
THE OBSOLESCENCE OF CRIME

FORMS

by

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Abstract: *Little attention has been paid to why offenses become obsolete or obsolescent. In the context of attempts to reduce crime, it is necessary to consider reasons for past successes. This paper presents a preliminary classification of reasons for the obsolescence (legal abolition, court action, action by police and customs officials, economic and social change, and population density) of 24 offenses (e.g., bribery of voters, eavesdropping, "furious driving," and sqfebreaklng.) The Issue of how new offenses are created may bear on their eventual prevention. It appears that deliberate preventive action is only rarely successful, and that obsolescence is largely the unintended consequence of economic and social change.*

INTRODUCTION

As criminal justice agencies react to current levels of crime, past successes in the eradication of particular crimes seem to be ignored, as though these had no bearing on the present situation. These successes arose in different ways and it is the variety of these ways which needs examination. Further, not all the successes have been total, and some have resulted only in certain crimes becoming obsolescent (i.e., in the process of passing from the scene), rather than obsolete. As policymakers continue to try and determine how to suppress crime, they need information on ways in which obsolescence of crime types has been achieved in the past. Not all these ways may be suited to modern conditions, and some may be impossible to activate at will. Nonetheless it is essential to attempt to list the elements which are known to have worked, rather than merely confronting puzzles which appear insoluble. Some of the apparent causes

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of obsolescence are legal abolition, court action, action by police and customs officials, economic and social change, and increased population density. Each of these will now be considered in turn, with examples of crime forms which they might be supposed to have affected.

CAUSES OF OBSOLESCENCE

Variations in the type of classification affect the outcome of the assessment, and several factors operating together rather than the somewhat artificial presentation of one alone may be responsible for obsolescence. For example, coining (making false coin) in all its manifestations might be affected by the level of sophistication of victims, forensic science, communications technology and the original engraving detail in the first place. Alternatively, the obsolescence of wrecking (ships willfully and deceitfully misdirected to their destruction so that their cargoes could be pilfered), nomadic crime and highway robbery appears to be multi-factorial, although for convenience they are discussed below under "action by police and customs officials"* and "population density."

Legal Abolition

Legal abolition can arise where changes in the law are made to remove the sanctions applied to particular behaviors, or to re-classify them under other headings. Such decriminalization can occur where the offenses are no longer committed (and the reason why should be established), or where the public attitude has become more tolerant and less punitive. For example, sacrilege ceased to be a crime with the changes introduced by the Theft Act (1968). In addition, the offense of being a "barrator" (one who "vexatiously incites to litigation or raises discord"), a common scold and a night walker were abolished by the Criminal Justice Act (1967), as were the offenses of challenging to fight and eavesdropping.

Court Action

There are cases where prompt deterrent or exemplary sentences are thought to have been responsible for stopping crimes which appeared to be in danger of becoming widespread. For example, the 1950s race riots directed against black immigrants in London's Notting Hill district and in Nottingham (Glass, 1960). and. in the 1860s. garroting (strangling with cord or wire). Severe exemplary sentences were used to try and control

garroting, and judges at the time and subsequently claimed success for this as a deterrent. The claim does seem justified—and a rare case of a deterrent actually working—since garroting stopped almost immediately after exemplary sentences began to be passed. The Garroters Act (1863), rushed through at the height of the wave, was not repealed until 1948. However, many features remain unclear, not the least being why garroting was so apparently "detractable" relative to other types of assault. More surprisingly, given the ease with which it could be performed in secret without detection, is why harsh sentences were a deterrent at all. Garroting was probably first used since ordinary mugging by intimidation was felt to be too dangerous for the offender in terms of the victim knowing his identity, because anonymity on the streets then was not so readily assured as it is now in large cities. Here, deterrent sentences apparently "worked," and we are still rather unclear as to why they should in this particular instance.

Action by Police and Customs Officials

Apart from conventional policing, the use of special squads and developments in forensic science have had considerable impact on crime. "Steaming," a form of high-speed mob bag-snatching first in evidence at London's Notting Hill carnival in 1987, declined as a result of the use of special squads.

