

# **A Critical Assessment of Zemiology's Appropriateness in the Analysis of Atrocities and More Specifically the Situation Experienced by the Uyghurs in Xinjiang**

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## **Abstract**

*The purposes of this paper are to assess whether the tools provided by zemiology contribute to positive ways forward in the field of atrocity studies beyond criminology and whether this proposed zemiological framework contributes to a furthered understanding of the situation experienced by the Uyghur community in Xinjiang. This paper argues that zemiology allows a valuable questioning and broadening of the criminological lens on episodes of atrocities. When applied to the case study, two relevant zemiological tools (i.e., a state/elite defined and constructed perception of the concept of crime and Simon Pemberton's three categories of social harm) allow the qualitative and quantitative improvement of our understanding of the volume and origins of the harms experienced by the Uyghur community. However, two main zemiological shortages are identified throughout this paper: an obsessive focus on the critique of criminology and a contradictive reproach about criminology's ideological bias.*

## **Introduction**

An attempt to index genocidal events from 1933 to 1999 suggests at least 26 headline events.<sup>1</sup> This non-exhaustive list displays the frightening occurrence of a genocidal event roughly every two and half years for 66 years. This statement manages to convey the idea of a global failure to prevent the occurrence of large-scale human suffering.

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<sup>1</sup> Andy Aydin-Aitchison, "Genocide and 'ethnic cleansing'", in *Handbook on Crime*, ed. F. Brookman (Cullompton: Willan, 2010), 777-778.

This paper seeks to determine whether the zemiological critique of criminology is relevant and valuable to studies of atrocity. Once put forward, theoretical findings are applied to a concrete event: the treatment of Uyghurs, Kazakhs, and other Turkic Muslim minorities (hereinafter referred to as Uyghurs) in the Xinjiang Uyghur Autonomous Region (Xinjiang) situated in the People's Republic of China (PRC). This research seeks to answer two main questions: how do the tools provided by zemiology contribute to positive ways forward in the field of atrocity studies beyond criminology? How can the framework proposed by zemiology contribute to the explanation and regulation of the atrocities experienced by the Uyghurs in Xinjiang?

This paper argues that zemiology allows a valuable questioning and broadening of the analytical lens adopted by criminologists, notably with its critique of the concept of crime and a specific framework to identify and categorise different harms. When applied to the concrete event, the zemiological framework is judged valuable for its comprehensive assessment of the harmful situations experienced by the Uyghurs in Xinjiang.

This paper uses the term 'atrocities' inspired by the term 'atrocious crimes' coined by David Scheffer to amend an unproductive lack of clarity on the defining of atrocity events.<sup>2</sup>

Scheffer justifies the label 'atrocious crime' by an urgent need to:<sup>3</sup>

"(...) describe as "atrocious crimes" a grouping of crimes that includes genocide but is not confined to that particular crime. In short, we need to simplify (...) both public dialogue and legal terminology about such crimes. At present, there is far too much confusion and garbled terminology about what is in fact occurring in an atrocity zone".

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<sup>2</sup> Miren Odriozola-Gurrutxaga, "Criminology of atrocious crimes from a macro-, meso- and micro-level perspective", *International E-Journal of Criminal Sciences* 5, no. 9, (2015): 2.

<sup>3</sup> David Scheffer, "Genocide and Atrocious Crimes", *Centre for International Human Rights* 1, no. 3 (2006): 2.

Thus, this label encompasses war crimes, genocide, crimes against humanity, and the events these terms include (for example, torture, slavery, and apartheid).<sup>4</sup> Although the atrocity label encompasses terms which have been legally defined, it is an analytical category looking at large-scale, collective, and organised acts of violence. This umbrella term allows the removal of technical, political, and emotional implications often attached to the events it observes without undermining their seriousness.<sup>5</sup> In coherence with the critique of the concept of crime explored throughout the paper, which includes an emphasis on the importance and influence of language,<sup>6</sup> the label 'crime' has been dropped.

Firstly, a literature review settles this article in its academic context whilst assessing the criminological and zemiological contributions to atrocity studies. Then, a section on methods presents the research strategy of this project. Finally, I proceed to the case-study through the application and assessment of the zemiological tools identified in the literature review. Throughout these sections, the argument that zemiology allows a valuable questioning and broadening of the criminological lens on atrocities is developed.

## Literature Review

### *Criminological analysis of atrocities*

The criminological analysis of atrocity consists of relatively distinct strands of criminology focusing on different events covered by the overarching label;<sup>7</sup> war-crimes,<sup>8</sup> genocide,<sup>9</sup> and crimes against humanity.<sup>10</sup> In an attempt to grasp the

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<sup>4</sup> David Scheffer, "The Future of Atrocity Law", *Suffolk Transnational Law Review* 25, no. 3 (2002): 394-396.

<sup>5</sup> Barbora Holá, Hollie Nyseth Nzitatira and Maartje Weerdesteijn *The Oxford Handbook on Atrocity Crimes* (New York: Oxford University Press, 2022), 2-3.

<sup>6</sup> Victoria Canning and Steve Tombs, *From Social Harm to Zemiology* (London: Routledge, 2021), 117.

<sup>7</sup> Andy Aydin-Aitchison, "Bringing Together the Criminologies of Atrocity and Serious Economic Crimes", *Edinburgh School of Law Research Paper Series* 2022, no.10, (2022): 22.

