



VOL. 7

ISSN 1595-7047

2017

| | |
|---|-----|
| Patient's Freedom and Informed Consent in Nigeria: A Symbiotic Relationship - Ibitoye, T. R. | 1 |
| De-Criminalising Libel in Nigeria: A Cue from Ghana and the United Kingdom - Oluwafunmilayo Adesina-Babalogbon | 25 |
| Legal Appraisal of the National Industrial Court of Nigeria - Marcus Ayodeji Araromi | 43 |
| Beyond the EU-ACP EPA: How African Countries can Attain Development through Trade - Daniel Philemon Saredau | 69 |
| Jurisprudence and the Conundrum of the Benue State Anti-Open Grazing Law and the Implications for the Administration of Justice in Nigeria - Adebayo Williams Adewumi | 97 |
| Acknowledging Birth Registration as a Child's Fundamental Human Right in Nigeria - Osifunke Ekundayo | 120 |
| Terrorism and Hate Speech: Distant Relatives or Close Cousins? - Hassan Adebawale I. | 139 |
| The Legal Regime of Electronic Commerce in Nigeria: Problems and Prospects - Ibrahim Shehu | 157 |
| Exploring the Threat of Child Recruitment and Exploitation by Terrorists and Religious Extremists in Africa: A Reflection on International Legal Standards - Oluwakemi Odeyinde | 174 |
| Environmental Degradation in the Niger Delta Region: A Quest for Justice - Kingsley Osinachi N. Onu and Ebihor Deborah | 194 |
| Body Type Theories and Crime Causation: A Crimino-Legal Discourse of the Offences of Robbery, Stealing and Obtaining Credit by Fraud in Nigeria - Akingbehin Emmanuel Oluwbenga | 223 |
| The Right of Aliens to Hold Interest in Land: Demystifying the Conundrum of "All Nigerians" and "Any Person" As Used in the Land Use Act - Oluchi Nwafor-Maduka | 246 |
| Multinational Enterprises and Transfer Pricing in Nigeria: Tailoring the Arm's Length Principle for Development - Derek Adetokunbo Obadina | 267 |
| Reparation as a Veritable Tool for Redressing Women's Reproductive Rights Violations in Armed Conflicts in Nigeria - Folakemi O. Ajagunna | 295 |
| The Phenomenon of Child Marriage: A Violation of Human Rights - Ayoola Abuloye | 317 |
| Corruption in the Defence Sector and Armed Conflicts in Nigeria: Defining the Nexus - Deborah D. Adeyemo | 332 |
| FIFA and Mandatory Football Arbitration Challenges of Arbitrability and Constitutionality - Emmanuel Oluwafemi Olowononi | 356 |
| Analysis of the Legal Frameworks for Combating Human Trafficking in Nigeria - Chinenye Joy Mgbeokwere | 380 |
| Private Good Versus Public Interest: Conflict of Interests in Intellectual Property Rights in Health and Biotechnology - Jadesola O Lokulo-Sodipe | 409 |
| Appraisal of Nigeria's Microfinance Policy, Regulatory and Supervisory Framework A. A. Oluwabiyi and B. Posu | 429 |

Olufemi Akintola Esq Ph.D.



UNIVERSITY OF IBADAN

**JOURNAL OF PUBLIC AND INTERNATIONAL LAW (UIJPIL),
PUBLISHED BY THE DEPARTMENT OF PUBLIC LAW AND
DEPARTMENT OF JURISPRUDENCE AND
INTERNATIONAL LAW**

UIJPIL., Vol.7, 2017

ISSN 1595-7047

© Department of Public Law and Department of
Jurisprudence and International Law
Faculty of Law, University of Ibadan, Ibadan, Nigeria.

Except for quotation of brief passages in criticism and research, no part of this publication may be reproduced, stored in retrieval system or transmitted in any form or by any means, electronics, mechanical, photocopying, recording or otherwise without the prior permission of the copyright owner.

Views expressed in this Journal are those of the authors and do not necessarily represent the views of the Department of Public Law and Department of Jurisprudence and International Law, University of Ibadan.



UNIVERSITY OF IBADAN

Editorial Committee

| | | |
|-----------------------------|---|-----------------|
| Dr M. A. Araromi | - | Editor-in-Chief |
| Professor A. I. Olatunbosun | - | Chairman |
| Dr J. O. A. Akintayo | - | Member |
| Dr Bukola R. Akinbola | - | Member |
| Dr Alero E. Akeredolu | - | Member |
| Dr P. C. Obutte | - | Member |
| Dr S. A. Fagbemi | - | Member |
| Dr Muyiwa Adigun | - | Member |
| I. O. Adejumo | - | Member |

Editorial Advisory Board

Professor Folarin Shyllon
Hon. Justice (Prof.) M. A. Oyewole JCA
Professor Oluyemisi A. Bamgbose
Professor Yemi Akinseye-George SAN
Professor Ademola Abass
Simisola A. Akintola

EDITORIAL NOTES

This is the 7th Volume of the University of Ibadan Journal of Public and International Law (UIJPIL), which is jointly published once a year by the Department of Public Law and the Department of Jurisprudence and International Law of the University of Ibadan.

Like the previous volumes, this contains scholarly and peer-reviewed articles contributed mainly by people in the academia. The Volume covers research in different legal subjects, incorporating terrorism, hate speech, corporate criminal liability, right of alien to own land, registration of birth, human trafficking, anti-open grazing law, environmental law, libel, the National Industrial Court, e-commerce, and trade law among others. The researchers made mind-blowing and incisive contributions to the subject areas discussed; the writings are quite educative and captivating. The views of the contributors, as expressed in the Journal, will definitely serve as guide to the Government and policy makers in deploying the best possible means of identifying, and actualising, their responsibilities to serve the country better. The suggestions made will also aid Nigeria to promote good international relations in the comity of states.

The readers would tend to find this Volume engaging while according it recognition as a credible platform to undertake further research in the future. Accordingly, the 2017 volume of the University of Ibadan Journal of Public and International Law is hereby presented for your contemplation.

Dr Marcus Ayodeji Araromi
Editor-in-Chief

GUIDE TO AUTHORS

This journal is published annually.

Guidelines for Contributions

1. Papers must be well researched original and, as much as possible, deal with contemporary legal issues.
2. Contributors are to provide a short abstract of the paper of not more than 300 words.
3. Author(s) should state title of paper, brief personal details, e-mail and postal address on a separate page.
4. **CITATIONS** should follow the following format:
 - (a) **Books:** Author's surname and initials, Title of the book in italics, the edition, place of publication: Publisher, year of publication, page number.
 - (b) **JOURNALS:** Author's surname and initials, title of the article in inverted commas, Volume number (year), Name of the Journal in italics and page number.
 - (c) **CASES:** Name of case (in full and in italics), the year reported (in bracket), Volume of the law report, page number.
 - (d) **STATUTES:** Full name of the statute, and year of enactment.
 - (e) **WEB PAGES:** Web address and date when material was retrieved.
5. **FORMAT:** Papers should be typed on A4 paper size, processed in MS Word: 1.5 line spacing; 15 to 25 pages with corresponding (automatic) footnote; Font: Times Roman: Size body text 12, footnotes 10.
6. **REFERRAL:** Articles will be Peer Reviewed for accuracy and relevance. Contributors are implored to do thorough proofreading of their works before submission.
7. **SUBMISSION** of articles is via e-mail to uijpil@gmail.com
Submissions are always ongoing.
8. **CORRESPONDENCE:** All correspondence and enquiries should be addressed to the Editor-in-Chief via e-mail to uijpil2@gmail.com
* Please, note that contributions which do not conform to our in-house style will not be acknowledged or reviewed.

