

## **LOMBROSO'S THEORY OF IN-BORN CRIMINALITY IN CRIMINALS: A FURTHER REVIEW THROUGH ISLAMIC LAW PERSPECTIVE**

**BY**

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### **Abstract**

The Scientific bio-genetic reason for crime as popularized long time ago by Cesare Lombroso predicates reason for crime on some human biological formations. This idea seems to be unfair to man if he must be punished for crimes influenced by biological makeup of his physical body instead of blameworthy mind and criminal intent of his. This paper argues against this as the concept will leave open a big loophole in our penal system i.e. punishments will lie with no justifying moral ground for same. The writer looks into the perspective of Islamic Law on this to unravel its position on the issue for possible positive influence on the contemporary law of crime anywhere. This paper finds that no solid basis exists for the so-called biogenetics factor of criminality. The paper consequently finds that it is in justice to punish offenders only on the biological makeup of their physical bodies. Rather, it is found in addition that penalty should flow only upon criminal intent of man and his blameworthiness. The writer hereby recommends harmonization of two additional points of argument against the biogenetic factor of crime alongside the useful critique of the said scientific theory of crime by Charles Goring. It is also recommended that the reward system of Islamic Law be adopted for operation in the Nigerian Law of Crime. The paper follows doctrinal methodology in discharging its work schedule as same

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allows deep analytical discussion which the specie of this write up demands.

### **Introduction**

A number of factors have over the years been identified as causes of crime. These range from bad environment factor with variables such as urbanization, unemployment and ethical decline to scientific causes which comprise of both the biological and genetic factors. There are also other distinct factors too numerous to mention<sup>1</sup>. The monotony of the identified causes for these crimes has informed the severalty of concern in the exercise of developing workable frameworks to combat them. Whereas, this is needed for waging a successful anti-graft war in Nigeria and elsewhere. To achieve it, a critique of some identified factors of crime is attempted in this work and as a result, ethical decline is arrived at as a major inducer of crime for which criminal intent (basis of liability) is formed.

Ethical decline and moral decadence denote the same thing without any iota of difference. While morality seems to enjoy little or no attention in the English Common law, the position is not the same under Islamic law which places high premium on moral uprightness in the society. This informs the imperative of this divine law being viewed as a necessary legal system which must be consulted in this work for comparison with the Nigerian criminal law on the subject of criminal liability and criminal intent.

The nexus between ethical decline and criminal intent shall be established by the writer at the appropriate juncture in the work. The objective from this is to point to the reason of ethical decline as instigator of almost all ignoble acts in the society. The writer also intends to show that the requirement for criminal intent, being the justifying moral ground for infliction of punishments, cuts across both the Nigerian Criminal Law and the Islamic Law of crime. However, it shall be pointed out that the reward system of Islamic law which is on ground to compensate those who can eschew crime and conduct peaceful living is expected to discourage formation of criminal intent by people living in Islamic law jurisdictions more than those living elsewhere with no similar reward system. All these and few other

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<sup>1</sup> Like poverty, affluence, high cost of living, high expectations from family, friends, society etc. and greed among others.

necessary concerns shall be looked into in the course of writing this piece.

### **Lombroso's Theory of In-born Criminality in Criminals**

The phrase 'in-born criminality in criminals' refers to bio-genetic factors of crime which is expressive of two causes of crime believed to be scientific in nature.<sup>2</sup> The first of the two is biological. It means that the criminal tendency in man is informed by some in-built biological formations in him such as a low forehead, protruding jaw and coarse cancasian features<sup>3</sup> such as strong canines, prominent zygomae and strongly developed orbital arches<sup>4</sup> among others<sup>5</sup>. According to Lombroso, who later got famous as proponent of this ideology, a direct nexus exists between crime and man's biological composition. As a result, criminals are believed to be products of atavism; throwbacks to the primitive forerunner of modern human beings.

This belief is projected because the biological peculiarities mentioned above were found available on the corpse of a criminal during a scientific post-mortem<sup>6</sup> carried out in 1876<sup>7</sup>. Another reason for the belief's projection was the similarity of these peculiarities to those found in carnivores and savages who tear and devour raw flesh. Lombroso<sup>8</sup> thus concluded that as the carnivores and savages are brutal among other species in the animal kingdom, nothing short of this

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<sup>2</sup> Ferrero G.L., *Criminal Man According to the Classification of Cesarer Lombroso* (Putnam, Network, 1911), p. 95

<sup>3</sup> Dambazau A.B., *Criminology and Criminal Justice* (2<sup>nd</sup> ed., spectrum Books Ltd. Ibadan, 2011) p. 47

<sup>4</sup> Ferrero G.L., p.95.