<sup>8</sup> Stephanie DiPietro, "Criminology and war: where are we going and where have we been?", *Sociology Compass* 10, no.10, (2016).

<sup>9</sup> Andy Aydin-Aitchison, "Genocide and State Sponsored Killing", in *The Handbook on Homicide*, eds Fiona Brookman, Edward R. Maguire, Mike Maguire (West Sussex: Wiley-Blackwell, 2017).

<sup>10</sup> Daniel Maier-Katkin, Daniel Mears and Thomas J Bernard, "Towards a Criminology of Crimes Against Humanity", *Theoretical Criminology* 13, no.2, (2009).

dynamics underlying episodes of atrocities in order to explain and prevent them, criminologists analyse multiple factors and actors involved in the event.<sup>11</sup> Certain criminologists formulate comprehensive frameworks at different levels (macro, meso and micro) for different groups (such as victims).<sup>12</sup> Others adopt a more precise focus, such as the study of actors like the International Criminal Court and its deterrence potential.<sup>13</sup> John Hagan is widely credited for the development of a criminological analysis of atrocities, through his documentation and analytical work,<sup>14</sup> notably of the atrocities which occurred in Darfur.<sup>15</sup> Another recurring theme, is the importance of multidisciplinary work in the context of atrocity studies<sup>16</sup> or the necessity to keep the borders of criminology open in order to (critically) incorporate other perceptions<sup>17</sup> and formulate a relevant over-arching theory.<sup>18</sup> By softening criminology's borders these approaches positively contribute to a crucial challenge for the future of criminology.<sup>19</sup>

Despite varying levels of attention,<sup>20</sup> the criminological scholarship has made a non-negligible contribution to the field of atrocities. For instance, due to criminology's

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<sup>11</sup> Miren Odriozola-Gurrutxaga, "Criminology of atrocity", 2.

<sup>12</sup> Andy Aydin-Aitchison, *Genocide and State Sponsored Killing*; Susanne Karstedt, Hollie Brehm, and Laura Frizzell, "Genocide, Mass Atrocity, and Theories of Crime: Unlocking Criminology's Potential", *Annual Review of Criminology* 4 (2021); and Miren Odriozola-Gurrutxaga, "Criminology of atrocity".

<sup>13</sup> Tom Buitelaar, "The ICC and the Prevention of Atrocities: Criminological Perspectives", *Human Rights Review* 17, no. 3, (2016)

<sup>14</sup> Andy Aydin-Aitchison, "Criminological Theory and International Crimes: Examining the Potential", *Edinburgh School of Law Research Paper Series* 2018, no. 10, (2018): 9; Stephanie DiPietro, "Criminology and War", 840; Joachim Savelsberg *Crime and Human Rights Criminology of Genocide and Atrocities* (London: SAGE Publications, 2010), 67.

<sup>15</sup> John Hagan and Wenona Rymond-Richmond, *Darfur and the Crime of Genocide* (Cambridge: Cambridge University Press, 2009).

<sup>16</sup> Wim Huisman, "Corporations and International Crimes", in *Supranational Criminology: Towards A Criminology of International Crimes*, eds. Alette Smeulers and Roelof Haveman, (Antwerp: Intersentia, 2008).

<sup>17</sup> Andy Aydin-Aitchison, "Criminological Theory".

<sup>18</sup> David Friedrichs, "Crimes of the Powerful and the definition of Crime", in: *The Routledge International Handbook of The Crimes of the Powerful*, ed. Gregg Barak, (New York: Routledge, 2015); Daniel Maier-Katkin, Daniel Mears and Thomas J Bernard, "Towards a Criminology", 231; William Pruitt, "Testing Hagan and Rymond-Richmond's collective action theory of genocide", *Global Crime* 16, no. 1 (2015), 1.

<sup>19</sup> David Garland, "Criminology's Place in the Academic Field", in *What is Criminology?* ed. Mary Bosworth, (Oxford University Press, 2011).

<sup>20</sup> Andy Aydin-Aitchison, "Criminological Theory"; Andy Aydin-Aitchison, "Bringing Together Criminologies"; Stephanie DiPietro, "Criminology and war"; Susanne Karstedt, Hollie Brehm, and Laura Frizzell, "Genocide, Mass Atrocity"; Daniel Maier-Katkin, Daniel Mears and Thomas J Bernard, "Towards a Criminology of Crimes Against Humanity", *Theoretical Criminology* 13, no. 2, (2009); Joachim Savelsberg *Criminology of Genocide and Atrocities Crime and Human Rights* (London: SAGE Publications, 2010).

ease with definitional work,<sup>21</sup> criminological scholars have shown definitional flexibility for certain key concepts such as genocide. Indeed, the acknowledgement that actions such as preparation, cooperation, and organisation, exist on a continuum allows further analysis and the formulation of multi-level frameworks of explanation.<sup>22</sup> An especially valuable type of criminological framework is an integrated analysis of multiple scales which recognises the interdependence of macro (state), meso (organisational) and micro (individual) levels and their interactions.<sup>23</sup> Some scholars working against the fragmentation and isolation of the criminological field have produced comprehensive works drawing on different strands of criminology such as the criminology of serious economic crimes<sup>24</sup> or distinct fields, such as psychology.<sup>25</sup> A crucial restriction is criminology's relationship to state and power. This point is illustrated by criminology's failure to produce material on atrocities during the second half of the twentieth century, when dynamics such as latent antisemitism or political world order (Cold-War bipolarity) did not support it.<sup>26</sup> Whilst certain authors actively attempt to correct the criminological gap within the atrocity scholarship,<sup>27</sup> others adopt a more pessimistic approach by questioning the capacity of criminology, as an academic field, to analyse events with an international dimension.<sup>28</sup>

### *Zemiology's contribution to atrocity studies*

Zemiology is an academic movement which originates from discussions around the concept of social harm and its potential as an alternative to the concept of crime.<sup>29</sup> Its contribution to the field of atrocities is less straightforward than criminology's. Thus, I

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<sup>21</sup> Stephanie DiPietro, "Criminology and War", 841.