UNIVERSITY OF IBADAN
JOURNAL OF PUBLIC AND INTERNATIONAL LAW

Table of Contents

| | |
|--|-----|
| Patient's Freedom and Informed Consent in Nigeria: A Symbiotic Relationship - Ibitoye, T. R. | 1 |
| De-Criminalising Libel in Nigeria: A Cue from Ghana and the United Kingdom - Oluwafunmilayo Adesina-Babalogbon | 25 |
| Legal Appraisal of the National Industrial Court of Nigeria - Marcus Ayodeji Araromi | 43 |
| Beyond the EU-ACP EPA: How African Countries can Attain Development through Trade - Daniel Philemon Saredau | 69 |
| Jurisprudence and the Conundrum of the Benue State Anti-Open Grazing Law and the Implications for the Administration of Justice in Nigeria - Adebayo Williams Adewumi | 97 |
| Acknowledging Birth Registration as a Child's Fundamental Human Right in Nigeria - Osifunke Ekundayo | 120 |
| Terrorism and Hate Speech: Distant Relatives or Close Cousins? - Hassan Adebowale I. | 139 |
| The Legal Regime of Electronic Commerce in Nigeria: Problems and Prospects - Ibrahim Shehu | 157 |
| Exploring the Threat of Child Recruitment and Exploitation by Terrorists and Religious Extremists in Africa: A Reflection on International Legal Standards - Oluwakemi Odeyinde | 174 |
| Environmental Degradation in the Niger Delta Region: A Quest for Justice - Kingsley Osinachi N. Onu and Ebihor Deborah | 194 |

| | |
|--|-----|
| Body Type Theories and Crime Causation: A Crimino- Legal Discourse of the Offences of Robbery, Stealing and Obtaining Credit by Fraud in Nigeria | |
| - Akingbehin Emmanuel Olugbenga | 223 |
| The Right of Aliens to Hold Interest in Land: Demystifying the Conundrum of "All Nigerians" and "Any Person" As Used in the Land Use Act | |
| - Oluchi Nwafor-Maduka | 246 |
| Multinational Enterprises and Transfer Pricing in Nigeria: Tailoring the Arm's Length Principle for Development | |
| - Derek Adetokunbo Obadina | 267 |
| Reparation as a Veritable Tool for Redressing Women's Reproductive Rights Violations in Armed Conflicts in Nigeria | |
| - Folakemi O. Ajagunna | 295 |
| The Phenomenon of Child Marriage: A Violation of Human Rights | |
| - Ayoola Abuloye | 317 |
| Corruption in the Defence Sector and Armed Conflicts in Nigeria: Defining the Nexus | |
| - Deborah D. Adeyemo | 332 |
| FIFA and Mandatory Football Arbitration Challenges of Arbitrability and Constitutionality | |
| - Emmanuel Oluwafemi Olowononi | 356 |
| Analysis of the Legal Frameworks for Combating Human Trafficking in Nigeria | |
| - Chinenye Joy Mgbeokwere | 380 |
| Private Good Versus Public Interest: Conflict of Interests in Intellectual Property Rights in Health and Biotechnology | |
| - Jadesola O Lokulo-Sodipe | 409 |
| Appraisal of Nigeria's Microfinance Policy, Regulatory and Supervisory Framework | |
| - A. A. Oluwabiya and B. Posu | 429 |

Body Type Theories and Crime Causation: A Crimino-Legal Discourse of the Offences of Robbery, Stealing and Obtaining Credit by Fraud in Nigeria

Akingbehin Emmanuel Olugbenga

Abstract

Enrico Ferri's law of Criminal Saturation indicates that crime is ubiquitous. Consequently, there can hardly be any society that is totally free of crime. However, efforts can be made at crime control and prevention. In the quest towards identifying the causes of criminality, certain scholars have embarked on studies of aetiology and have come out with findings. The scholars cut across the Classical, Neo-classical and Positivist Schools. Prominent amongst the positivists, whose research interests bordered on the biological factors of crime, was Cesare Lombroso who was reputed as the pioneer of the Positivist School of Criminology. However, the duo of Ernest Kretschmer and William Sheldon worked extensively on the nexus between body types (Somatotype) and criminality. Their contention basically hinged on the fact that there is a correlation between the shape of a person's body and his proclivity towards the commission of particular crimes. For example, they both agreed that people with athletic/mesomorphic body types have propensities for the commission of violent offences.

This paper, therefore, appraises the contributions of the various schools in the development of criminological thoughts, examines the postulations of the two body-type theorists and evaluates the relevance of the theories to the selected offences of robbery, stealing and obtaining credit by fraud in Nigeria. The paper highlights the criticisms levelled against the theories, adumbrated their values to the contemporary criminal justice system and proffered recommendations towards attaining a near crime-free society.

Keywords: Aetiology, Somatotype, Crime, Robbery, Stealing, Fraud.

* LL.B,(HONS) IFE, BL, LLM, PhD (LAGOS), FCI Arb, FISN, Senior Lecturer, Department of Public Law, University of Lagos, Lagos Nigeria.

Introduction

Just as in a given volume of water, at a given temperature, we find the solution of a fixed quantity of any chemical substance, not an atom, more or less, so, in a given social environment, in a certain defined physical conditions of the individual, we find the commission of a fixed number of crimes¹.

The above-stated Enrico Ferri's law of criminal saturation succinctly depicts the ubiquitous nature of crime in any society. Crime is part of our society and, as such, inasmuch as it can be controlled or reduced, it cannot be eradicated.

Crime is rampant in Nigeria in its various forms and it is becoming painfully obvious that the law enforcement authorities are overwhelmed by the situation. Obviously, the incidence of violent crimes far outstrips those called white-collar crimes or the recent phenomenon of internet or cyber crimes. Indeed, crime and criminal tendencies are as old as human existence, if historical accounts are to be believed².

The damage done by the white collar and internet criminals usually have very far-reaching economic and social consequences which naturally impact on the individuals in significant personal ways. These categories of crimes are committed daily all over Nigeria and are, for the most part, unresolved because the law enforcement agencies are either ill-equipped or ill-motivated, coupled with the compromising attitudes of our judicial systems, over time.

In the quest to proffer solutions to criminal tendencies and deviant behaviours, criminologists have propounded different theories as indicative of crime causation. The theories were products of several schools of thought which emerged within the criminology discipline, each of which investigated different factors involved in deviant behaviour and each coming to different conclusions about how to approach the issue.

The factorial approaches to the study of aetiology³ have been subsumed under three broad parts⁴. The first part is the socio-economic approach which encompasses

¹ Enrico Ferri. See Gibbons D. C., (1977) *Society, Crime and Criminal Careers: An Introduction to Criminology* 3rd ed., (Englewood Cliffs, N. J.: Prentice-Hall), P. 3.

² See C. O Okonkwo, (2012) *Okonkwo and Naish on Criminal Law in Nigeria* (2nd Edition, Ibadan, Spectrum Books Limited) P.4.

³ Aetiology is the theory of crime causation. In medicine, it connotes the factors associated with the causation of disease. See the *New Webster's Dictionary of the English Language* International Edition, Lexicon International Publishers Guild Group, New York, USA P.324.