<sup>5</sup> Other signs of physical make-up in man believed by Lombroso to be crime inciters are; longer span of arms than normal height, scanty beard as opposed to the general hairiness of the body of a non-criminal, prehensile foot, diminished number of lines in the palm of the hand, cheek puches, enormous development in the middle incisors and frequent absence of the lateral ones. The remaining others are; flattened nose, angular or sugar loaf form of the skull common to criminals and apes and excessive size of orbits.

<sup>6</sup> Dambazau A.B., pp. 58-59.

<sup>7</sup> *Ibid*, p. 58

<sup>8</sup> It is instructive to note that Cesare Lombroso was not the first person to come up with the 'born-bad' idea. He was indeed preceded on the issue by people like Ellis (1900). But Lombroso's range and attention to detail has given him a new and lasting prominence, as well as the perpetuation of the myth that he was the first to take such approach.

brutality (otherwise known as criminality) is expected to manifest in human beings identified with peculiarities common to these carnivores.

Having dealt with the review of the first cause of crime under biogenetic factors, the second cause, genetic factor, now demands attention. One simple way of capturing what this factor connotes is to present it as one which expects presence of criminality in offspring of ascendants with criminal traits. Genetic influence has been viewed to be the sole ground for this proposition.

A number of test studies were developed long before now to establish the correctness and genuineness of the proposition above (the genetic factor). A collection of these test-case studies is known as Karyotype studies.<sup>9</sup> The first among them compared the size, type, shape, length and number of specific chromosomes in the system of human being<sup>10</sup>. This particular study, proposed by Clark G.R.,<sup>11</sup> has this conclusion that Y chromosome seemed to have higher than expected probability of being larger and longer among criminals than in non-criminals.<sup>12</sup>

Twin study is the second one. It was carried out for the first time in 1929 by Johannes Lange, a German physician.<sup>13</sup> The thrust of the study is that twin from the same womb are found to resemble each other in terms of indulgence in criminality. This is so whether they are monozygotic (MZ-identical) or dizygotic (DZ – unidentical)<sup>14</sup>.

The above apart, adoption study is another theory canvassed by Crowe and later supported by Hutchings and Mednicks among others. The thrust of the study revolves around the possible criminal traits of an adopted child. The prediction is that such child would grow to become a criminal if there has been evidence of crime commission against his biological father, for instance. The proposition is that this prediction will still be operative even where the adoptive father in his own case has no crime record whatsoever. Other study theories abound with

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<sup>9</sup>Dambazau A.B., p. 61

<sup>10</sup> Clark G.R., 'Sex Chromosomes, Crime and Psychosis' *American Journal of Psychiatry*, 1970, pp. 674-682.

<sup>11</sup> Nelson J. and Friedrich V., 'Length of the Y Chromosomes in Criminal Males' *Clinical Genetics*, Vol. 3, 1973, pp. 281-285.

<sup>12</sup>Dambazau A.B., p. 63

<sup>13</sup>*Ibid*

<sup>14</sup>Mednick S.A., 'Genetic Influence in Criminal Convictions:Evidence from an Adoption Cohort:*Science*, Vol. 224, 1984, pp. 891-894.

attachment to genetic influence on deviance. However, the above propositions notwithstanding, it is instructive to note that none of the two causes of crime explained under bio-genetic factors is free from attack by scholars from earliest time. It is expedient at this juncture to consider some of the points raised in the critique of these factors.

### **Previous Critique of Bio-Genetic Factors of Crime**

On the critique of the two crime factors explained above, it is interesting to note that scholars in the separate eras of the proponents of these study theories faulted them.<sup>15</sup> Upon examination of the various points relied upon by both the proponents and the critics, the present writer finds it more appropriate to pinch tent with the latter than the former. The higher quality of evidence identified with the critics informs this position. This paper even presents and analyzes additional grounds with which to lend credence to the point of view of the critics.

Before coming to the additional grounds, name of Charles Goring appears necessary to be mentioned as one of those who argued in contrast to the biogenetic factors advanced by Cesare Lombroso. Goring mustered courage and exposed areas of incorrectness in the Lombroso's idea to which he finally posed an insurmountable challenge. He discredited Lombroso's conclusion for being inadequate. To do this creditably well, Goring studied 3,000 English convicts and found no significant anatomical differences in their physical measurements (biological formations) when compared to some other selected non-criminal population. He then concluded on unavailability of what Lombroso called physical criminal type.<sup>16</sup>

Without mincing words, Goring deserves all paeans and accolades for undertaking the laborious exercise of sampling up to 3000 criminal convicts within the same clime. This stressful engagement, which revealed no anatomical difference in the biological compositions of the sampled criminals and the non-criminal population, will continue to remain a veritable weapon with which to condemn Lombroso's claim. Although the claimant must have based his result on some specific

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<sup>15</sup> This is not to say that Lombroso himself had no supporters. Sheldon W.H., Glueck S., Glueck E. and Hooton Earnest, an anthropologist, were among the vetters of Lombroso's biological study theory.