<sup>22</sup> Andy Aydin-Aitchison, *Genocide and State Sponsored Killing*, 11; Susanne Karstedt, Hollie Brehm, and Laura Frizzell, "Genocide, Mass Atrocity", 77.

<sup>23</sup> Andy Aydin-Aitchison, *Genocide and State Sponsored Killing*, 11; Susanne Karstedt, "Scaling criminology: From street violence to atrocity crimes", in *Regulatory Theory: Foundations and Applications*, ed. Peter Drahos, (Canberra: ANU Press, 2017); Joachim Savelsberg, *Address Contemporary Atrocities?*.

<sup>24</sup> Andy Aydin-Aitchison, "Bringing Together Criminologies".

<sup>25</sup> Tom Buitelaar, "The ICC and Atrocities".

<sup>26</sup> Katya Franko Aas, "The Earth is One, But The World is Not': Criminological theory and its geopolitical divisions", *Theoretical criminology* 16, no. 1, (2012); Alex Alvarez, "Governments, citizens", 18; Stephanie DiPietro, "Criminology and war", 840; John Hagan and Wenona Raymond-Richmond, *Crime of Crimes*, 32.

<sup>27</sup> Manuel Eisner, "The Uses Of Violence: an Examination of Some Cross Cutting Issues", *International Journal of Conflict and Violence* 3, no.42, (2009).

<sup>28</sup> David Garland, *Criminology's Place*, 301.

<sup>29</sup> Victoria Canning and Steve Tombs, *From Social Harm*, 1.

start by framing and analysing the zemiological lens before analysing the zemiological tools relevant in the context of atrocities.

*Beyond Criminology: Taking Harms Seriously*,<sup>30</sup> gathers analysis and research on the conceptual and empirical shortages of mainstream criminology.<sup>31</sup> Despite dissonances amongst the book's contributors, two important arguments stem from this book. The first is that the concept of crime does not suffice to encompass the full range of harms individuals experience.<sup>32</sup> The second is that efforts of progressive changes are permanently restricted, even within critical currents, and, therefore, unprecedentedly suggests a clear movement beyond criminology's boundaries.<sup>33</sup>

Indeed, a recurrent theme within the zemiological literature is a critique of the concept of crime. Hillyard and Tombs famously formulated nine criticisms of crime: namely it (1) has no ontological reality, (2) perpetuates a myth, (3) consists of many petty events, (4) excludes several serious harms, (5) is artificially constructed, (6) inflicts pain through criminalisation and punishment, (7) is ineffective, (8) gives legitimacy to the growth of crime control (and its industry), and (9) serves to sustain power relations.<sup>34</sup> Throughout the zemiological literature, with varying emphasis on one or more of these criticisms, academics thoroughly examine the concept of crime.

I have observed two main categories of divergence within zemiology's ranks. The first one is the ontological value of the notion of harm (zemiology's underpinning concept). Canonical authors themselves acknowledged that the broadness of the zemiological scope could be considered ontologically problematic.<sup>35</sup> Despite the advantages of definitional flexibility,<sup>36</sup> several authors admit that a coherent definition and grounding of the social reality of their object of study, namely harm, is a crucial step for the

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<sup>30</sup> Paddy Hillyard et al., *Beyond Criminology: Taking Harm Seriously* (London: Pluto, 2004).

<sup>31</sup> Simon Pemberton, "Social Harm Future(s): exploring the potential of the social harm approach". *Crime Law and Social Change* 48, no. 1-2, (2007), 57; Justin Kotzé, *Criminology or Zemiology?*,85.

<sup>32</sup> Letizia Paoli and Victoria Greenfield, "Harm: A Substitute for Crime or Central to It?" in *Zemiology: Reconnecting Crime and Social Harm*, eds. Avi Boulki and Justin Kotzé (Cham: Springer International Publishing, 2018), 57; Justin Kotzé, *Criminology or Zemiology?*,85.

<sup>33</sup> Simon Pemberton, "Social Harm Future(s)", 27.

<sup>34</sup> Paddy Hillyard, et al., *Beyond Criminology*,10–16.

<sup>35</sup> Paddy Hillyard, et al., *Beyond Criminology*,19–20.