An earlier example comes from policing London's Thames River. In the eighteenth century, theft from ships in the river Thames had reached epidemic proportions. In the last few years of that century, it was estimated that about 10,000 people "working" on the river were part of an organized syndicate involved in robbery, piracy, prostitution and theft (see Critchley, 1967). When the Thames River Police was founded in 1798, its object was to take direct action against criminals operating on the river. To do this the police used a combination of armed patrols of constables cruising the river and reliable dockers to supervise the movement of ships' cargoes. The result was entirely successful: Crime no longer became possible or profitable on the Thames. Direct action worked largely because the task was to drive criminals out of a specific area (the Thames), which, although a large one, was relatively easy to both patrol and oversee.

There is a contrast here with wrecking, the practice of deliberately misdirecting ships so that their cargoes could be pilfered. The coastlines of the Scilly Isles and Cornwall were particularly suitable for this crime.

and attempts at direct action merely resulted in displacement. Officials would often have their hands full trying to cope with smuggling, and a raid in one area would merely be followed by an outbreak elsewhere. The decline in wrecking has been traced to a combination of more effective policing, improved navigational methods, increased use of coastal warning devices, replacement of sail by steam power and peoples' changing ideas of permitted behavior (Rule. 1975).

With wrecking, the failure of direct action on its own and the resultant displacement were attributable to geography. A long coastline meant many choice points for wreckers, and a large number of secluded bays provided many hiding places with poor surveillability. The task of capturing the Thames River thieves was much simpler and more practicable than that of ousting wreckers. In the former case direct action worked, whereas in the latter the mobilization of large-scale commercial and defense resources was also required before there was any appreciable impact. These resources were activated primarily for purposes other than the direct suppression of wrecking, that is, to improve the safety of sea trade generally.

Forensic science has been most notably successful in making the crime of poisoning obsolescent. This has been accomplished through the techniques of small-sample identification, and through coordinated knowledge, which meant that there ceased to be such a thing as an unknown poison. Before this, because of poor toxicological knowledge, murder by poisoning was often suspected and rarely proved. To give only a single illustration, when the Emperor Napoleon died in 1821, although it was strongly rumored that he had been poisoned, it was never proved. There was a great deal of fear of poisons—as evidenced by the medieval occupation of royal food-taster—and threat, deceit and secrecy surrounding their use. Citizens had to live with the knowledge that there were "secret venoms" and exotic "gypsy" poisons whose nature was known only to a few, and yet the means to understand how they could be identified were so limited that only the grosser cases of poisoning were discovered. A number of deaths through poisoning also occurred due to ignorance and carelessness, which further confused the issue.

This disturbing state of affairs created a powerful pressure for rapid toxicological advance, not only because of crime but also because of accidental death and suicide caused by poisoning, inadvertent industrial poisoning and, at the beginning of the century, possible military uses by a foreign enemy. The situation changed with the increasing acquisition of

detailed forensic knowledge concerning symptoms and, ultimately, the availability of means to identify a poison from a small sample through the use of chromatographs, spectrographs and spectrophotometers.

Once forensic knowledge had developed to such a pitch, establishing who might have administered the poison was a much more feasible task. By about the 1940s we see the virtual end of poisoning, as potential offenders were faced with almost certain identification and capture. Although one might have expected there to be considerable relief at the end of the poisoning threat, the demise seems to have passed almost unnoticed. No doubt this was because isolated instances still occurred. Poisoning is one of the very few cases where a deterrent, in this case the certainty of capture through forensic knowledge, actually does work in virtually all cases. The attack on poisoning has been perhaps the most startling success in crime prevention, yet one that is rarely remarked upon.

Economic Change

Circumstances that permit or make a crime "worthwhile" may cease to exist. A group of crimes which are based upon the erstwhile isolation of predatory rural communities provide instances of this, e.g., shooting at naval or revenue vessels, assaults on persons preserving wrecks, impeding the saving of life from shipwreck, or wounding officers employed in the prevention of smuggling. Additional crimes which might come under this heading—instances where there has been a cessation of profitable feasibility—are fraudulently concealing ore or sending an unseaworthy ship to sea.