⁴ Williams K.S, (2008), *Textbook on Criminology*, 6th Edition (Oxford: Oxford University Press) P.135.

economic theory, ecological theory and the theory of anomie. The second part is the socio-psychological approach which comprises the family factors, learning theories like Dangerous Gangs, Imitation and Differential Association and the cultural conflict theories. The third part delves on the physical/constitutional/biological factors. Under this approach, there are studies on physique and crime, temperament and crime and heredity and crime. The biological theories of crime causation can be traced back to about 1750, but it became dominant at the end of the 19th century and the beginning of the 20th century.⁵

One natural extension of Lombroso's approach was into Somatotyping⁶ which purports to relate the behaviour and constitution of a person to the shape of his body. Lombroso and the Somatotypist theorists considered that biological traits were useful means of identifying criminals or potential criminals.⁷ A common denominator amongst all the theories is that offenders differ from non-offenders in some physiological or anatomical ways. It is, therefore, the thrust of this paper to interrogate the relationship between the various body types and their proclivities towards the commission of certain offences. The paper chooses to appraise the contributions of Ernest Kretschmer and Williams Sheldon to the development of body type theories against the analysis of the specific offences of Robbery, Stealing and Obtaining credit by fraud. The paper is divided into six parts. The first part constitutes the introduction. Part two focuses on the appraisal of the various schools of criminological thoughts. In the third part, the author discusses the contributions of Ernest Kretschmer, whilst in the fourth part, the article appraises Williams Sheldon's contributions. The application of the theories to the specific offences of robbery, stealing and obtaining credit by fraud constitutes the thrust of the fifth part. In the sixth part, the author concludes and proffers apposite recommendations towards crime control and planning in our society.

⁵ Somatotype is the study of body type and the nexus with criminality. Somatotypes are a set of generalised body types and the psychologists who believe in this approach are of the opinion that people can be divided into definite types. Hippocrates developed a theory of personality types based on the predominance of one of the four humours or fluids of body which are blood, yellow bile, black bile and phlegm. See Williams K.S, *op cit* (note 4) P.39.

⁶ Williams K.S. *Ibid*. P.139.

⁷ The theorists in the school comprise Cesare Lombroso, Hooton E. A., Charles Goring, Norwood East, Ernest Kretschmer and William Sheldon *inter alia*.

Schools of Criminological Thoughts

(i) *Classical School*

The earliest of the schools, known as the classical school, emerged under Cesare Bonesana Beccaria (1738-1794)⁸. Beccaria wrote at a period when the theology of the Church father and the doctrine of the divine rights of kings were positioned against intellectualism and rationalism of the social contract thinkers like Rousseau⁹, St Thomas Aquinas, Thomas Hobbes, John Locke and Voltaire, who wrote the preface to his major work¹⁰. He considered in his book¹¹ that people have agreed to sacrifice a portion of their freedom of action so that they might enjoy the rest of it in peace and safety. He believes that criminal offences should be clearly defined and that there should not be retrospective legislation whilst the rights of the accused should be protected. He also claimed that punishment should be proportionate to the harm done to the society and that the purpose of the law should be to deter the offender. Beccaria was against death penalty because he was of the view that the duration of punishment is of a greater significance than the intensity of punishment.¹²

In an attempt to regulate criminal punishment, Beccaria based his approach on the laissez-faireism and rational choice theories on the basis that human action is predicated on the considerations of pleasure and pain, being a rational being. He posited that despite the fact that a person exercises his free will in committing a crime, excessive punishment is tyrannical and unjust.¹³ The Classical school was criticised mainly on the grounds that his idea was too simplistic and was not supported by empirical research.¹⁴

(ii) *Neo-Classical School*

Subsequent to the classical school emerged the neo-classical school which continued the traditions of the classical school within the framework of right realism.¹⁵ Hence, the utilitarianism of Jeremy Bentham and Cesare Lombroso was adopted as deterrence through law enforcement, the courts and imprisonment. Neoclassical criminology

⁸ Cesare Beccaria, (1999) "On Crime and Punishment", *Criminological Perspectives: A Reader*, John Muncie et al (eds) (London: Sage Publications) PP. 1-4.

⁹ George Vold, (1986) *Theoretical Criminology*, (Oxford: Oxford University Press), P. 18.

¹⁰ *Ibid.*

¹¹ Beccaria, *Ibid.*

¹² Beccaria *op cit* (note 8 above).

¹³ Dambazau A. B., (2007) *Criminology and Criminal Justice*, (Ibadan: Spectrum Books Limited), P. 9.

¹⁴ Adeyemi A. A., (1970) "The Challenge of Criminology in a Developing Country: A Case Study of Nigeria", *Proceedings of the xxth International Course in Criminology, Lagos*, PP. 153-157.

¹⁵ Williams *op cit* (note 4 above).

defines crime more broadly as actions that offend against a shared understanding of morality¹⁶. In its thinking, it is possible to do more to deter crime than just to catch and punish criminals and that the environment can be changed in ways that can make crime less likely to occur.¹⁷

The neo-classical perspectives relied on the law of felicific calculus which assumes that individuals choose to commit crime after calculation whether crime's potential rewards (pleasure) outweigh its potential risk (pain).¹⁸ Unlike the classicists, the neo-classicists, in rejecting the rigidity of the classical school embraced subjectivity or discretion in evaluating criminal responsibility¹⁹. They recognised extenuating or mitigating circumstances in crime commission, which they believed ought to be taken into consideration in punishing the criminal. The neoclassical school made an improvement on the classicists by positing that the broad concept of equality in rationalism postulated by the latter failed to recognise practical reality²⁰. They identified three classes of people with impaired criminal responsibilities who are to be treated leniently in matters of punishment. These were classified as the insane, immature people due to non-age and the married women who were said to have no minds of their own but reason through their husbands²¹. Notable adherents of the neoclassical school were Bayer and Van den Haag²². The school has been severely criticised by the positivists on the basis that it based its postulations on scientific error because responsibility is a conception of social origin which the neo-classicists were alleged to have converted to an abstract or metaphysical notion.

(iii) *Positivist School*

The first half of the 19th century saw the beginning of a rapid growth in scientific knowledge and the consequential adoption of scientific methods to investigate the properties of every type of phenomenon, which extended to include the nature of

¹⁶ *Ibid.*

¹⁷ *Ibid.*, PP. 136-137.

¹⁸ Vold, *op cit* (note 9 above), P.20. Felicific Calculus Theory is also predicated on the principle of Hedonism.

¹⁹ Vold, *Ibid.*

²⁰ *Ibid.*

²¹ The notion on married women has been overtaken by event with the enactment of the Married Women Emancipation Act. See Stephen Jones, (2009) *Criminology* 4th ed., (Oxford: Oxford University Press), P. 294.

²² Jones, *Ibid.*

humanity itself²³. Under the school, different approaches emerged and one of the schools was the biological or constitutional factors. The factors are based on the belief that criminals can be distinguished from the rest of the population by some unusual physical or biological characteristics which render them inferior²⁴. According to Havelock Ellis, there was a notion in medieval England which stated that "if two persons fall under suspicion of crime, the uglier or more deformed is to be regarded as more probably guilty"²⁵.