<sup>36</sup> Francesca Soliman, "States of exception, human rights, and social harm: Towards a border zemiology", *Theoretical Criminology* 25, no. 2 (2021),10.

development of zemiology.<sup>37</sup> Nevertheless, no clear assessment, of what makes an event harmful, stems from the literature observed. An illustration of this shortage is the unquestioned use of a core and crucial term: “xemia”. Xemia is a Greek term with multiple connotations, it can be understood in terms of ‘hurt’ or ‘loss’ but also in the context of ‘punishment’ or ‘penalty’.<sup>38</sup> Despite being a vague term stemming from a rough translation, xemia gave its name to zemiology, a label which permeates the scholarship observed.<sup>39</sup> In an attempt to correct this lack of characterisation, Pemberton suggests the grounding of harm’s ontological reality within Doyal and Gough’s theory of human needs.<sup>40</sup> He argues that harm occurs when an individual cannot satisfy specific needs.<sup>41</sup> He proposes three categories of harm which correspond to categories of needs that must be fulfilled for individuals to not be harmed: physical/mental health, autonomy, and relational.<sup>42</sup>

The second group of divergence identified within zemiology’s ranks concerns zemiology’s position towards criminology. Three stances can be identified. The first considers zemiology to be a sub-discipline of criminology according to which the replacement of crime with harm has no legitimacy.<sup>43</sup> The second position is to advocate for zemiology as an independent discipline defending the idea that zemiology must be emancipated from restrictive and strict legalistic definitions.<sup>44</sup> The last position consists of questioning the necessity to oppose zemiology and criminology. For instance, Simončič uses zemiological and criminological lenses one after the other in order to analyse the harms produced by the fast-fashion industry.

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<sup>37</sup> Victoria Canning and Steve Tombs, *From Social Harm*, 53; Simon Pemberton, “Social Harm Future(s)”, 35; Simon Pemberton, *Harmful societies*, 14.

<sup>38</sup> Justin Kotzé, *Criminology or Zemiology?*, 88-90.

<sup>39</sup> Justin Kotzé, *Criminology or Zemiology?*, 88-90.

<sup>40</sup> Victoria Canning and Steve Tombs, *From Social Harm*, 50-51; Len Doyal and Ian Gough, *A Theory of Human Need* (Basingstoke: Macmillan Education, 1991).

<sup>41</sup> Simon Pemberton, *Harmful societies*, 27-28.

<sup>42</sup> Simon Pemberton, *Harmful societies*, 28.

<sup>43</sup> Victoria Canning and Steve Tombs, *From Social Harm*, 41–46; Lynne Copson, “Beyond ‘Criminology vs Zemiology’: Reconciling Crime with Social Harm” in *Zemiology: Reconnecting Crime and Social Harm*, eds. Avi Boulki and Justin Kotzé (London: Palgrave, 2018), 38; Justin Kotzé, *Criminology or Zemiology?*, 93; John Muncie, “Book Review: Beyond criminology: Taking harm seriously”, *Crime, Law and Social Change* 43, no. 2–3 (2005); Letizia Paoli and Victoria Greenfield, *Harm: A Substitute*, 59; Lucia Zedner, “Putting Crime Back on the Criminological Agenda” in *What is Criminology?*, eds. Mary Bosworth & Carolyn Hoyle, (Oxford: Oxford University Press, 2011).

<sup>44</sup> Victoria Canning and Steve Tombs, *From Social Harm*: 49; Louk Hulsman, “Critical Criminology and The Concept of Crime”, *Contemporary Crises* 10, no.1, (1986); Simon Pemberton, “Social Harm Future(s)”: 28;30.

Without ignoring the tensions between the disciplines, the author intends to maximise her understanding of the harms addressed.<sup>45</sup>

I argue that two zemiological tools discussed above are appropriate in the context of atrocities: the critique of crime and the categorisation of harms.<sup>46</sup> Zemiologists consider crime as a spatially, temporally, and socially contingent construction whose definition has historically been decided by the powerful, namely state entities and elites.<sup>47</sup> In a zemiologist perspective, crime supports structures and systems benefiting its architects rather than the population.<sup>48</sup> Where it used to serve feudalist or imperialist principles, crime (and the entities materialising it: criminal law, the criminal justice system, etc) now acts according to neoliberalism and its capitalist structures' interests.<sup>49</sup> In other terms, zemiology considers crime as a concept defined, constructed, and enforced by state and elite entities of a given society.<sup>50</sup> This perception of crime has two implications which can be key in the context of atrocities. Firstly, it allows a qualitative and quantitative broadening of the criminological scope through which an episode of atrocity is analysed. It allows us to analyse harmful events beyond standards set by the restricted scope of traditional criminal justice such as intentionality and proximity.<sup>51</sup> Secondly, the state/elite-defined aspect of crime permits the consideration of crime and its derivative terms (for example 'criminal', 'prisoner' and 'illegal immigrant') as indicators of dynamics of power.<sup>52</sup> In the context of an episode of atrocity, this approach permits careful consideration of the use of labels to observe and uncover relationships of power, dynamics of dominance or the involvement of specific actors.<sup>53</sup> The second zemiological tool I judge appropriate is

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<sup>45</sup> Katja Simončič, "Fast Fashion: A Case of Social Harm and State-Corporate Crime", *Howard Journal of Crime And Justice* 60, no. 3 (2021).

<sup>46</sup> Simon Pemberton, *Harmful societies*.

<sup>47</sup> Victoria Canning and Steve Tombs, *From Social Harm*, 3.

<sup>48</sup> Victoria Canning and Steve Tombs, *From Social Harm*, 3; Ifeanyi Ezeonu, "Capital and Chlordecone Poisoning in the French Caribbean Islands of Guadeloupe and Martinique: A Thesis on Crimes of the Market", *International Critical Thought* 11, no. 2 (2021), 272.