There have been a number of particularly obvious general change factors, as follows:

(1) *The shift in transport from horses to cars.* This development, which was complete by about the end of the 1950s, virtually eradicated the crimes of horse theft and "furious driving," as well as the "faking" of horses to make them appear healthier than they were for sale.

(2) *Improved communications, especially the use of police radio and telephone.* The emergency "999" service was introduced in Britain in 1937, and by 1987 had about 17 million calls a year relating to requests for help from the police as well as from the ambulance. Coast Guard and fire services.

(3) Improved lighting and surveillablity. The first introduction of street lighting must be distinguished from improvements to it. In seventeenth-century London, the provision of street lighting was looked upon as "the only answer to disorder" (O'Dea. 1958:98). but its precise effect when it was introduced in London in the last quarter of the nineteenth century is not known. Taken on its own, improving street lighting as a prevention measure unexpectedly appears to have had no effect on the incidence of reported crime (Atkins. Husain and Storey. 1991: Ramsay and Newton. 1991). although it can help to reduce citizens' fear of crime (Ramsay and Newton. 1991). Combined with increasingly effective restrictions on the availability of stolen explosives, employment of the concept of surveillability has had a crushing effect on safebreaking. This applies to instances where floodlit safes are left locked but are on open view, protected by alarms and shop window glass.

(4) Increased hospital provision of Intensive care units, and of specialist accident and trauma surgery units. These must unquestionably have reduced the number of people dying of wounds received from criminal attacks (Brantingham and Brantingham, 1984, Wolfgang and Ferracuti, 1967). The introduction of the ambulance service in Great Britain by the National Health Service Act (1946) must be assumed to have had a similar effect.

Social Change

Patterns of interaction and behaviors which might affect crime can change according to weather, economics, fashions and norms. A less morally censorious society that has relaxed its severity toward adultery, divorce, homosexuality and pornography in the last 30 years is no doubt responsible for the reduction in blackmail. A further factor in this is the more realistic attitude toward eliminating its possibility taken by the security services, who permit people to "own up" to proclivities which 50 years ago would have been unthinkable.

Population Density

From the estimate for 1750. the population of England and Wales has increased by more than 800%. The sheer quantity of people unfavorably affects the prospects for the commission of some crimes, for example, bribery of voters or nomad-related crime. The latter was predicated upon itinerants first being able to unobtrusively drift into a place of their choice

to stay in as a base, whereas population pressures have all but enforced stability of residence, which precludes this type of crime.

Up until about the 1940s the presence of large numbers of itinerants in British society—most notably, tinkers, gypsies (and later pseudo-gypsies known as *dldekais*), hawkers and travelers—was a continuing source of friction. Members of such groups sometimes committed crime, chiefly theft, intimidation and operating under false pretenses such as the "hokano baro" confidence trick.¹ Gypsies were often able to escape the consequences of any crime which they had committed through moving elsewhere. The history of hostility and prejudice toward them was ancient and intensified by their use of secret languages, as well as of distinctive clothing. They performed a scapegoat function, too, since when all else failed the gypsies could be blamed. There were a number of reasons for the demise of the nomads and their crime. It was known that their numbers swelled on the return of servicemen from foreign wars, so that after every major campaign there was legislation designed to hit itinerants harder in an effort to try and eradicate them. After the Napoleonic war, the Vagrancy Act (1824) was passed, sections 3 and 4 of which itemized and proscribed the activities which were of most concern, such as begging, refusing to work and not being of fixed abode.

Apart from increased legal powers to chivvy nomads, there were other features which operated in unison to squeeze the square pegs into round holes. One was the dwindling amount of forest and common land, the progressive destruction of which reduced the amount of unallocated space available for nomads to wander in. (During World War II, farmers were encouraged to cultivate the common land in order to produce much-needed extra food, but after the war this land was not returned to the community.) Another was a growing pressure to be of "fixed abode" coming from the state, the employer and the Educational Authority. There were also crucial changes in the occupational structure which functioned to pull the rug from under nomadic feet. In the nineteenth century, there had been many ways for itinerants to earn a living, either independently (as with knife-grinding or hurdle-making) or seasonally (as with threshing gangs, or pea or strawberry picking). But there came a time when cheap factory-made products and farm mechanization largely swept these aside, and few goods or services that the traveler could supply were marketable in modern society. Since dwindling to virtually nothing by the early 1960s, nomadic groups have undergone brief, sporadic and bogus resurgences intermittently. On the whole, however, nomads and their associated crime

seem to have been largely abolished by socioeconomic forces arising inexorably from increasing industrialization and population pressures, rather than from repressive legislation.