Physiognomy, which is the assessment of character from facial features gave way to the more-structured theory of phrenology which is based on the notion that the workings of the mind are related to the shape of the brain and skull and that the measurement of bumps on the skull can provide an indication of personal characteristics²⁶. The school sees freewill as of secondary importance because it conceives that a person's behaviour was influenced or even determined by constitutional or structural forces over which the person has no direct control.²⁷

The most prominent amongst the positivists was Cesare Lombroso (1835-1909)²⁸ who was an Italian army medical doctor. He worked as a medical doctor in a prisons and studied group criminals and non-criminal population²⁹. He claimed that he found physical differences in characteristics between them which he called the "stigmata". He also coined the term "atavism" which he coined from the Latin word "atavus", meaning a reversion to the primitive or sub-human type of man characterised physically by a variety of inferior morphological features which are reminiscent of apes and lower primates³⁰. In his principal work published in 1876³¹, Lombroso put forward the thesis that criminality was largely inherited and that criminals could be identified by the shape of their heads and certain other anatomical features. He highlighted 18 physical characteristics in which he stated that the presence of five or more of the features in a

²³ Taft D. R. & England Jr. R. W., (1964) *Criminology* 4th ed. (New York: Macmillan), P. 11.

²⁴ Taft *et al*, *Ibid*.

²⁵ Jones, *Ibid*, P. 295.

²⁶ Writers such as Franz Gall (1758-1828) measured bumps on the head in order to identify brain development. There was also palmistry which was concerned with "palm reading" which analyses a person's character and future by examining the lines on the palm. See Haskell M. R. & Yablonsky L., (1974) *Criminology: Crime and Criminality*, (Chicago: Rand McNally), P. 3.

²⁷ Fox V. B., (1976) *Introduction to Criminology*, (Englewood Cliff, N. J.: Prentice-Hall) P. 388

²⁸ Hall Williams J. E., (1982) *Criminology and Criminal Justice*, (London: Butterworths) PP. 11 - 15.

²⁹ *Ibid*.

³⁰ Hall Williams, *op cit* (note 28 above).

³¹ Cesare Lombroso, (1876) "L'uomo Delinquente" (The Delinquent Man), (Milano: Hoepli) P. 10.

person makes him a "born criminal"³². He categorised criminals to born criminals, insane criminals and occasional criminals³³. Lombroso has been credited with introducing the scientific measurement methodology to criminology even though, today, it is believed that his statistical methods are inadequate³⁴.

Contributions of Ernest Kretschmer to Somatotype Theories

Ernest Kretschmer (1888 - 1964) was a German physician and psychologist. He was known for developing a classification system that can be seen as one of the earliest exponents of a constitutional approach. His classification system was based on four main types: asthenic/leptosomic (thin, small, weak), athletic (muscular, large-boned), pyknic (stocky, rounded, fat) and dysplastic (amorphous)³⁵. Each of these body types was associated with certain personality traits and, in a more extreme form, psychopathologies. Kretschmer believed that pyknic persons were friendly, interpersonally dependent and gregarious. In a more extreme version of these traits, it would mean that the obese are predisposed toward manic-depressive illnesses. It would also mean that thin people were associated with introversion and timidity. This was seen as a milder form of the negative symptoms exhibited by withdrawn schizophrenics. He has also attempted to correlate physique and character³⁶. From his studies on mental patients, he found that certain body types are associated with particular types of mental disorders³⁷.

Kretschmer classified personalities into the following four types:

- a. **Asthenic** - These people have a slender or slim body, usually tall with long legs and arms and flat chest. The shoulders are narrow; the lower limbs are long and thin. The asthenics have the personality traits of introverts. They also have Shizotimik temperament which makes them to fluctuate in emotions and be stubborn. They are said to also have difficulty in adapting to the environment.

³² Ibid.

³³ These anatomical deformities include long arm, extra-long legs, abnormal height, small torso, skin blemish, spectacular dentition deformity, ears that lack clearly-defined lobes, eyes of different colours, prominent cheek bones, large amount of body hair, crooked noses, large lips, etc.

³⁴ Radzinowicz has described Lombroso's book as the first systematic and persistent attempt to enquire into the personality of the crime. See Conklin J. E., (1989) *Criminology*, 3rd ed. (U. S. A.: Macmillan), P. 152.

³⁵ Kretschmer E. (1931) *Physique and Character* (Abingdon, United Kingdom: Routledge) P.26.

³⁶ Ibid.

³⁷ Ibid.

They are more prone to suffer from a serious mental disorder called Schizophrenia³⁸.

- b) **Athletic** - These people have strong physique, muscular, characterised by a high or medium height, broad shoulders, and narrow hips. They have Iksotimik temperament which makes them to possess restrained gestures and facial expressions. They are quiet with low flexibility of thinking. They are strong, aggressive, determined, adventurous and balanced. They are comparable with ambiverts³⁹.
- c) **Pyknic** - These are people who are short and have round body. They have severe adipose tissue, excessive fat, characterised by big belly and a round head on a short neck. They have personality traits of extroverts. They have tsiklotimik temperament which makes their emotion to fluctuate between joy and sorrow. It is easy for them to relate with people and they are more prone to suffer from a mental disorder known as manic depressive psychosis (MDP).
- d) **Dysplastic** - This typifies the appearance of the three body types in an inconsistent form in an individual. These people will have amorphous, irregular and unproportionate body characterised by different strain physique and do not belong to any of the three types mentioned above. The disproportion is due to hormonal imbalance⁴⁰.

However, regardless of the lofty contributions of Kretschmer, his works have been widely criticised by other researchers. Little wonder when sir Norwood East, criticising Kretschmer's hypothesis, stated that in spite of its interest and importance, it was not applicable to the practical problems of adolescent crime in contemporary times⁴¹.

Contributions of William Sheldon to Somatotype Theories

Sheldon, a psychologist was born in 1899 in Warwick, Rhode Island, where he grew up in a farm setting⁴². He developed Kretschmer's typology but classified his body types into three basis typologies. He came up with Somatotypes in 1940s and they were one of

³⁸ *Ibid.*

³⁹ Kretschmer, *op cit* (note 35 above).

⁴⁰ *Ibid.*

Norwood East, (1954) *The Roots of Crime*, (London: Butterworths) PP.4-5.

Fishbein D. (2001) *Biobehavioural Perspectives in Criminology*, (Belmont, C.A: Wadsworth Publishing). P.52.

the biological theories developed in this period that associated body types with human temperament. He attempted to explain and predict crime based on a person's body types.⁴³

William Sheldon's identified three basic body types are: ectomorphic (thin, weak, frail) endomorphic (soft rounded, fat) and mesomorphic (hard, muscular, athletic). He developed these categories based on existing knowledge at the time, of how embryos develop in layers; namely, the inner layer or the endoderm, (development into digestive tract), the middle layer or the mesoderm (becomes muscle, heart and blood vessels) and the outer layer or the ectoderm (forms the skin and nervous system).⁴⁴

Sheldon posited that a body type could be linked with the personality trait of that person. He claimed that a fat person, with large bone structure, tends to have an outgoing and more relaxed personality while a more muscular body typed person is more active and aggressive. He stated further that a slim or scrawny person with thin muscles is usually characterised as quiet and fragile. He split the body types into three categories called somatotypes.⁴⁵

During a 10-year period, Sheldon examined a group of 200 young men who were referred to a community centre focused at helping young male delinquents. He compared these individuals to a group of 200 non-delinquent college students, ranking individuals in the study according to their body types. He found that many of the juvenile delinquents had mesomorphic body types, whereas most of the college students had ectomorphic body types. He also noted specific behavioural and personality traits associated with a predominance of each body type.⁴⁶

In his 1954 book⁴⁷, Sheldon categorised all possible body types into endomorphs, mesomorphs and ectomorphs as analysed hereunder.