<sup>49</sup> Ifeanyi Ezeonu, "Capital and Chlordecone Poisoning"; Stephen Hall and Simon Winlow, "Big Trouble or Little Evils: The Ideological Struggle over the Concept of Harm", in *Zemiology: Reconnecting Crime and Social Harm*, eds. Avi Boukli and Justin Kotzé (Cham: Springer International Publishing, 2018), 107.

<sup>50</sup> Ifeanyi Ezeonu, "Capital and Chlordecone Poisoning", 275.

<sup>51</sup> Simon Pemberton, "A theory of Moral Indifference: Understanding the Production of Harm by Capitalist Society" in *Beyond Criminology: Taking Harm Seriously*, eds. Paddy Hillyard, et al (London: Pluto, 2004), 68.

<sup>52</sup> Victoria Canning and Steve Tombs, *From Social Harm*, 3 and 118.

<sup>53</sup> Victoria Canning and Steve Tombs, *From Social Harm*, 3 and 118.



Pemberton's categorisation of harms. He operationalises a 'needs' approach to harm in an unprecedented manner by defining three categories of harm which stem from the idea that harm occurs when individuals are prevented from fulfilling specific needs, such as autonomy or decent health.<sup>54</sup> As demonstrated in Simončič's work, Pemberton's categories can be used to uncover the magnitude and seriousness of the wide range of harms occurring during a specific event.<sup>55</sup>

## Methods

### *Research Strategy*

This article analyses experiences of the Uyghurs through a zemiological lens, more precisely through the two following tools: a state/elite defined and constructed perception of the label of crime and Pemberton's categories of social harm. The litmus test to judge the first tool's appropriateness is whether this specific zemiological critique of the concept of crime allows a quantitative and qualitative improvement of our understanding of the volume and origins of the harms experienced by the Uyghur community. Concerning the second tool, the hypothesis to assess is whether Pemberton's three categories of social harm are relevant and appropriate in the case of the situation experienced by the Uyghurs and whether they allow the enhancement of our knowledge of the magnitude and seriousness of the harms occurring. In other words, these categories will be used to consider whether the harms observed in the data, affect individuals' capabilities and opportunities to maintain sufficient physical/mental health, achieve, and control their self-actualisation, or preserve meaningful social relationships and their identities.<sup>56</sup>

### *Sources*

The data on the concrete events experienced by the Uyghur community in Xinjiang is collected in the Uyghur Tribunal's public evidence base. The Uyghur Tribunal (UT) is an independent People's Tribunal established in June 2020 and it delivered its

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<sup>54</sup> Simon Pemberton, *Harmful societies*, 28; Katja Simončič, "Fast Fashion", 346.

<sup>55</sup> Katja Simončič, "Fast Fashion".

<sup>56</sup> Simon Pemberton, *Harmful societies*, 28–30.

judgment in December 2021.<sup>57</sup> The People's Tribunal's purpose is to address a question which needs answering but is left untouched by formal bodies. Their jurisdiction is rooted in citizens' rights to fill a knowledge gap. Their conclusions have no formal power.<sup>58</sup> Additionally, further explanations are found in expert reports which rely on primary evidence such as audio-visual evidence or official documents and were considered by the UT.<sup>59</sup> The events, facts, situations, and emotions delineated in the data will be thoroughly considered through the lens of the two zemiological tools identified earlier.

This database was chosen because the UT represents the (unique) assessment of the Uyghur situation following a wide, evidence-based process by a recognised model. Because of the PRC, alongside its global influence, repeatedly stating that any comments on this situation represents a breach of its sovereignty which will not be tolerated, this data is controversial.<sup>60</sup> The PRC has issued sanctions towards individuals (e.g., academics, deputies) and organisations (including the UT) who publicly addressed this matter.<sup>61</sup>

## Case Study: The Uyghurs of Xinjiang

### Context

The harms observed are endured by the estimated eleven million Uyghurs living in Xinjiang. Since the conquest of the Qing Empire in 1884, Xinjiang has seen a series of governments until the establishment of the PRC in 1949. With a varying intensity

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<sup>57</sup> David Tobin, "How an independent tribunal came to rule that China is guilty of genocide against the Uyghurs", *The Conversation UK*, 14 December 2021, <https://theconversation.com/how-an-independent-tribunal-came-to-rule-that-china-is-guilty-of-genocide-against-the-uyghurs-173604>.

<sup>58</sup> Andrew Byrnes and Gabrielle Simm *Peoples' Tribunals and International Law* (Cambridge: Cambridge University Press, 2017); Geoffrey Nice, UT- Live Hearing 04/06/2021-Opening Remarks From the Chair, 2021. <https://www.youtube.com/watch?v=7aLUj1sQDgQ>; Geoffrey Nice, *International Justice and the UTs: A conversation with Sir Geoffrey Nice, QC*. Edinburgh: The University of Edinburgh's Global Justice Academy, 2022.

<sup>59</sup> Uyghur Tribunal Judgement, 2021, 14-15, <https://uyghurtribunal.com/wp-content/uploads/2022/01/Uyghur-Tribunal-Judgment-9th-Dec-21.pdf>.