Highway robbery falls into this category, and is of interest because—with the exception of a very few incidents—it appears to vanish without trace past a certain point. This came about as a result of a range of issues related to the change from a rural to an urban society. In particular, growing urbanization entailed verge clearance, road widening (both necessitating the removal of dense thickets behind which riders could hide), street lighting, increased traffic flow, the introduction of an efficient police force (1829-56) and a more dependable banking system (which meant that travelers did not need to carry valuables with them as frequently). All these changes operating in unison gradually reduced opportunity, heightened surveillability and meant the end of highway robbery as a profitable or feasible activity. (Although "motor bandits" had arisen by the 1930s, they were largely involved in smash-and-grab raids and were not immediately comparable with highway robbers).

DISCUSSION

The above six factors might initially be thought to be chiefly responsible for the obsolescence of a group of at least 24 crime forms: assaults on persons preserving wreck: barrator: blackmail; bribery of voters: challenging to fight: common scold: eavesdropping; fraudulently concealing ore; furious driving; garroting; highway robbery; impeding lifesaving from shipwreck; night walker; "nomad" crime; poisoning; race riots; sacrilege; safebreaking; sending an unseaworthy ship to sea; shooting at naval or revenue vessels; "steaming": Thames river crime; wounding officers employed in the prevention of smuggling and wrecking.

Following this a stage further, it becomes increasingly apparent that specific crime forms apart, there has been a remarkable and largely ignored success story in reducing the level of assault and violence over the centuries in Britain. Most especially in this case it must be assumed that the diminution has a multi-factorial origin, since legislation alone might not be thought to be a sufficient cause of the eradication of private armies and generational feuding which so signally mark this success, in notable contrast with many other countries' failure to do so. For centuries English history has been woven around invasions, brutal murders, warfare, pitched battles, riots, rebellions, acts of pointless cruelty, plots and

massacres. It has been estimated that the homicide rate in the thirteenth century was, depending on county, between four and 26 times higher than it is now (Given. 1977). Although the current level of violent crime is "too high"—it could never be low enough—to say that it is "high" is to utterly disregard the quite startling achievement in reducing it from what it was to what it is now.

It is only when trying to list the components responsible for this success that the extent of interaction between them becomes apparent. Neither direct military power nor a strict legal system is enough, and Christianity does not have the effect of preventing bloodshed. Over time, a host of factors together have given rise to particular criminal opportunities and have simultaneously functioned to suppress others. For example, the clearing of the primeval forest, seafaring skills which inter alia facilitated trade, the settling of the original nomadic tribes through agriculture and industry, the Magna Carta, the ancient markets and fairs, local attempts to construct and sustain small-scale communities based upon regional industries, and so on.

In view of this it appears rather naive to ask how violent crime can be reduced still further, though this is most certainly a laudable enough objective. But so much has been achieved already through means that are only imperfectly understood, that it is scarcely possible to say "Let us continue with this process, but make it work faster than it has been working." when there is little clear information on how it has been operating in the first place. (Not surprisingly "coercion" or "force." for example, do not appear to have played a major part in it.) Nor can it be said that the process will occur "anyway" or "naturally." when we have instances across the globe of how the inevitable and natural may be expected to produce further conflict. What is currently being done in attempting to reduce violent crime is to psychologize offenders and (not unexpectedly) to incarcerate them, while ignoring the process of progressive reduction in the volume of violent crime that has never been understood.