<sup>16</sup> Lilly, J.R., Cullen F.T. and Ball R.A., *Criminological Theory: Context and Consequences* (Thousand Oaks, (A –Sage Publications, 1995).

assessment undertaken by him, the conflicting findings later arrived at by Charles Goring on the same subject offers manifest evidence that whatever Lombroso must have based his claim on was nothing but a figment of imagination or, at most, a sheer coincidence not capable of being an empirical proof that can pass the test of time.

### **Additional Points on the Critique**

In addition to the powerful submissions under the critique above, there are two other points which the present study raises with a view to adding strength to Gorings critique of the Lombroso's biological cause factor of crime. The first point which dispels with free-will and rationality in crime commission is that adopting the Lombroso's theory will discountenance the moral ground for subjecting criminals to punishment. This is so because the crimes perpetrated would no longer find explanations in premeditation, but in automatism which should be a sufficient ground to vacate or foreclose the necessary punishment. In the circumstance, to insist on going ahead with the infliction of punishment is as good as punishing without the required justifying basis (intention or mens rea)<sup>17</sup>. This is inequity of the highest order.

Having said the above, the second additional point is the common belief that human beings generally are prone to exhibit traces of transgression and deviance. This is born out of man's willful egoism and self centeredness found inherent in all, as opposed to the erroneous opinion of Lombroso that some shapes and forms of skull, forehead, jaw, canine, and zygomae, among others, are responsible for the deviance. On man's tendency to step on toes of others (an issue similar to the point being addressed), Al-Ilori writes:

This tendency happens when human beings co-habit around one another in a given environment. This attitude is born out of egoism or self-centeredness. Though a short coming, the so-called egoism is found inherent in almost all men... It can be safely deduced from the above that man is always in absolute love with himself among the rest of others. While striving to satisfy himself, man hardly takes necessary cautions and, in the process, he finds himself encroaching on other people's rights. This consequence,

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<sup>17</sup> S. 24 of the Criminal Code, Cap. C38, LFN 2004 which is similar to S. 23 of the Queens land Criminal Code, is clear on this state of mind requirement.

which captures man's inequity or tyranny to others, is a regular occurrence among human beings.<sup>18</sup>

All the points canvassed above –both the initial and the additional – go to puncture the age long Lombroso's theory on the cause of criminality. It is for these same points and reasons (especially the additional ones) that the conclusions in the early chromosomal, twin and adoption study theories as explained above would be found difficult to stand. Just like the Lombroso's idea of criminal physical types was criticized, a welcome critique of the remaining study theories was also undertaken by some early scholars of criminology.<sup>19</sup>

Submissions on the three aspects<sup>20</sup> of psychological factors of crime were made from the tune above.<sup>21</sup> The implication of this is that the two variables of the bio-genetic factors analyzed above are not the real bedrock upon which crime stands. This therefore leads to an imminent puzzle: What is the real instigator of crime in the society? From the

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<sup>18</sup>Al-Ilori A.A., *Huquq al-Insan Bayna Adyan al – Samahi Wa Qawanin al-Zaman*, pp. 10 – 11

<sup>19</sup>For instance, the chronological study theory was criticized by Clark who found that there are more criminals among the XY normal genetic configuration than even in the XYY. This finding negates the hypothesis that criminality is a function of some Y- carried genetic factor. See Price W.H., and Whatmore P.B., *Criminal Behaviour and the XYY Male* (Nature, 213: 1970) p. 815. As for the 'Twin study theory' by Johannes Lange, the problems identified with this, among others, are the fact that the sample size is usually too small, the method of determining 'zygosity', for if twins are same sex, it can be difficult to distinguish DZ from MZ twins on mere appearance which may lead to concordance errors; and the assumption that most twins share same environment can also work against genetic hypothesis. See Dambazau A.B., pp. 63-64. In its own case, adoption study theory's critique is inherent in the possibility of an adopted child exhibiting behaviours (criminal) in similarity to those of his adoptive father than his biological father. See Crowe R.R., 'An Adoption study of Antisocial personality' (Archives of General Psychiatry, Vol. 31; 1974) pp. 785-791.