<sup>60</sup> Patrick Wintour, "China imposes sanctions on UK MPs, lawyers and academic in Xinjiang row", *The Guardian*, 14 March 2021, <https://www.theguardian.com/world/2021/mar/26/china-sanctions-uk-businesses-mps-and-lawyers-in-xinjiang-row>

<sup>61</sup> Patrick Wintour, "China imposes sanctions".

until the early 1990s, with a peak of magnitude since the late 2010s, the PRC has issued discriminatory policies towards the Uyghurs.<sup>62</sup> This PRC strategy is underpinned by connected and mutually reinforcing assumptions such as security, political, and economic threats, stemming from the Uyghurs' identity and the strategic aspect of Xinjiang.<sup>63</sup>

A search using the Institute for Scientific Observation's database (Web of Science) demonstrates that several academic disciplines have investigated the Uyghurs' situation (such as area, ethnic, religious studies, political science, sociology, and biology). When applying the filter 'genocide', relevant to atrocity studies, the search reveals only ten results. These resources are less than two years old and mostly stem from government, legal, and political science research areas. No paper proposes any sort of framework attempting to make sense of the events endured by the Uyghurs. Nevertheless, similar explanatory approaches have been adopted in the context of the Rohingya Crisis.<sup>64</sup> The literature, however, lacks an analysis of the criminological lens of a specific event in terms of zemiology.

### *Zemiological critique of crime*

This section explores the validity of the zemiological critique of the concept of crime in the context of the harms experienced by the Uyghurs. It argues that this first zemiological tool qualitatively and quantitatively broadens the criminological scope of inquiry.

From the zemiological state/elite constructed perception of crime stems the idea that certain artificial elements attached to the concept of crime reduce the volume of harms observed. The following segments analyse whether an approach bereft of certain

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<sup>62</sup> Amnesty International, *Like we were enemies in a war*, 18.

<sup>63</sup> Amnesty International, *Like we were enemies in a war*, 19; James Millward and Dahlia Peterson, "China's system of oppression in Xinjiang: How it developed and how to curb it", The Brookings Institution, September 2020, 8, <https://www.brookings.edu/research/chinas-system-of-oppression-in-xinjiang-how-it-developed-and-how-to-curb-it/>; United-States Holocaust Memorial Museum, *'To Make Us Slowly Disappeared': The Chinese Government's Assault on the Uyghurs*, (Washington: Simon-Skjodt Centre for the Prevention of Genocide, 2021), 11.

<sup>64</sup> Melanie O'Brien, "'There We Are Nothing, Here We Are Nothing!' —The Enduring Effects of the Rohingya Genocide", *Social Sciences* (Basel) 9, no.11, (2020).

excluding elements (respectively intentionality, proximity and subjective narrowness) is relevant in the context of the Uyghurs.

Firstly, zemiologists consider that the concept of crime, through its ties to criminal law, which artificially prioritises intentionality over indifference, excludes the wide range of harm caused and/or allowed by indifference.<sup>65</sup> The situation of the Uyghurs has increasingly been publicly disclosed, evidenced, and discussed by media and academics for at least four years.<sup>66</sup> This paper acknowledges that the PRC's geopolitical and economic power considerably reduce the prospects of significant leverage of individual state-action but argues that it does not justify the almost complete level of inaction displayed<sup>67</sup> beyond fruitless diplomatic statements<sup>68</sup> of governmental actors. It has been identified that at least 83 companies such as Amazon, Mercedes-Benz, or Zara, by employing contractors involved in the Uyghurs forced labour program, participate in Uyghur suffering.<sup>69</sup> Although they do not themselves intentionally employ Uyghurs under enslaving conditions their silence cannot be considered as harmless.<sup>70</sup> Additionally, the global public, despite social media campaigns,<sup>71</sup> shows indifference to the situation experienced by the Uyghurs by not holding their governments accountable nor boycotting companies. For instance, several fast-fashion clothing companies appear in the list of companies participating the Uyghurs suffering, but the industry is still growing<sup>72</sup>. An approach bereft of a focus on intentionality reveals that through indifference a wide range of actors are responsible for the harms experienced by the Uyghurs.

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<sup>65</sup> Simon Pemberton, *A Theory of Moral Indifference*, 68–69.

<sup>66</sup> Lily Kuo, "China Footage Reveals Hundreds of Blindfolded And Shackled Prisoners", *The Guardian*, 23 September 2019, <https://www.theguardian.com/world/2019/sep/23/china-footage-reveals-hundreds-of-blindfolded-and-shackled-prisoners-uyghur>.

<sup>67</sup> J Packer and Y Diamond, Expert Witness Statement. 11/09/2021 Hearings. London: UT.

<sup>68</sup> Human Rights Watch, "UN: Unprecedented Joint Call for China to End Xinjiang Abuses" (2019), <https://www.hrw.org/news/2019/07/10/un-unprecedented-joint-call-china-end-xinjiang-abuses>; Reuters, "U.N. rights chief regrets lack of access to Xinjiang", (2021) <https://www.reuters.com/world/china/un-rights-chief-regrets-lack-access-xinjiang-2021-09-13/>

<sup>69</sup> Vicky Xiuzhong Xu et al, *Uyghurs For Sale: 'Re-education', Forced Labour and Surveillance beyond Xinjiang* (Branton: ASPI-International Cyber Policy Center, 2020).

<sup>70</sup> A Idris, Expert Witness Statement. 10/09/2021 Hearings. London: UT.

<sup>71</sup> Mathilde Durand, "Soutien aux Ouïghours : pourquoi les réseaux sociaux sont-ils envahis de carrés bleus ciel?", *Le Journal du Dimanche*, 01 Octobre 2020, <https://www.lejdd.fr/International/soutien-aux-ouighours-pourquoi-les-reseaux-sociaux-sont-ils-envahis-de-carres-bleus-ciel-3995567>.