This discussion is a digression to indicate the complexity of prevention or even reduction. It is most improbable that this can arise merely by doing one thing alone; apparently it is usually only multi-factorial changes which are able to completely destroy crime forms. Asking whether eradication inevitably leads to displacement elsewhere must produce the answer "not necessarily." since it must be apparent that offenders stopped from coining, for example, do not necessarily turn to robbery. Cessation can

occur just as well as displacement can. Heal and Laycock (1086) in any case found little indication of displacement effects. However, while depicting a general decline in the professionalism of offenders, Cusson (1993) convincingly argues that there has been an important general within-category trend in displacement toward the vulnerable.

Further new crimes can also be created, and it would be interesting to consider the process. An assumption might well be that opportunities, so far from occurring randomly, are created unwittingly by the culture or, more specifically, by the victim's behavior. This is not to blame the victim but to argue that his or her standard behavior may act like a starting pistol for the aggressor, whereas it may take several moves in synchronization to make a crime obsolescent (technical, economic, behavioral and so forth). Bearing in mind that "the criminal event is a systematic result of the convergence of people and things over space and time" (Felson, 1986:121), it needs only one small change to create the opportunity loophole that starts a new crime form. Below two examples are given of the influence of victim behavior upon the creation of new criminal opportunities.

The first example is provided by the new crime of "ram-raiding" (a term first coined in 1991), whereby offenders use cars to shatter shop fronts and then loot from them, favored shops being those with high-value electrical goods. This only became possible when owners asked shopfitters to supply floor-to-ceiling windows to make their goods on display appear more attractive. Before this time, the "old-style" shop window was not continued to ground level but stopped at roughly waist height, and was supported on a substantial wall which precluded ram-raiding.

The second, much earlier, illustration of how new crime is created comes from considering opportunity and availability in the medieval forest. Royal decree generated a block of new crimes, and a problem was then posed as to how to punish the offenders (Manwood, 1978). The entire issue arose because of William the Conqueror's determination to make much of England into a game reserve for his private use. With the arrival of the Normans in England in 1066, hunting and the chase became more systematically organized for the benefit of the nobility than they had been previously. The king declared particular parts of the realm to be Royal Forest within which he gave himself exclusive hunting rights. This not surprisingly produced considerable ill feeling. To create the New Forest, for example, several villages first had to be destroyed and scores of families were evicted, with the sole object of providing pleasure for one person and his friends. Commoners who saw people turned off their homesteads to

create the forest would come to detest the apparently idle pleasure-seekers who hunted in it. Especially in winter, the temptation to take the game must have been very great for those in the nearest villages, intensified by the fact that some commoners were granted particular rights within the forest (such as those of estovers, turbary, piscary and pannage), which would mean that in the process of collecting firewood it would be easy to poach. Only being hunted infrequently, much of the game would be relatively tame, and there would be seclusion and—particularly during times of famine—pressing need.

To check any hostile or contemptuous response from commoners, apart from normal law, forest courts were set up with the power to sentence offenders to forest prisons. There were three forms of court: the court of wood-mote, otherwise known as the court of attachments; the swainmote; and the justice-seat, which dealt with crimes committed in the forest and against the king's authority. To enforce forest law, six different classes of officer were utilized: a steward, verderers, foresters, regards, agisters and woodwards. Forest courts provided severe punishments for infringements of forest law. For example, the penalty for killing a deer was to be blinded. Poaching in royal forests was only one of a number of offenses against forest law; two others which were common were assarting (creating arable land from woodland by cutting down trees), and purpresture (building a house within the precincts of the forest). The severity of the laws would have been alarming enough, but particularly under King Richard (1189-99) and King John (1199-1216), there was continual pressure to expand both the number of forests and their size. Further, forest laws were subtly being extended to private estates at the same time. Resentment by commoners must be supposed to have grown as afforestation did. The first charter of the forest was made by Henry III in 1217, the royal forests being supposed to continue in perpetuity. Yet by the late seventeenth century the forest laws largely fell into desuetude, no doubt in part as a result of the anti-royalist Cromwellian revolution.

The incontrovertible conclusion is that, rightly or wrongly, in the case of medieval royal forests the victim's behavior created the new crimes through criminalizing actions which would previously have been considered quite normal, such as land reclamation, house-building or hunting. Having criminalized them, an elaborate and separate system of justice was required to enforce the proscriptions. To eradicate the crimes or at the least to make them obsolescent required a change in victim attitude, which did not occur.

