewhat as one would at a particular mud geyser among the many phenomena at Yellowstone, and see how it reacts just a bit apart from the panoramic whole.

Crime in its origins and development presents a sorry study even in this enlightened year. Probably the reason is that any study of it always demands a view-point from which to attack the problem. First of all you must know what is the law and perhaps why it is, which latter in itself is deeply philosophic if we include the spirit as well as the letter. Secondly, we have to appreciate or depreciate environmental factors in respect to every alleged criminal act and reach conclusions as to its criminality through a hazy maze of prejudices, pre-conceived opinions, and beliefs in so-called “rights and wrongs.” If the criminologist meets this, small wonder the historian gains an appreciable confusion when he tries to observe the emergence of “illegalness” during the quickly moving days of the “roaring forties.”

The period 1830 to 1850 in a legal sense was one of formation. Codes civil and criminal as expounded in the English law had to be re-cast to meet the new land and the somewhat different people. For one thing, to speak of the trend in the particular rather than

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the general, penalties as meted out by the harsh common law of England could not stand in America. Men were too valuable to hang for stealing a sheep (not horses) or trying to improve on one of the various bank notes of the time. Also it was inconsistent with freedom and "equality" to condemn the poor because he was poor and to tolerate or even pamper the rich because he was rich. This rather inexpressible concept was definitely at variance with the legal code of England that hanged pickpockets but let off a noble who had manhandled an inferior with a light fine. The inadequacy of the English law showed itself early and we have Pennsylvania and Maryland in 1790 and 1809 respectively formally eliminating harsh punishments for lesser crimes.²

Thus America prospered on leniency, but at a price. With the slow growth of the cities after the second quarrel with England, there appeared the first inklings of the infested hell-holes that were to increase with the country's expansion until to-day they present a problem not only for the police but for those who ponder long their nation's future. Lord Bryce writing years later grasped the real significance of the city in the body politic.³ The stench pots grew with industry, and the tariff was their nurse maid. It is in the city that we find the first emergence of the crimes against property and the rise of vice, and they have retained their notoriety as a city phenomenon without diminution.

The American city has progressed far, but the baneful excrescence of criminality and its attendant general immorality still root deep within its walls. The excoriation of the metropolitan areas as the beds of vice and wickedness of course has more point to-day than it did in the days of the stage coach and first railroads, but it is a fact that the rise of crime was concomitant with the growth of the city.

The year 1820 was eventful in more respects than political. It was not merely noted as the year in which the Missouri question was allegedly settled, or the date in which Monroe re-established non-intercourse with Great Britain. In 1820 an act was passed by Congress relating to the slave trade, and along with other maritime regulations, it provided that the slave trade was piracy and the punishment upon conviction was death. There is no record of any execution under this law up to the Civil War, but the fact that the legislation existed furnishes an important link in our study of the crimes of the period. The point is that only a certain section of the

² Hunt, G. "Life in America 100 Years Ago," p. 159 (New York, 1914).

³ Bryce, J. (Viscount) "American Commonwealth," Vol. II (N. Y., 1910).

country considered this a crime. This condition is to be met time after time during these years. Crimes of course are transgressions against the codified mores, and these in turn are based on customs. Strange as it may seem, customs varied greatly in the different parts of the country. If a member of the gentry south of Mason-Dixon's line decided to avenge his Southern honor at six paces with shot-guns, he did so. If he survived, he was a hero and might be sent to Congress. In the Northeast and generally throughout the Middle Atlantic States such activity was frowned upon most severely, and the punishment of the law descended.

In the North to help a slave reach freedom was to put one's self in line for the laurel wreath. In the South, the abettor of an escape stood in danger of "club law." Thus although the Act of 1820 did make the slave trade a piracy, little support could be expected from the South, and after 1850 the movement for restoration of the trade became a crusade, led by the fire-eaters who were literally fed-up with the damyankees.

Sectionalism injecting its disturbing features into the politics of the nation, touched all the phases of life, and as it had its basis in the customs and beliefs of the people of each section, it went far in determining the moral standards. As the sections differed one from the other, so differed the morals. It is this fact that has made the study of the crimes of the Middle Period a succession of differences and comparisons rather than the treatment of a specific problem nicely bounded by set rules, forms, and features. America in 1830 to the War Between the States was a conglomeration of differences, and perhaps it still is, but unless this fact is appreciated, one cannot hope to understand why a gambler on the Mississippi was generally tolerated so long as he didn't violate "the code," while the indolent, idle fellow in New England might find himself jailed as a vagrant.

The most notorious city in the country from a criminal statistics viewpoint in the early '50's was New York.⁴ The great trading metropolis met the wash of Europe; through it went the Germans toward the Northwest, the Scotch-Irish (whatever they are) into Western Pennsylvania and toward the Southwest, but the great mass of "low-class" Irish, the so-called "bilge of Europe" of the earlier immigration period in our country's history, i. e. until their place was taken by the Southeastern European, settled in the city proper. How so many were accommodated still remains a question. New

⁴ *New York Herald*—March 7. 1853.