<sup>20</sup>These are; the psychoanalytic theory of Sigmund Freud (which views human aggression as instinctual and a result of imbalance conflict between Id-ego and super ego); the personality theory of which Eysenck is one of the proponents, (which says some individuals, through genetic endowments, are born with cortical and autonomic nervous systems which affect their ability to learn from the environmental stimuli); and the mention disorder theory of Peter Marzuk and Hollin, among others.

<sup>21</sup>Each of the three psychological theories was later criticized. Alexander F. and Staub H. criticized the psychoanalytic theory. Passingham did a critique of the personality theory. A number of critics have also challenged the mental disorder theory. See: Dambazau A.B., pp. 70-78

totality of what has been discussed, one would not tarry to conclude that ethical decline under environmental factor of crime is the accurate answer to the question at hand. Indulgence in, and perpetuity of many crimes up till today have been a function of this very factor. Ethical decline pushes the deviant towards indulgence in crime with requisite criminal intent. The criminal intent of the deviant, and not any bio-genetic factor, is what makes him/her criminally liable under Islamic penal laws.

### **Ethical Decline as Precursor of Crime**

It is hardly conceivable that a perpetrated act of whatever form would stem without an instigation otherwise called driving cause. Dambazau<sup>22</sup> epitomizes this truism in clearer terms when he submits, with respect to crime, that "... it is lucidly delineated in positive determinism that every act had a cause."<sup>23</sup> The desire to identify how to control a particular reprehensible act in a society may therefore spur an in-depth research into possible causes of the act. It is a platitude that identification of such causes will ease the task of arriving at how adequately and swiftly to stop the reprehensible act. Thus, upon various researches carried out long time ago on etiology of crime under Common Law, biological factor<sup>24</sup>, genetic factor<sup>25</sup>, bad environment factor<sup>26</sup> and unemployment factor<sup>27</sup> have been discovered as possible instigators. Other factors in the same context relate to urbanization<sup>28</sup>,

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<sup>22</sup> Major Gen. AbdulRahman Bello Dambazau

<sup>23</sup> Dambazau A.B., *Criminology and Criminal Justice* (2<sup>nd</sup> ed., Spectrum Books Ltd., Ibadan, 2011) p.47

<sup>24</sup> Ferrero G.L., *CriminalMan According to the Classification of Cesare Lombroso* (Putnam, New York, 1911), p.95

<sup>25</sup> Clark G.R., 'Sex Chromosomes, Crime and Psychosis' *American Journal of Psychiatry*, 1970, pp. 674-682.

<sup>26</sup> Dambazau A.B., *Criminology and Criminal Justice* p.79

<sup>27</sup> Glaser D. and Rice K., 'Crime, Age and Employment' *American Sociological Review*, Vol. 24, 1959, p. 679.

<sup>28</sup> Fischer C.S., 'The Subcultural Theory of Urbanism: A Twentieth year Assessment' *American Journal of Sociology*, No. 101, pp. 543-577.

poverty<sup>29</sup>, affluence<sup>30</sup>, moral decadence<sup>31</sup>, high cost of living<sup>32</sup>, greed<sup>33</sup> and lack of political will<sup>34</sup>.

Of all the numerous factors of indulgence in criminality as enumerated above, it seems none is as strong and prevalent as the factor of bad environment. This factor is known with variables such as drug trafficking, urbanization, poverty, unemployment and corruption.<sup>35</sup> Other variables within the fold of same factors are moral decadence, poor education, family type, technology, child abuse and architectural design.<sup>36</sup>

Looking through the intimidating number of variables mentioned above as constituents of the bad environment factor, the only conclusion left to be made is that of this factor of bad environment which features as the parent and pivotal factor around which many others revolve. This therefore explains attribution of highest degree of strength to the factor of bad environment among other causes of crime. What flows from this is that the main cause of crime must be located within the purview of bad environment factor. The question now is which exactly is this variable?

An attempt to answer this question has revealed only three of the mentioned variables as germane areas of consideration. These are: urbanization, unemployment and moral decadence i.e ethical decline. These three factors have been selected not only for their direct attachment and link to the modern environment, but also because they specially require satisfactory explanation that will bring out the nexus

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<sup>29</sup> Allan E. and Steffen Smeier D., 'Youth, Under-employment and Property Crime: Differential Effects of Job Quality On Juvenile and Young Adult Arrest Rates' *American Sociology Review*, (No. 54: 1989) pp. 107-123.

<sup>30</sup> Saturday Punch, (Vol. 7093, No. 1583, Saturday, October 15<sup>th</sup>, 2011)p. 7.