(a) *Ectomorph*

Sheldon's ectomorphs physically have narrow shoulder, thin legs and arms, little fat on the body, a narrow face, petite nose, finely-textured hair and a narrow chest. They may

⁴³ *Ibid.*

⁴⁴ Hollin C. R., (2013) *Psychology and Crime: An Introduction to Criminological Psychology*, (Abingdon, United Kingdom: Routledge) P. 59.

⁴⁵ *Ibid.*

⁴⁶ Roeckelein J. E., (1988) Sheldon's Type Theory: Dictionary of Theories, Laws and Concepts in Psychology (Connecticut: Greenwood) PP. 427-428.

⁴⁷ Sheldon W. H., (1954) *Atlas of Men: A Guide for Somatotyping the Adult male at All Ages*. (New York: Harper) PP. 215-227.

eat just as much as the endomorph but never seem to gain any weight. They always stay very skinny and fragile, often appearing delicate. Personalitywise, they tend to be self-conscious, socially anxious, artistic, thoughtful, quiet and private. They keep to themselves and are afraid to branch out. The temperament Sheldon associated with this body type is considered cerebrotonic⁴⁸. The nervous system forms a bigger part of ectomorph's body compared to the other body types and that is what makes him emotionally-sensitive. An ectomorph suffers from emotional problems and mood swings more than the other body types because of his sensitive nervous system⁴⁹. This typology can be likened to Kretschmer's Asthenic body type.

It is observed that Julius Caesar must have been influenced by this theory when he whispered to Anthony:

*Let me have men around me that are fat, healthy looking men
who sleep at night. That Cassius over there has a lean and
hungry look. He thinks too much, such men are dangerous.*⁵⁰

(b) *Endomorph*

Endomorphs are quite the opposite of their frail associates. They tend to be pudgy and round with a tendency to gain weight easily. Their skins are usually very smooth and their arm and legs somewhat short for their build. The temperament that Sheldon associated with endomorphic individuals is referred to as viscerotonic⁵¹. Psychologically, they are also fun-loving, good-humoured, even-tempered and they love food and affection. The endomorph is physically rotund. They have wide hips and narrow shoulders that give a pear shape. They tend to have a lot of extra fat on their body and on their arms and thighs. They have skinny ankles and wrists that make the rest of their body look even bigger. This typology can be likened to Kretschmer's pyknic body type⁵².

⁴⁸ Someone who is introverted, suffers from allergies or skin maladies, is often tired or fatigued, highly sensitive to distractions and noise and tends to shrink away from large crowds.

⁴⁹ Roeckelein, *Ibid*, P. 2.

⁵⁰ Shakespeare W., (1959) *Julius Ceasar*, (London: Longman), P. 23.

⁵¹ Those who are easy going, relaxed, tolerant, sociable and comfortable with themselves. They enjoy luxurious things and are extroverted and outgoing.

⁵² Roeckelein, *op cit* (note 46 above).

(c) *Mesomorph*

Sheldon's third and final body type is mesomorph. It can be described as the balanced combination of muscles, bones and nervous system. A mesomorph is muscular and dense with a long torso. He tends to have large wrists and hands. The temperament associated with mesomorphs is called somatotonic⁵³. The mesomorph is in-between the ectomorph and endomorph. He has an attractive and desirable body. Physically, a mesomorph tends to have a large head and broad shoulder with narrow waist. He has a strong muscular body and strong arms and legs and little fat on the body. Psychologically, the mesomorph is adventurous and courageous. He is not afraid to break out and do new things with new people⁵⁴. This typology can be likened to Kretschmer's athletic body type.

One of the most important of the secondary components of Sheldon's work is dysplasia, a term he borrowed from Kretschmer⁵⁵. Sheldon used the term to refer to "any inconsistent or uneven mixture of the three primary components in different regions of the body". Thus, it is a measure of disharmony between different areas of the physique. The measure of dysplasia is arrived at by taking the separate somatotype rating for the five regions of the body and summing the differences for each of the components among the five areas of the body⁵⁷. In other words, it represents the amount of discrepancy in the somatotype as computed for each of the three components as well as a total score. Preliminary findings by Sheldon indicate that there is more dysplasia associated with the ectomorphic component than with either of the two other components. His finding also revealed the observance of more dysplasia in the female physique than in the male physique. Sheldon also reports that there is more dysplasia among the psychotics than among the college students⁵⁸.

Kretschner and Sheldon's contentions from these findings are that the body type of a person determines the nature of the offence for which the potential offender has proclivity to commit⁵⁹. They posit that there is a correlation between bodily chemical

⁵³ Those who are active, dynamic and assertive with tendency toward aggression.

⁵⁴ Roeckelein, *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Sheldon *op cit* (note 47 above) P.2.

⁵⁷ *Ibid.*

⁵⁸ Sheldon *op cit* (note 47 above).

⁵⁹ Ellis Lee (1990). "The Evolution of Violent Criminal Behaviour and it's Non Legal Equivalent" in Lee Ellis and Harry Hoffman (Eds), *Crime in Biological, Social and Moral Contexts*, (New York: Praeger) P.66.

composition (temperament) of an individual and his propensity for crime commission⁶⁰. The two scholars concur that people who fall into the categories of asthenic and ectomorph have propensities of committing the offence of stealing which requires the ability to be swift and run to escape⁶¹. The scholars also posited that people who fall into the categories of athletic and mesomorph have proclivities to commit violent offences like robbery, murder, burglary and so on. This is because the offence requires a lot of strength and energy to overpower and subdue their victims. The scholars agreed as well that the people in the categories of Pyknic and Endomorph have propensities for committing fraudulent offences⁶². This is because the offence does not require any violence or speed, as it can be committed within the confines of one's room.

In their analysis of the dysplastic typology, which they both adopted, they indicated that people who fall into this group have disposition towards the commission of degenerate offences like Rape and Defilement⁶³. This is because of the lombrosian description of a "born criminal" who must have combined at least five out of the 18 anatomical deformities which will make them to be ugly and unattractive to the female sexes. Hence, the resort to force or violence to achieve their sexual desires.

Sheldon's theories enjoyed a vogue through the 1950s. However, modern scientists have dismissed his claims as outdated and constituting quackery⁶⁴. The principal criticism of Sheldon's theory was that it was more of an assumption than a theory. His work has also been criticised as being fraudulent for failing to acknowledge or account for body shape changing with age⁶⁵. His work has been described as being heavily burdened by his own stereotypical and discriminatory views⁶⁶.

Application of the Somatotype Theories to Specific Offences

Having discussed the various somatotype theories, as espoused by Kretschmer and Sheldon, the thrust of this part of the paper is to apply the theories to Nigeria's situation in relation to selected offences. The offences selected for analysis are robbery, stealing

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Lasker G. "The Effects of Partial Starvation on Somatotype: An Analysis of Material from the Minnesota Starvation Experience" *American Journal of Phys. Athropology*, 10, 79 - 90.

⁶⁴ Amongst his critics were Roeckelein and Genovese. See notes 46 and 66 *infra*.

⁶⁵ Roeckelein, *op cit* (note 46 above) PP. 427 - 428

⁶⁶ Genovese J. E. C., "Physique Correlates with Reproduction Success in an

and obtaining credit by fraud. The choice of the offences is premised on each being discussed under each of the body type categories. The offence of robbery is discussed in relation to athletic and mesomorphic classification; stealing is discussed in line with asthenic and ectomorphic classification whilst obtaining credit by fraud is treated in relation to pyknic and endomorphic classifications.