York was not an overly industrialized center, although the shipping trades gave a good bit of work. Nevertheless lower New York was Irish and remained so until supplanted by the Jew and the immigration of 1890. It was the Irish therefore that served as the nucleus of the famous New York gangs. These were organized bands of boys and young men with a leader or sometimes several rival leaders whose chief purpose was to see that their men were in good fighting trim and that sufficient rows were stirred up to keep them in condition. Most of the fighting took place between the gangs themselves. Under such appropriate banners as the "Dead Rabbits", "Plug Uglies", "Roach Guards", and the "Shirt Tails" the denizens of the underworld would sally forth. Usually they began their battles close to dusk and they would last well into the night. Several persons usually were killed in the melees, but no gang ever seemed unable to replace its casualties. Their bailiwicks were places like the old Brewery down in the famous Five Points section of the city. There were subterranean passage-ways and tortuous alleys that led to places impenetrable by the uninitiated. It is said that a murder a night was committed within the confines of the old Brewery itself,⁵ but very few arrests were ever made. The residents were a law unto themselves, and from the records it appears a veritable feud was rampant within the deep recesses of this 1830 tenement. The police dared not attempt an assault upon the place unless they operated in squads numbering upwards of fifty men, and even then they always lost several.

The male members of the gangs were ferocious enough, but if any spirit was needed to make the battle a bit more bloody such female characters as "Hell-Cat" Maggie more than provided it. It was these gangs (or rather the vestiges of them) that made the draft riots of 1863 so terrible, and they were not subdued until the federal government in conjunction with the State of New York finally used the militia.

Along with this hoodlumism went the filth and dirt of New York of the early '30's and '40's, police and sanitation were slow in making their appearance, and the frightful conditions⁶ persisted until well into the 1860's, with all the attendant vice and corruption. City politics acquired the tenacious parasitic grip they still hold. It was with the general extension of the suffrage during the Jacksonian Era that the ward heeler made his appearance. Graft and

⁵ Asbury, H., "Gangs of New York" (N. Y., 1928).

⁶ Mitchell, D. W., "Ten Years Residence in the United States," p. 144 (London, 1862).

elections were concomitant if not synonymous, and "protection" was had at a price. Conditions became so bad toward the later '50's that the State of New York decided to provide the city with a police force. This led to a series of altercations between the Mayor and the state police that finally was settled by the state militia after the Mayor was arrested. Gambling, lotteries, and prostitution flourished—all under the "protective" system. In fact the last named vice became quite fashionable, and the European method for handling this particular evil was introduced. The reform movement that swept through the East during the late '50's curtailed it, but never stamped it out entirely?

What has been said of New York could apply in a lesser degree to Philadelphia, Baltimore, Chicago, and New Orleans. The cities were the main points of racial conflicts, therefore they furnished the means for constant misunderstanding among religious and racial groups that eventuated in mob force. This last in the indicative mark of the criminality of the second quarter of the 19th Century. Mob spirit with all its ruthlessness and savagery expressed itself time and again. Anti-Masonism, anti-Catholicism (which found its outlet in such acts as burning of convents), secret societies such as the Know-Nothings, and organizations like the famous night riders in Indiana were the outgrowth of intense hatred and prejudice that were based on ignorance and fear. Some of these were utilized by the politicians, and they persisted almost to the Civil War, the rest were either superseded by other fanaticisms such as abolition and religious revivals or merely disappeared because of disinterest on the part of the various adherents. Several European visitors, writing upon the impression obtained from their visits, have attributed this to the contact of the whites with the aborigines.⁷ This seems quite far-fetched when one considers that mob action in the pure destructive form occurred almost exclusively in the cities, whereas the posse comitatus of the South and West was a law force rather than a riotous, unlawful gathering. Even to the present day the vast stretches of the West still depend on the posse to quell disorder or punish the errant. It was the city in the East that had to have the organized police force long before the West and South ever considered municipally paid legal protective agencies. Of course, the city dwellers never had contact with the Indian (perhaps with the exception of Chicago). The struggle with the Indians may have attributed to the quick action, characteristic of the punitive

⁷ Cole, A. H., "Irrepressible Conflict" (New York, 1934), p. 155-6.

⁸ de Tocqueville, A., "Democracy in America," Paris, 1840.

expeditions in the West, but we cannot blame the criminal passions of lower New York and the Atlantic coastal metropolises upon the red man.

The West, or more specifically the frontier, was the scene of brutal wantonness with respect to both life and property during this period, and the apparent rawness that pervaded the frontier society no doubt did provide the European traveller with the feeling that the ferocity akin to that of the savage was a prevailing characteristic of America. True enough the drunkenness of the West differed from that of the East only in that it took more to make the Westerner drunk. Gambling with cards, dice, or horses was a Southern and Western pastime more so than in the Middle States, but it probably was a means of amusement rather than a method of gainful employment.