<sup>31</sup> Hughes T.P., *Dictionary of Islam* (The broke house publishers and booksellers, Pakistan: 1885), p.216

<sup>32</sup> River State University (Faculty Of Law), 'Corruption in Nigeria: Dimensions and Implications for National Development' in *Corruption and National Development: Proceedings of the 46<sup>th</sup> Annual Conference of NALT*, 2013), p. 495.

<sup>33</sup> Unreported Suit No. FHC/ABJ/CR14/2005 (Federal High Court, Abuja)

<sup>34</sup> <http://www.nairaland.com> accessed 9/3/2015

<sup>35</sup> Dambazau A.B., p.79

<sup>36</sup> Ibid

between each of them and the environment on one hand, and between them all and crimes on the other hand.

Having said this, the next is to determine which out of the three selected variables of bad environment can be regarded as the strongest cause of crime or the major precursor of crime. Without mincing words, this seems to be urbanization factor whose discourse the paragraphs below shall be dedicated to.

### **Urbanization Factor**

Urbanization simply means over concentration of people in an urban settlement. This occurs when the rate of increase in the urban population exceeds the regional rate of increase considerably<sup>37</sup>. At 5.3%, the rate of urbanization in Nigeria, for instance, is said to be among the highest in the world.<sup>38</sup> There is indeed a link between urbanization and crime. An over-populated environment is an haven for all and sundry. Although, some well-conducted human beings may be available thereat, the highest propensity is to find such a place littered with backlog of undesirable elements among people. This scenario breathes transfer of bad behavior (ethical decline) interse. Consequently, an otherwise well-conducted person amidst the exodus may begin to pick some negative behavioral patterns embedded in some among the group. It is when the situation degenerates to this level that upsurge of crimes will be noticed.

The veracity of the above analysis finds expression both in America and Nigeria among other countries of the world. The quest of the Americans for unlimited acquisition of wealth willy-nilly (a pointer to ethical decline) is the central feature of what is called 'The American Dream'<sup>39</sup> and same has been given as the reason for rampancy of white

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<sup>37</sup>Liman M.A. and Adamu Y.M., *Urbanization and the Spatial Development of Urban Centres*, Northern Nigeria: A Century of Transformation, 1903-2003, (Arewa House, Kaduna, 2005).

<sup>38</sup> National Planning Commission, *NEEDS NIGERIA: National Economic Empowerment and Development Strategy* (Abuja: 2004) p. 20.

<sup>39</sup>David R.S. and Frank E.H., *White Collar Deviance* (Allyn and Bacon USA, 1999) p137.

collar deviance in America. <sup>40</sup> James Adams, who coined the term ‘The American Dream’ once remarked :

Many people coming to American’s shores were relatively law abiding before they arrived here. People were made lawless by America, rather than America being made lawless by them.<sup>41</sup>

The experience in Nigeria on the uncultured obsession for wealth acquisition at all cost (a pointer to ethical decline) is also no less prevalent than what the American tale above reveals. Pointing to the American type of money induced cause of crime in Nigeria (which is a fallout of moral decadence), Reuben Abati notes:

Our value system is so bad that the only thing Nigerians value is money. An average Nigerian would do anything because of money. The rich are always reminding the poor of their poverty so much that the poor have also learnt to become rich by any means possible. Public officers are not interested in service; they are interested in what they can get. Ordinary people are also corrupt because there are no safety nets in this society.<sup>42</sup>

What is deducible from the preceding paragraphs is that nexus exists between urbanization and crimes. What is further deducible is that these crimes will not automatically emanate from a person by mere dwelling within a populated area. Rather, it takes the moral standing of such a person to fall short of an approved standard in the area before he can get inclined to crimes. This raises a platitude that people who reside in an urban area but still remain morally upright will rarely join the bad wagon. The reason is not far-fetched. Morality is a state of ethical consciousness. A morally upright individual is most often a well-guided person in thoughts and expressions. Actions and inactions of such a person are always in line with acceptable normative framework in the society. This is due, in the alluded wordings of

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<sup>40</sup>Mesner S.F. and Rosenfeld R., *Crime and The American Dream*(Belmont CA, Wardsworth, 1994) p. 6.

<sup>41</sup>*Ibid*

<sup>42</sup>Abati R., The Bribe-For-Big-Budget Scandal(The Guardian, March 27<sup>th</sup>, 2015)p.58

Hughes, to the moralist's discipline of mind and manners, good education and good breeding, politeness and comportment.<sup>43</sup>

From the above, it is lucid that crime is not necessarily a direct function of populated urbanization as erroneously held in some quarters. Instead, ethical decline is the linking decimal. Hence, the major precursor of crimes is ethical decline which in turn is borne out of corrupt mind. This conclusion is reached because even the scourge of unemployment, which is one of the three important variables under bad environment factor, will hardly lead to indulgence in crime on its own without same first causing moral turpitude in an unemployed person. The same argument as earlier canvassed while de-emphasizing urbanization factor of crime (in favour of ethical factor) also relevant to the unemployment factor of crimes.