The fact remains that victim behavior can create opportunities which offenders may exploit, but it is not always the case that victim behavior can be altered to forestall crime. What frequently occurs is the addition of criminal opportunities resulting from changes made by businesspeople in the interests of furthering their money making, the introduction of the expanded opportunity to shoplift in self-service shops in the 1950s being a case in point.

CONCLUSION

A cursory glance suggests that, legal abolition apart, direct preventive action has not been as successful in producing obsolescence as economic change and the absence of circumstances which either permit the crime or make it worthwhile. It goes without saying that the benefits of conventional policing remain incalculable to a community, but acting alone rarely could it realistically be expected to achieve the utter destruction of a crime form. Those crime forms discussed above are a few which have largely vanished, but when they were operative, people charged with the responsibility for criminal justice policy were at their wits' end trying to find ways of stopping them. Cessation can be discussed in terms of our current limited vocabulary of prevention-related words, such as displacement, target hardening, surveillability and so forth. But what we have seen for this group of crimes is that they commonly ceased by "accident" as a result of social, economic and technical change which makes them unrewarding to commit and their perpetrators increasingly likely to be caught as their "cover" dwindles. Only rarely is the end of such crimes brought about by action aimed at them (despite all the urgent debate at the time over the immediate need for such action, and for more police and resources to carry it out).

Storr (1026) describes a special case of the intended ideal, in fact a most unusual situation, where obsolescence occurred upon criminalization as it is supposed to. The case is that of the duel, which eventually ceased as the result of a successful criminalization campaign. Before the 1500s duels were unknown in England, but resolving quarrels through ritual combat involving pistols or swords became increasingly common during George III's reign (1760-1820), when there were 91 fatalities out of 172 duels recorded. The duels originated as a result of subtle notions of honor and insult held largely by the elite of the officer corps, but requiring the consent of both parties had never been regarded as crimes until 1808,

when a survivor was sentenced to death and executed. An association consisting of influential members of the elite was formed in 1823 for the suppression of duels. It was sufficiently powerful to effect an amendment to the articles of war in 1844, which stipulated that duelists were to be cashiered or court martialled and which was incorporated into the Army Act (1879). Duels largely disappeared once they were officially criminalized and discredited by the army, although isolated instances cropped up until at least the 1880s.

More often crimes appear to cease when, direct action apart, other inevitable change processes occur that overpower them. It may be that these are unrepresentative examples, or that the interpretation put upon their termination is wrong. It is difficult to say with great accuracy exactly when any crime form stops. And if it cannot be precisely known when one does stop, then of the various influences which may effect its "tailing off" or decay, different observers may emphasize different influences. A conclusion which might be drawn is that crime control is largely the unintended consequence of economic and social change, and that direct action rarely works except insofar as it boosts morale and is necessary so that citizens can see that something is being done (to reduce the likelihood of people taking the law into their own hands). However, such a discussion does not deal with crimes which are still continuing—the theft and assault which has gone on for centuries. The standard view is that this crime is immune-resistant, and appears to have learned how to adapt and survive under all conditions and social and economic changes. But such a view is strenuously challenged by situational crime prevention practitioners (e.g., Clarke and Mayhew, 1980; Heal and Laycock, 1986), and especially by Clarke (1992), who has assembled a weighty collection of evidence to demonstrate that it is possible to prevent even core crime, providing that precision-ground counter-measures are applied to specific offense categories.

NOTE

1. The "hokano baro" con trick began with the selection of a suitably gullible victim to whom the gypsy offender pretended to confide that "his people had always known that there was treasure hidden in the victim's house.

Over time, gypsy and victim would agree to cooperate to get the treasure. The victim would be persuaded to tie all his valuables into a bundle and leave it in the cellar, supposedly to help "draw" more gold there. Amongst such mumbo-jumbo, a condition was imposed that the bundle should not be touched. An identical-looking bundle of valueless goods would finally be smuggled in and substituted for the real one, which the gypsy would steal before promptly leaving the area (Vesey-Fitzgerald, 1944).

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