<sup>72</sup> Verena Gruber and Marie-Agnes Parmentier, "10 years after the Rana Plaza collapse, fashion has yet to slow down", *The Conversation UK*, 27 April 2023, <https://theconversation.com/10-years-after-the-rana-plaza-collapse-fashion-has-yet-to-slow-down-204481>.

Secondly, zemiology argues that crime, through its affiliation with criminal law which mostly indexes events entailing a degree of proximity between the source and object of the harm, dismisses the wide range of harms caused despite spatial and temporal distance.<sup>73</sup> The PRC's governing entities operate from Beijing,<sup>74</sup> more than 2000 kilometres away from the Xinjiang's capital Ürümqi. Their direct responsibility in virtually all harmful decisions concerning the Uyghurs of Xinjiang, clearly demonstrates that spatial proximity is unnecessary to cause harm. Similarly, the decision of a technology company's leadership, such as Huawei or Megvii<sup>75</sup> to sell technologies for mass surveillance to the PRC, is taken far (geographically and temporally), from the Uyghurs' situation. Moreover, in the case of the mass surveillance campaign,<sup>76</sup> time and precise locations are irrelevant to the extent in which the harms caused (e.g., terror climate, intimidation) are omni-present. Thus, spatial, and temporal proximity are irrelevant in the context of certain harms experienced by the Uyghurs in Xinjiang.

Thirdly, zemiologists argue that crime is based on a contingent construction maintained and defined by the society's powerful actors and therefore currently supports neoliberalism's and capitalist structures' interests.<sup>77</sup> Because the concept is formulated far from human considerations it fails to encompass a wide range of events which meaningfully impact individuals' lives in a daily manner: organisational and structural harms or harms normalised by neoliberalism.<sup>78</sup> One of the rationales underlying the PRC's strategy is a belief in Han supremacism from which stems the framing of policies under nationalist efforts to neutralise the threat represented by communities not clearly showcasing a Han sense of identity.<sup>79</sup> According to the expert witnesses, such strategies are underlined by strong anti-Muslim narratives, enabling a form a latent racism to infiltrate the country's structures, which in turn allows the

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<sup>73</sup> Victoria Canning and Steve Tombs, *From Social Harm*, 55.

<sup>74</sup> E Anderson, Expert Witness Statement. 13/09/2021 Hearings. London: UT; J Batke Expert Witness Statement. 10/09/2021 Hearings. London: UT; C. Parton, Expert Witness Statement. 13/09/2021 Hearings. London: UT; S Roberts, Expert Witness Statement, 04/06/2021 Hearings. London: UT; A Zens, Expert Witness Statement, 07/06/2021 Hearings. London: UT. C Healy, Expert Witness Statement. 12/09/2021 Hearings. London: UT.

<sup>75</sup> T Biao, Expert Witness Statement. 10/09/2021 Hearings. London: UT; M Wang, 2021. Expert Witness Statement. 10/09/2021 Hearings. London: UT.

<sup>77</sup> Ifeanyi Ezeonu, "Capital and Chlordecone Poisoning".

<sup>78</sup> Victoria Canning and Steve Tombs, *From Social Harm*, 55; Paddy Hillyard et al, *Beyond Criminology*, 13.

<sup>79</sup> United-States Holocaust Memorial Museum, *To Make Us Slowly Disappeared*, 11.

current Uyghur situation.<sup>80</sup> Companies participating in the forced labour programmes also are an integral part of a global supply chain whose main enabler is one of capitalism's core features: consumerism. The harms stemming from consumerism's main industries (for example fast fashion, communication tools), including slavery-like working conditions,<sup>81</sup> are normalised due to their affiliation with the dominant ideology (that is neoliberalism).<sup>82</sup> Certain harms excluded or normalised by the concept of crime's contingency on elites' interests have been proven as crucial in the situation of the Uyghurs.

Zemiologists argue that the crime language and labels are indicators of a capacity to manage economically, politically, and structurally 'the powerless' according to specific interests.<sup>83</sup> As previously mentioned the 'stability' of the Xinjiang is considered to be imperative by the PRC. This rationale is visible through the criminalisation of the Uyghurs individuals' everyday lives.<sup>84</sup> Several factual witness state that they have observed actions such as regular prayer, dietary restrictions, or even Muslim greetings being considered as reasonable justifications for long term detention or labelled as terrorist activities.<sup>85</sup> The labelling of most aspects of an Uyghur individual's familial, social, cultural, and religious life as crimes displays the PRC's desire to control this group and the means it is ready to deploy.

### *Pemberton's categories of harm*

This segment considers the significance of Pemberton's framework in the analysis, identifies and categories the harms experienced by the Uyghurs. It is divided into three sections which respectively consider the relevance of the physical/mental health, autonomy, and relational categories of harms. The consideration of these three

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<sup>80</sup> T Biao, Expert Witness Statement; J Millward, Expert Witness Statement. 12/09/2021 Hearings. London: UT; D Tobin, Expert Witness Statement. 05/06/2021 Hearings. London: UT; C Tyler, Expert Witness Statement. 11/09/2021 Hearings. London: UT; United-States Holocaust Memorial Museum, *To Make Us Slowly Disappeared* 11.