### **Instances of Ethical Decline Being Instigator of Crime**

Indulgence in crime is not an occurrence of modern time.<sup>44</sup> It is on record that the first man and woman (Adam and Hawwah/Eve) committed as ignoble act of consuming one of the earliest crimes a number of forbidden fruits. This historical account is contained both in the Bible<sup>45</sup> and in the glorious Quran<sup>46</sup>. After this, what followed from the biblical account<sup>47</sup> was the dastardly act of Abel's murder by his own sibling, Cain. This is in tandem with what the Qur'an relays on the murder of Habil (Abel) by Qabil (Cain).<sup>48</sup>

Ethical decline had been with man right from the scratch. It is the bedrock upon which the deviance of falsity is hinged. Crime is the offshoot of ethical decline wherever same is observed. This therefore explains the continuation of indulgence in crime by all manners of human being at every time and place. There are also modern offences which are being frequently committed.

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<sup>43</sup> Hughes T.P., *Dictionary of Islam*, (The broke House Publishers and Book Sellers, Pakistan, 1885), p. 216

<sup>44</sup> Chukkol K.S., *The Law of Crimes in Nigeria* (Ahmadu Bello University Press Limited, Zaria, 1989), p.1

<sup>45</sup> Genesis, 3:1-6

<sup>46</sup> Chap. 7, verses 19-22 and Chap. 2, verses 35-38 among others.

<sup>47</sup> Genesis, 4 : 8

<sup>48</sup> Quran, Chap. 5, verses 27-30

For instance, the Roman Dutch Law came to be developed later and same punishes a wide range of crimes believed to be in vogue in the area. Among these are: crimes against the state (including high treason and sedition), various sexual crimes, crimes against the family, crimes against the public welfare and crimes against a person (including crimes against life, bodily integrity, dignity, reputation (and freedom of movement). Others are fraud in its widest sense (stellionatus and crimenfalsi) and related crimes, bribery, defeating or obstructing the course of the administration of justice, perjury (periurium) and forgery.

From that time on, there has been regularity of indulgence in one form of crime or another. Obsession for wealth accumulation by one at the expense of others<sup>49</sup> became a more manifest trait in man. The controversial Qarun (Pharaoh) in the ancient time, whom Al-Ilori refers<sup>50</sup> to as the first ever capitalist descort, was identified with this trait, and Prophet Musa<sup>51</sup> was sent down by Allah to caution him and check his excesses.<sup>52</sup> Though the messenger of Allah (Musa) tried his best, materialism, greed and uncultured quest for money were already entrenched as offshoots of Qarun's capitalism and egoism. All these are among the traces of ethical decline.

Crime has been on ever since, but it became an object of scientific enquiry in its own right in the early nineteenth century. In important respects, a concept of 'crime' only came to replace a concept of 'sin' when a burgeoning legal apparatus, designed to protect property and the interests of the nation-state, evolved out of the social, economic and cultural transformations of the industrial revolution. As concern over the problem of 'crime' intensified, crime also became the object of more systematic observance and measurement. Analysis of its extent and causes was first made possible through the publication of national criminal statistics in France in 1820s.<sup>53</sup>

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<sup>49</sup>As alluded to in the Glorious Quran in Chap. 89, Verse 20

<sup>50</sup>Al-Ilori A.A., *Huquq al-Insan Bayna Adyan al-Samaai wa Qawanin al-Zaman* (2<sup>nd</sup> ed., Islamic Dawn Publication House, Lagos – Nigeria, 2009), pp.26-27.

<sup>51</sup>After Musa, other prophets of Allah who were sent down for the same mission include Isa who preached complete spirituality, and Muhammad (S.A.W), who adopted a middle course approach on the issue.

<sup>52</sup>Quran, Chap. 28, Verses 76 – 83

<sup>53</sup>McLaughlin E., Muncie, J. and Hughes G., *Criminological Perspectives* (2<sup>nd</sup> ed., Sage Publications Ltd., London, 2003), p.1

On the capitalistic attitudes of Qarun and some other people of like minds at his time, one can, as earlier indicated, refer to their unscrupulous attitudes (ethical decline) as precursor of general crimes and specific crimes like white collar crimes or economic and financial crimes as they are known presently in Nigeria and virtually all other jurisdictions.<sup>54</sup>