(i) *Robbery*

Robbery is committed when a person steals anything and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property to obtain or retain the thing stolen or prevent or overcome resistance to its being stolen or retained⁶⁷. The Criminal Code does not say what degree of violence is required but it must be substantial in view of the seriousness of the offence. Thus, if the threat of violence is incapable of execution, as where an unloaded gun is used, the offence is nevertheless deemed committed, provided the circumstances are such that a reasonable man would anticipate violence therefrom⁶⁸. However, the offence is not committed if the complainant is not present such that there is no violence or threat of it to his person⁶⁹. Where several persons go to steal, and one of them, unknown to the others, used violence, those others are not guilty of robbery but stealing, unless it can be shown that they were parties to the use of violence⁷⁰. The defence of *bonafide* claim of right is available to a person who is charged with robbery⁷¹. Hence, where a creditor severely beats up his debtor and compels him to pay up on the spot, this is not robbery⁷². The ingredients of the offence of robbery are further enumerated below:

- a. *Stealing*: This is an *actus reus* of the offence. It is an "aggravated stealing". The definition of the word "steal" in section 383 of the Criminal Code is the same as the definition under Section 286 of the Penal Code which defines theft. It is therefore important that all the necessary ingredients of the offence of stealing must be present and proved in a charge of robbery⁷³.

⁶⁷ S. 401, Criminal Code Act, Cap C.38, Laws of the Federation, 2004; S.296, Penal Code Cap 89, Laws of Northern Nigeria, 1963. See also S.294, Criminal Law of Lagos State 2011.

⁶⁸ Babalola v. State [1970] 1 All N.L.R 44.

⁶⁹ Ugboaja v. C.O.P [1967] & E.R.N.L.R. 153.

⁷⁰ R. v. Fallon, *The Times*, May 7, 1963.

⁷¹ See C.O Okonkwo *op cit*, (note 2 above) P.11.

⁷² R. v. Hemmings [1865] 4 F & F. 50.

⁷³ Adejobi v. State [2011] 12 NWLR (Pt 1261) 347, and The State v. Ajuluchukwu [2011] 5 NWLR (Pt 1239)

- b. *Violence*: This requirement distinguishes stealing from robbery⁷⁴, as violence is another *actus reus* of the offence of robbery. It is the combination of stealing and violence. Simply put, robbery is stealing coupled with violence used or threatened⁷⁵. In *R. v. Bekum*⁷⁶, the accused in whose house valuable property was deposited, waylaid the owners of the property and stole the property. He was held guilty of robbery. Hence, when violence is used to steal, immediately the stealing is complete, it is robbery. Under the English Law, the offence of robbery is provided for under Section 8 of the Theft Act 1968. The word "force" is used instead of "violence". The Criminal Code does not define violence and the degree of violence required is not stated. However, Okonkwo has stated that the degree must be substantial in view of the seriousness of the offence.⁷⁷
- c. *Immediately Before or After*: The violence or threat to use violence must be immediately before or immediately after the stealing⁷⁸. The time interval between the act of stealing and violence is a very important requirement in the interpretation of what constitutes violence "at the time of stealing". Violence inflicted a while after stealing will not suffice, neither will violence inflicted some time before the stealing.
- d. *The Violence must have been done to any Person or Property*: The violence used or threatened to be used can be on a person or on a property. This distinguishes "robbery" in the Criminal Code from the English Law and from the Penal Code. Under the Theft Act 1968 and Penal Code, the force must be on a person⁷⁹. This has been the position under Common Law. The violence could be to any person and not necessarily the owner of the property who is the target of the theft. An accused person who, immediately

⁷⁴ Bamgbose O. & Akinbiyi S., (2015) *Criminal Law in Nigeria*, (Ibadan: Evans Brothers Publishers Ltd) P.245.

⁷⁵ *F.R.N. v. Usman* [2012] 8 NWLR (Pt 1301) 141, *Adeleke v. State* [2012] 5 NWLR (1294) 122 and *Ebinwe v. The State* [2011] 7 NWLR (Pt 1246) 314. [1941] 7 WACA 45.

⁷⁶ Okonkwo *op cit* (note 2 above) P.20.

⁷⁷ *Ikuopenikan v. The State* [2011] 1 NWLR (Pt 1229) 589; *Rasaki v. The State* [2011] 16 NWLR (Pt 1273) 251.

⁷⁹ *R. v. Hales* [1979] CLR 596; *R. v. Lapier* [1784] 1 Leach 320. See also S.8 Theft Act 1968, S.296 Penal Code, *op cit* (note 67 above).

after stealing from a bank pushed down a customer who was blocking him at the door as he escapes, is guilty of robbery as he has used violence on a person immediately after the stealing⁸⁰. It is therefore, not a defence that it was not the customer's money that was stolen⁸¹.

- e. *In order to retain or obtain a stolen item:* The actual violence or threat of use of it must be in order to steal. This is the mental element (*Mens rea*) for the offence of robbery to be complete, which suggests that at the time of using violence or threatening to use violence, the accused person is doing this to hold on to what has been stolen or to collect what is to be stolen. Where the accused, in annoyance punches the complainant and, on his falling down, noticed the gold watch on the complainant's wrist and the accused takes it, he would not be guilty of robbery but of assault and stealing. Thus, violence or threat of use of violence on a person for another purpose is not robbery if the accused decides to steal. However, it will be robbery, if after stealing it, he uses violence on the person of the owner the second time to retain the stolen thing.⁸²

Punishment: Any person who commits the offence of robbery shall, upon conviction, be sentenced to imprisonment for not less than 21 years⁸³. If any offender mentioned in subsection (1) is armed with any firearms or any offensive weapon or any obnoxious chemical substance or is in company with any person so armed, or at or immediately before or immediately after the time of robbery, the said offender wounds any person, the offender shall, upon conviction be sentenced to death⁸⁴. Attempted robbery is punishable with a minimum of 14 years imprisonment⁸⁵.

Application of the Somatotype Theory

There is every tendency that individuals that possess mesomorphic/athletic body types (muscular body, very active and aggressive) would have the propensities to perpetrate

80 See *Sowemimo v. State* [2002] NWLR (Pt 1284) 372, *Rasaki v. State* [2011] 16 NWLR (Pt 1273) 251.

81 *Smith v. Desmond & Hall* [1965] A.C 960.

82 *Bamgbose & Akinbiyi, op cit*, (note 74 above) P. 241.

83 See S. 402 Criminal Code Act *op cit* (note 67 above), see also *John v. The State* [2011] 18 NWLR (Pt. 1278) 353.

84 S. 402, *Ibid*, S.295 Criminal Law of Lagos State 2011.

85 S. 403, Criminal Code Act *Ibid*. See also S. 296 of the Criminal Law of Lagos State, *Ibid*.

the offence of robbery. This is because the typology of robbery indicates that it is a violent, property and personal offence.

The profile of a robber is such that, once he possesses any of the character traits that properly fits the commission of robbery, he will automatically engage in the commission of the offence, which violence is an element. Violent crimes may or may not be committed with the use of weapons. Violent crimes vary from murder, robbery, kidnapping to terrorism. A robber must be energetic and muscular such that he can overpower and subdue his victim. Robbery is also a property offence because the objective is to dispossess the victim of his property. It is also, essentially, a personal offence because force or violence is used on the victim of crime to overcome or subdue him before or after the property is stolen from him.

The temperament which is associated with Sheldon's mesomorphs and Kretschmer's athletic body type suggests that these individuals are active, dynamic and assertive with a tendency towards aggression and proclivity for committing violent offences.