Land speculation, which most frequently was of a very shady sort, prevailed throughout the West, but here again, without making too many excuses, it was due to local conditions. To the frontier mind the acquisition of land was paramount, and with the constant lure of new territory ever beckoning and the continual pressure of people from back East, the turnover was too fast and too furious for such minor details as "clear title" and "fair return." First come received the choice acreage, and if the government land agent hadn't helped himself too liberally there was a sizeable profit available if one wanted to sell and move, or sell and buy up something else at the "ground price" with the hope of another clean-up.

The early improvement in the form of canals and roads presented an easy means of quick enrichment, and as state aid was enlisted, it was an extremely easy matter for those in the confidence of the politician to reap a harvest by obtaining land cheaply and then manipulate the legislature so that a canal would come close by with the subsequent rise in the value of the holding.⁹

The Panic of 1837 helped curtail state financing, and general speculation at the expense of the government waited until the era of the railroad before it again appeared. The corruption that ensued when the railroads were projected belongs mostly to the latter part of the '50's and to the scandals of the post-bellum period, but as an instance of the manipulations of these times it is of interest to note that governors could be "reached" for \$50,000 and senators for \$10,000. The Panic of 1857 itself could be traced to a large degree to the inordinate and insensate speculative fervor of the

⁹ Paxson, F. L., "History of the American Frontier," devotes several chapters to early state financing of canals and internal improvements.

'50's which in connection with or on account of the increase in the amount of gold in the country made men forget that wealth only comes from labor and land.¹⁰

Licentiousness as a rule flourished in the frontier towns where large groups of men gathered without family or home. Drink and cards were ever present, and the staid religious precepts of New England had little effect. One governor of Missouri boasted that "the Sabbath had never crossed and should never cross the Mississippi."¹¹ Such expressions were probably caused by contempt for the regulations and restrictions of the effete East rather than evidences of a deep-seated immorality. The demand for law quickly showed itself in these western communities as witness the vigilante movement in California and then in the silver country, but it was a much rougher and quicker-acting law than that which held in the East, and it was no doubt so ruthless at times that many actually did mistake it for lawlessness.

In the Southland criminality was more limited to such "anti-social" acts as helping a slave escape, insulting a white woman of your own stratum or better, or stealing stock. Murder and assault were hard to distinguish from what was known as maintaining one's honor. The duello was accepted as a gentleman's duty, and it was a distinction to leave the world via the field of honor. It was said, however, that only one in every ten thousand white men made use of this privilege. The incessant drinking of hard liquors no doubt was a contributing factor to this honorable method of murder, but the basic cause seems to have been the pride of the Southern gentry. Southern "honor" meant something even if it did include such a method of attack as Brooks applied to Sumner, and unless the "blood" of the South is appreciated in its "true" sense, the many excursions from the Ten Commandments will appear as willful violations. They were far from this. Morality was a virtue highly respected by every Southerner, but its meaning depended on the code of the South. Thus one could shoot down his contemporary for a slight aspersion to his honor, but was quite within the code if he asked his friend to endorse a note which he knew was worthless.

The police authority throughout the country at this time was purely a local matter. The federal government had nothing whatever to do with the enforcement of the criminal law unless the

¹⁰ N. Y. Times—May 25, 1858.

¹¹ Carman, H. J., "Social and Economic History of the United States," Vol. II, p. 86 (New York, 1934).

crime was against the mails or was committed within the exclusive federal jurisdiction such as the high seas. One English traveller was bold enough to hold that it was fortunate the federal government did not handle the criminal administration because it would have been "ten times worse."¹² Considering the legal reasoning of the period it would have been impossible for the federal government to have handled it and remained within its constitutional limitations. It is almost impossible to conceive the recent activities of the Federal Bureau of Investigation being tolerated in the days of Calhoun. The states themselves were not called upon to enforce their own criminal codes, if they had one. Individuals usually were able to defend themselves from incursions against their persons or property. In an agrarian economy this state of affairs could exist with little trouble, but with the rise of compact metropolitan areas there developed the rules of urban society necessitated by the utter impersonal atmosphere that obtained. Contraventions of these rules grew in proportion to population and to rise of economic activities. As one eminent penologist¹³ points out, banking gave rise to embezzlement, the transportation of large sums of money from place to place helped increase highway robbery, and unbalanced sexual proportions as existed in the larger industrial centers of the East led to an increase in sexual crimes. As America developed industrially, its criminality "increased." This "increase" has been largely one of statistics and definition. Today we think we know what crime is, that is we have facts first as to what are crimes, then what are their cause, effect, and trend. However, it is difficult to compare our statistics of today with the record of the period between the opening of the West and the beginning of the War Between the States. Definition of crime depended on the customs of the locality in which the act was committed, and where the range of customs was as wide as it was in the early period of the United States no definite, codified, national moral structure could be erected. We must take into account the several different sectional groupings in ante-bellum America. The states were united as far as the political form was concerned, but in their several domestic or sectional cultures they lived in different worlds. Crime, therefore, in the period under discussion was an indication of our internal diversification rather than a mark of a general lawlessness or universal disrespect for order.

¹² Mitchell, D. W., "Ten Years Residence in the United States," p. 150 (London, 1862).

¹³ Wines, F. L., "Punishment and Reform" (New York, 1895).