So far, it has been established that bad environment is about the most elastic and comprehensive factor of crime. The numerous variables which this factor is constitutive of have equally been highlighted in a detail of some sort. Nevertheless, the fact has to be made that a cluster of other factors apart from the variables of bad environment are still available as instigators of economic and financial crime. These include: poverty, affluence, high expectation from family and society, high cost of living, expensive cost of attaining elective position, greed, uncomplimentary foreign attitude and lack of political will.<sup>55</sup>

Each of the enumerated factors above is self-explanatory and therefore seems in need of no further exposition. This paper admits that additional factors of crime instigation do really have the proclivity of igniting economic and financial crimes. However, it is believed that the factor of bad environment (ethical decline) is more at work than any of these additional factors on the precursor of crime. The arguments earlier canvassed in upholding the bad environment factor of crime are also germane and apposite on the proof of this assertion.

### **Analyzing the Basis of Criminal Liability Under Islamic Law**

The thrust of argument against Lombroso's bio-genetic reason for crime seems to be concentrated around the theory's neglect for the position of the criminal's mind at the time of crime perpetration. This is very clear in the additional points given by the writer to the previous critique of the bio-genetic theory. Predicating criminal liability upon presence of some physical and biological formations of the body of the deviant without caring to ascertain blameworthiness of the mind or establish criminal intent of the accused is as good as allowing

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<sup>54</sup>Such as Sri Lanka, Australia, Turkey, Dubai, Jordan, United Kingdom and the Caribbean to mention a few.

<sup>55</sup> Achebe C., *There Was a Country* (The Penguin Press, U.S.A., 2012), pp.249-250

punishment of the accused without his guilt. This is unacceptable as it lacks the justifying moral ground for criminal liability to lie.

Without doubt, the conclusion above reflects the Islamic law position on the issue in major respects. It is a platitude that Islamic criminal jurisprudence has, for more than fourteen centuries, stuck to the principle of criminal responsibility being an off shoot of both overt act (*actus reus*) and criminal intent (*mens rea*)<sup>56</sup>. This principle seems to find reliance on a number of Quranic provisions. One of these is where Allah says:

There is no blame on you if you make a mistake. What counts is the intention of your hearts.<sup>57</sup>

The lucidity of the content of the above quotation<sup>58</sup> is not in doubt. A popular saying of the prophet (SAW) ‘that conducts are to be judged according to the instigating intentions’<sup>59</sup> also lends additional credence. However, one must hastily add that bare intention unsupported with criminal act is also not indictable.<sup>60</sup> A prophetic saying among others is available<sup>61</sup> on this as well.

Further, it must be stated that the two categories of general and specific<sup>62</sup> had been identified long ago with early jurists on the issue of intention. What *mens rea* simply implies is real intention. This differs from the desired intention which denotes an intention open to doubt<sup>63</sup> in offences relating to persons. Imam Maliki did not recognize specific intention. To him, it is sufficient to base criminal liability on general intent with respect to violation of law and its subject matter.<sup>64</sup> To this

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<sup>56</sup> Mahmood T. et al., *Criminal law in Islam and the Muslim World: A Comparative Perspective* (1<sup>st</sup> ed., Qazi Publishers and Distributors, Nizamuddin West, New Delhi-1100013, 1996) p. 128

<sup>57</sup> Q 2:225

<sup>58</sup> A similar Quranic provision to this quotation can be found in Q 33:5 among others.

<sup>59</sup> *Sahih Muslim* (Hadith No 1907).

<sup>60</sup> *Ibn al-Qayyim, I'lam al-Muqi'in* (Vol. 3, Mansfield, Scofield, 1784) pp. 101 – 107 at 402.

<sup>61</sup> *Sunan al-Tirmidhi* (Hadith No. 1407) and *Sunan Abi Daud* (Hadith No. 4498).

<sup>62</sup> *Udah A., Al-Tashri'i al-Jina'ii al-Islami* (Vol. 1, 1934) p. 493

<sup>63</sup> Mahmood T. et al.,

<sup>64</sup> *Ibid*

extent, Maliki did not recognize quasi-deliberate homicide to be of any legal importance<sup>65</sup>.

As for Abu Hanifah, Shafi'i and Ibn Hanbal, they recognized specific intention to be the workable principle for the determining criminal responsibility. However, these jurists disagreed on the extent of applicability of the specific intent principle.<sup>66</sup> The classification of homicide into intentional and by error categories is an express recognition of the specific intent as the basis of criminal responsibility. That is why in the case of intentional homicide, retaliation is ordained as punishment. Whereas in the case of erroneous homicide, blood money (diyah) is paid to the next of kin of the victim.<sup>67</sup>

From the preceding paragraphs, the writer has left no one in ambiguity as to the fact of criminal intent of the accused being the rationale behind his criminal liability/responsibility. It is the absoluteness of this position that exonerates an otherwise culpable offender of his liability where his blameworthy and illegal conduct can be said to have occurred out of mistake, coercion or while the culprit is still an infant. Other exonerating circumstances include crimes perpetrated under the influence of insanity, intoxication or forgetfulness.