(i) *Stealing*

A person who fraudulently takes anything capable of being stolen or fraudulently converts to his own use or to the use of any other person, anything capable of being stolen is said to steal that thing⁸⁶. The ingredients of the offence of stealing are enumerated below:

- a. *Taking*: This is the *actus reus* of the offence. To constitute "taking", it is not necessary for the thief to take the thing completely into his possession. On the contrary, he is deemed to have taken a thing if he moves it or causes it to move⁸⁷.
- b. *Conversion*: This is another *actus reus* of the offence of stealing. Unlike "taking", the code does not say what constitutes a conversion. It would appear, however, that the word "conversion" in S. 383 of the Criminal Code has the same meaning which it bears at Common Law. Dealing with the

⁸⁶ S. 383, Criminal Code Act *op cit* (note 67 above), S.286 Penal Code *op cit* (note 67 above). See also S. 278, Criminal Law of Lagos State 2011. The Criminal Law of Lagos State, Theft Act and The Penal Code employ the use of "dishonestly" instead of "fraudulently" used in Criminal Code in describing the nature of intent. The Penal Code and Theft Act employ the use of "Theft" instead of stealing.

⁸⁷ "Asportation". See R. v. Taylor [1911] 1 KB 674.

meaning of conversion, *Atkin J. (as he then was) in Lankashire and Yorkshire Railway Company v. Macnicol*⁸⁸ stated thus:

Dealing with goods in a manner inconsistent with the right of the true owner amounts to a conversion provided that it is also established that there is also an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right.

Accordingly, to destroy alter, sell, pledge or use property belonging to another person is to convert it⁸⁹. However, in order that the conversion will amount to stealing, it must be done with one of the fraudulent intents specified in S.383 (2) of the Criminal Code. The conversion must be to the use of the accused or to the use of any other person.⁹⁰

- c. *The item taken must be capable of being stolen:* Section 382 of the Criminal Code lists the items capable of being stolen. The Section provides:
Every inanimate thing whatever which is the property of any person and which is movable is capable of being stolen.

Land cannot be stolen⁹¹ because it is an immovable object⁹². Property includes money. Personal and real property includes things in action⁹³ and other intangible things⁹⁴. Human parts are not property and, as such, cannot be stolen. A corpse cannot also be stolen. However, if a person has performed some work of skill on the corpse, such work can be a subject to theft⁹⁵. The item stolen must be of value⁹⁶ and must have been taken without

88

89

90

91

92

93

94

95

96

[1999] 88 LJKB 60 @ 603

Street H., Brazier M. & Murphy J., (2012) *Street on Torts*, 3rd ed. (London: Oxford University Press) P.44

Smith & Hogan, (2005) *Criminal Law*. 11th ed. (London: Oxford University Press) P. 665.

Ojiko v. IGP [1956] 1 F.S.C 62.

Salami v. Gbodoolu [1997] 4 NWLR (Pt 499) 279.

See Kohn's Case [1976] 69 CAR 445

Adejobi v. State *Supra*, (note 73 above) 347. In *Oxford v. Moss* [1979] CLR 119, it was held that information cannot be stolen.

Doodeward v. Spence [1909] CLR 406.

State v. Odimayo & 3 ORS [1967] NMLR P. 92.

the owner's consent⁹⁷. Although Section 383 of the Code is silent on the issue of consent, it has been rightly held that absence of consent is implicit in the definition of stealing⁹⁸. Hence, consent obtained by threat, intimidation or fraud is no consent.

d. *Elements of fraud:* In order to constitute stealing, there must be an element of fraud. S.383 of the Code sets out six intents (mental elements), any of which would make taking or conversion fraudulent. Thus, the test is what the intent of the accused was at the time of the taking or conversion⁹⁹. These intents are enumerated below:

- a) Intent to permanently deprive the owner of the thing of it.¹⁰⁰
- b) Intent to deprive any person who has special property in the thing of such property.¹⁰¹
- c) Intent to use the thing as a pledge or security.
- d) Intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform.
- e) Intent to deal with the thing in such manner that it cannot be returned in the condition in which it was at the time of the taking or conversion.¹⁰²
- f) In the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.¹⁰³

Punishment: Any person who steals anything capable of being stolen is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for three years.¹⁰⁴

Application of Somatotype Theory

The typology of the offence of stealing is that it is a non-violent offence which does not require the use of any force or injury to another person. The seriousness of non-violent

⁹⁷ Lawrence v. C.O.P [1971] 2 A.E.R 1253.

⁹⁸ Wada v. I.G.P [1957] NRNLR 1.

⁹⁹ R v. Ninedays [1959] 4 FSC 192.

¹⁰⁰ R. v. Easom [1971] 2 ALL ER 945.

¹⁰¹ Armory v. Delamirie [1722] 1 Stra. 505; Rose v. Mart [1951] 1 KB 810

¹⁰² R v. Bailey [1924] QWN 38.

¹⁰³ R v. Orizu [1954] 14 WACA 455; R v. Sagoe [1963] 1 ALL NLR 290.

¹⁰⁴ S. 390 of the Criminal Code *op cit* (note 67 above), S. 285 Criminal Law of Lagos State 2011.

crime is usually measured in terms of its economic damage or losses to the victim. Other examples of non-violent crimes are forgery, prostitution, bribery and so on.

It is also a property offence because it involves the taking of another's property and does not involve the use of force or threat of force to the victim. The victim does not even need to be present for stealing to be committed. The gist of the offence of stealing is, therefore, the absence of consent. The perpetrator needs to be smart, swift and calculative to be able to escape before getting apprehended. He does not need to be muscular or energetic.

The personality traits of being tall, skinny, calculative and artistic are associated with ectomorphic/athletic body typologies of Sheldon and Kretschmer. This suggests that the perpetrator needs to be active, dynamic, smart with a tendency to be discreet, deceitful and slippery. Ability to be able to run fast to escape from being caught is also associated with this body type.

(i) ***Obtaining Credit by Fraud***

Any person who by any false pretence or by means of any other fraud obtains credit for himself or any other person:

- a. in incurring any debt or liability: or
- b. by means of an entry in a debtor and creditor account between the person giving and the person receiving credit, is guilty of a felony and is liable to imprisonment for three years.¹⁰⁵

A false promise suffices and the credit may last for a short time. However, whether or not credit is obtained does not depend on the length of time it was intended to be enjoyed or was enjoyed.¹⁰⁶

The House of Lords has, however, held that the expression "obtained credit" connotes the obtaining of credit in respect of the payment of money and no more¹⁰⁷. Obtaining credit by fraud is just a specie of the series of obtaining by false pretences. There are eight different items that can be obtained by false pretence and these includes

¹⁰⁵ S. 419^A Criminal Code *op cit* (note 67 above). See also S. 315(1) Criminal Law of Lagos State 2011. However, the latter provision punishes the offender with 14 years imprisonment term as against the three years under the Criminal Code.

¹⁰⁶ See *Fisher v. Raven* [1963] 2 All E.R. 389 @ 394 and *R. v. Jones* [1898] 1 QB 119 where the accused without making a representation as to his ability to pay, ordered food in a restaurant and was unable to pay. He was convicted of obtaining credit by fraud.