Liability of the accused in the above situations has gotten a different rule<sup>68</sup> of Islamic law because of the impaired position the state of mind of the accused is in. With mistake, coercion, intoxication and the rest, man cannot be said to have full control of his mind. With this, there is no how such a person can be said to fully intend the unpalatable consequences of his actions. An example at this juncture is the offence of homicide committed mistakenly. Retribution is ordinarily the fixed punishment for the offence if committed wittingly.<sup>69</sup> But where its

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<sup>65</sup> Ibid

<sup>66</sup> Shafi'i and Ibn Hanbal argued that specific intent operated both in homicide and injury to person, whereas Abu Hanifah did not allow it to be extended beyond homicide.

<sup>67</sup> Abu Yusuf, Kitab al-Kharaj, pp. 443 – 445.

<sup>68</sup> In some of these instances, penalty will not lie at all. And in others, penalty will lie but in mitigated or varied modes.

<sup>69</sup> Q 2:178 and Q 5:45

commission occurs by mistake, the punishment is another thing other than retaliation.<sup>70</sup>

Still on the need to ascertain criminal intent of the accused as a condition precedent to administration of his punishment, the writer submits that this position cuts across both the common law and Islamic legal system. For the latter, the position has been brought to bare in the preceding paragraphs. On the other hand, the position in the former can be discerned among others from the English case of *WALTER V LUNT*<sup>71</sup> wherein the liability of an infant (of 6 years old or so) came up for consideration. It was held that such a child would not be accused of stealing, even if by chance he takes food from market store and offers same to his parents who thereafter consume same. It was further held that as there is no original offence in the scenario, offence of receiving stolen property later on cannot lie against the parent.

On what such parents could at best be guilty of, stealing by conversion was mentioned in the case. This is because the state of mind of such an infant, which could not be said to have been criminally formed at that age, was the influencing factor for the kind of holding in the case. This same position is what obtains in the Criminal Code<sup>72</sup> of Nigeria where proof of intent to commit crime is required for liability to emanate. There are other relevant provisions<sup>73</sup> in the Criminal Code on this issue.

Although it has been established from the above that predicating criminal liability on criminal intent of the accused is a legal requirement of both the common law and Islamic law, expectation is that not many people will be found ready to form the requisite criminal intent with which to delve in crime in Islamic law jurisdictions. Islamic law has a robust and laudable reward system to compensate whomever can eschew criminality and remain unblemished among the faithful.<sup>74</sup> This Quranic provision among others is enough to deter prospective criminals from delving into vices. The latitude of the divine benefits awaiting them upon abstinence is enough an encouraging impetus.

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<sup>70</sup> The punishment here is either emancipation of a Muslim faithful under bondage as well as payment of wergild (Diyah) or fasting for two consecutive months where the first twin option is difficult to achieve. Q 4:92 is relevant on this punishment.

<sup>71</sup> (1953) 1, All E.R., p. 64

<sup>72</sup> S. 4

<sup>73</sup> Such as SS. 1, 30 and 427 among others.

<sup>74</sup> Q 16:90

There is certainly no replica of this largesse throughout the provisions of the Criminal and Penal Codes of crime in Nigeria. The common law system is likewise devoid of this crime discouraging measure.

### **Conclusion**

It has been established that sufficient justification exists for the various measures of penalty which can be imposed upon commission of crimes by individuals and group of persons in any given society. This justification finds expression in the presence of criminal intent of the accused. The achievement in this is furnishing of moral ground for the infliction of various punishments on guilty offenders. This seems needful and necessary for there to be justice and fair play in the pursuit of anti-graft goals of any nation.

The paragraph above is in sharp contradistinction to the gist of scientific bio-genetic factor of crime which explains, according to Lombroso, that crimes are not necessarily caused by the criminal mind of the accused, but by some biological formations in his physical body system. This paper has toed the path of Charles Goring among those who condemn this line of thinking for its irrationality. The reasons previously relied upon in the condemnation have been mentioned and analyzed. It is recommended that the writer's additional points of arguments against the so-called biogenetic factor of crime be considered alongside the useful critique of the scientific theory by Charles Goring. The writer further recommends the reward system of Islamic law for operation in the criminal law of many Western styled legal systems. This recommendation is informed by the positive impact the said reward system has on crime reduction in Islamic law jurisdictions.