¹⁰⁷ *Fisher v. Raven* *Supra*, overruling *R. v. Ingram* [1956] 2 QB 424.

goods¹⁰⁸, credit¹⁰⁹, cheques¹¹⁰, execution of a security¹¹¹, fraudulent trick or device,¹¹² fraud on sale or mortgage,¹¹³ exercise of witchcraft or fortune telling¹¹⁴ and registration of licence or certificates¹¹⁵. These offences have common features but different objects and it would appear that the *mens rea* requirement of intent to defraud permeates all the offences¹¹⁶. The accused person must also have knowledge of the falsity of the representation. The intention to defraud can be inferred from the facts of the case.¹¹⁷

Application of Somatotype Theories

Obtaining credit by fraud is a non-violent offence. The typology also reveal that the offence is a property offence and, essentially, fraudulent in nature. The gist of the offence is predicated upon fraud. The categories of people who will fit into the typology of the offence of obtaining credit by fraud are those who possess endomorphic/pyknic personality owing to their body build of being round, fat, and short with tendency to be lazy and slow at carrying themselves. The offence commission does not require physical stress or muscular energy. This description attunes squarely with Sheldon and Kretschmer's classification.

Conclusion

Theories that suggest a nexus between physique and behaviour pre-dated many centuries before the birth of academic psychology. Not only did these formulations begin in the dim past, more surprisingly, many of them show a remarkable correspondence to formulations that are still popular and contemporary. Lombroso's theory of anthropological criminology essentially depicts that criminality was inherited and that a "born criminal" could be identified by anatomical defects which confirmed a criminal atavism. Hippocrates, thereafter, suggested not only a typology of physique but also a temperament typology and a conception of humours that is highly congruent with the

¹⁰⁸ Section 419 Criminal Code Act *op cit* (note 67 above).

¹⁰⁹ S. 419 (A) *Ibid.*

¹¹⁰ S. 419 (B) *Ibid.*

¹¹¹ S. 420, *Ibid.*

¹¹² S. 421, *Ibid.*

¹¹³ S. 423, *Ibid.*

¹¹⁴ S. 424, *Ibid.*

¹¹⁵ S. 425, *Ibid.*

¹¹⁶ *Laja v. IGP* [1961] 1 ANLR 715 @ 717.

¹¹⁷ *R. v. Sullivan* [1964] 1 KB 169.

current emphasis on the importance of endocrine secretions as determinants of criminal behaviour.

The stage became set for Kretschmer who postulated a four-group classification of asthenic, athletic, pyknic and dysplastic. Sheldon improved on Kretschmer's typology but coined different taxonomy with similar features and propensities with Kretschmer's¹¹⁸. He substituted the asthenic with ectomorph, athletic with mesomorph and pyknic with endomorph. He retained Kretschmer's typology of dysplastic.

Sheldon's idea has similarities with the Lombroso's theory of biology and criminals, in that "criminals are physically different from law abiding citizens and that these differences demonstrated the biological causes of criminality"¹¹⁹. To people like Lombroso and Sheldon, people are impacted by their biological breakdown, through genes, disorders and basic biological make up. Consequently, certain people are destined to be criminals because of biological morphology and are then at a social disadvantage regardless of what they attempt to do to avoid it. Sheldon's work is, no doubt, superior to that of his predecessors though his achievements could not have been accomplished without the imaginative and painstaking efforts of these earlier figures.

This paper has shown that the understanding behind the somatotype theories is given in each of the researchers' findings, such that we may be able to somewhat predict an individual's likelihood for committing a crime. Notably, Sheldon has been reputed to have contributed new words to the criminological vocabulary like somatotyping, endomorphy, mesomorphy and ectomorphy. It was also conceded that his photographic displays constitute one of the most powerful visual rhetorics in criminological history. Sheldon's theory, therefore, could be seen as having evolved to apply to the socio-economic changes that occurred over the centuries to adjust to new world of morals and values. Somatotyping has become the significant focus of this theory of constitutionalism. It has, therefore, been proven that the body types of the mesomorphic individuals seem to be the most likely candidates when predicting crime trends and patterns.

The writer has found from this work that constitutionalism theories may be an important tool to the law enforcement agencies, psychologist, parents/guardians and educators and, even, lay individuals, because knowledge of the theory may be utilised in making intelligent guesses about the personality traits of suspects, wards, students,

¹¹⁸ Newman R.W, "Age Changes in Body Build" *American Journal of Phys Arthropology*, Vol. 10 PP.79-90.

¹¹⁹ *Ibid.*

clients and individuals generally. From the constitutional theories, a specific body type may represent a possibility of a criminal. However, it does not seal the deal because many aspects are missing from these theories as observed by various critics.¹²⁰

Regardless of the contributions of the theorists of temperament and crime, their works have been widely criticised by other researchers. The principal criticism of Sheldon's work is that it was not a theory at all, but a general assumption and a set of descriptive concepts to measure physique and behaviour in a scaled manner.

Recommendations

What can criminal justice do to prevent future rise in crime? What policies need to be applied to make a difference in these individuals' lives since, according to Sheldon and Kretschmer, they are destined to be criminals? Against the backdrop of the above posers, the following recommendations are hereby proffered:

1. A multifactoral approach should be adopted towards the quest for aetiology of crime. Adeyemi¹²¹ has discredited the unifactoral approach because it can be risky and preposterous to stick to a single factor and conclude the cause of criminality. There are environmental postulations as well as socio-psychological and genetic factors of crime causation. A combination of two or more factors will enhance the reliability of our research results.
2. Since the hallmark of the positivists' postulates (including the somatotypists) is pre-determinism, it would be sheer wickedness to punish a person for crimes committed when the individual had no control over his criminal proclivity. It is, therefore, recommended that factors like somatotypes should have bearing on the sentencing policy of the courts in terms of mitigation of punishment.
3. Beyond the correlation between body type and criminality, in order to have a near crime-free environment, our policy makers should place more emphasis on crime control and planning. There should be heavy reliance on the use of criminal statistics which will enhance crime measurement and, eventually, crime control and prevention. This also extends to the aspect of empowering the law

¹²⁰ For example, Roeckelein criticised the theories as being merely subjective. See Roeckelein *op cit* (note 46 above). Genovese also described both body type theories as objectional. See Genovese *op cit* (note 66 above).

¹²¹ Adeyemi A. A., *op cit*, (note 14 above) PP 153 – 157.

enforcement agents through modern training, kitting and equipping them with sophisticated weapons and gadgets, and more importantly, motivating them.

4. The law enforcement agents should be made to undertake the study of criminology as part of their training courses. Knowledge of criminology will enable them to know about aetiology of crime especially the somatotypes. A law enforcement officer that is knowledgeable in somatotypes will be able to predict the nature of criminality of a particular potential offender from his body type, which will make the task of apprehension a lot much easier for him.
5. Finally, it is recommended that the government should embrace the mechanism of socio-economic redress intervention, thereby empowering its citizens, through the creation of jobs, provision of housing and access to education *inter alia*¹²². This will substantially plug the holes created by the identified criminogenic factors. Unemployment leads to insecurity and criminality and that is the attestation of the aphorisms: "Devil finds work for idle hands" and "an idle hand is the devil's workshop".

¹²²

In a study conducted in 2008, Akingbehin found that a predominant percentage of armed robbery convicts on the death row at the Kirikiri Maximum Prison in Lagos State were driven into the crime by unemployment and lack of education. See Akingbehin, I. O., "Armed Robbery in Nigeria; Legal and Criminological Perspectives." Being a Seminar Paper Presented to the Faculty of Law, University of Lagos, in partial fulfilment of the requirements for the award of PhD in Public Law in December 2008. P.26.