<sup>81</sup> N Abdureshid, Factual Witness Statement. 07/06/2021 Hearings. London: UT.

<sup>82</sup> Katja Simončič, "Fast Fashion".

<sup>83</sup> Victoria Canning and Steve Tombs, *From Social Harm*, 3 and 18.

<sup>84</sup> E Anderson, Expert Witness Statement, 10.

<sup>85</sup> R Abbas, Factual Witness Statement. 06/06/2021 Hearings. London: UT; S Abdighafur, Factual Witness Statement. 05/06/2021 Hearings. London: UT; N Abdureshid, Factual Witness Statement; O Bekali, 2021. Factual Witness Statement. 04/06/2021 Hearings. London: UT.

categories showcases that Pemberton's identification of harms increase this paper's understanding of the severity, scope, and origins of the situation.

The physical and mental health category relates to the objective of maintaining a state sufficient for individuals to 'lead an active and successful life'.<sup>86</sup> Pemberton understands physical health beyond deaths and mere survival as he argues that harmful events occur when individuals are unable to secure a quality of life allowing successful self-actualisation and social participation.<sup>87</sup> However, the extreme conditions endured by Uyghurs do not require this furthered understanding to reveal the physical and mental harms experienced. Indeed, it is an understatement to argue that the PRC's policies represent a clear impediment towards the physical and mental health of Uyghurs. In detention centres, the use of violent interrogation methods and torture is systematic.<sup>88</sup> Several factual witnesses report the use of electric shocks on parts of their bodies or 'tiger chairs'.<sup>89</sup> Sexual violence is also described as a routine method of harm by both male and female former prisoners.<sup>90</sup> The exploitation of family ties (disappearance, separation, intimidation),<sup>91</sup> constant technical and physical (infiltration of Hans within Uyghurs household)<sup>92</sup> surveillance and the use of physical torture as an enforcement tool for psychological torture<sup>93</sup> have created a climate of terror in which Uyghurs constantly exist.<sup>94</sup>

Pemberton's second category relates to the objective of securing a level of autonomy adequate for individuals to possess the appropriate decision-making skills necessary for self-actualisation.<sup>95</sup> According to Pemberton, the capability to independently formulate choices and act accordingly is a need which individuals must fulfil in their attempts to achieve self-actualisation.<sup>96</sup> Autonomy harms occurs in three different

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<sup>86</sup> Len Doyal and Ian Gough, *A Theory of Human Need*, 59.

<sup>87</sup> Simon Pemberton, *Harmful societies*, 28.

<sup>88</sup> D Tobin, Expert Witness Statement.

<sup>89</sup> A Ayup, Factual Witness Statement. 04/06/2021 Hearings. London: UT; O Bekali, Factual Witness Statement.

<sup>90</sup> G Alwauqanqizi, Factual Witness Statement. 13/09/2021 Hearings. London: UT; O Bekali, Factual Witness Statement; D Tobin, Expert Witness Statement.

<sup>91</sup> R Abbas, Factual Witness Statement; H Achad, Factual Witness Statement. 06/06/2021 Hearings. London: UT.

<sup>92</sup> A Muhammad, Factual Witness Statement. 11/09/2021 Hearings. London: UT.

<sup>93</sup> G Cain, Expert Witness Statement. 12/09/2021 Hearings. London: UT.

<sup>94</sup> R Abbas, R., Factual Witness Statement.

<sup>95</sup> Simon Pemberton, *Harmful societies*, 28.

<sup>96</sup> Simon Pemberton, *Harmful societies*, 29.

manners. The first is the inaccessibility of adequate educational systems, preventing the individual from developing their understanding and learning skills, leading to the harmful states of illiteracy or innumeracy for instance.<sup>97</sup> The education of Uyghur children is not understood in terms of supplying necessary tools for self-actualisation but in terms of an opportunity for the state to safeguard their interests.<sup>98</sup> The second is the lack of opportunities for individuals to meaningfully participate in social activities (including paid work or having children) allowing for the development of self-esteem and preventing isolation.<sup>99</sup> Opportunities for Uyghurs to participate in meaningful social activities are extremely restricted. When Uyghurs are not coercively enrolled in labour programmes, they face considerable discrimination in terms of job opportunities.<sup>100</sup> Uyghurs face difficulty in constructing a family due to a mass campaign of Uyghur birth prevention. Inside and outside camps, women have been subject to imposed contraceptive devices (for example annual checking of contraceptive implants), sterilisation (for example removal of reproductive organs) and abortions.<sup>101</sup> This campaign has caused a drop in official birth rates in Xinjiang since 2017 which fell by nearly half between 2017 and 2019.<sup>102</sup> The third, is the inability of individuals to exercise control over important decisions having a direct impact on their lives.<sup>103</sup> The restrictions mentioned above clearly indicate an absence of control over economic and familial decisions. All factual witnesses heard by the UT confirm the occurrence of comprehensive 'health checks' including blood tests and scans.<sup>104</sup> This coercion also applies to an individual's choice of identity as the Han identity is the only accepted one as several factual witnesses report forced assimilation process such as classes in detention camps.<sup>105</sup>

The third category pertains to the objective of maintaining meaningful social relationships crucial to achieve both social participation and self-actualisation.<sup>106</sup>

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<sup>97</sup> S., Pemberton, *Harmful societies*, 29.

<sup>98</sup> J Milssap, Expert Witness Statement. 11/09/2021 Hearings. London: UT.

<sup>99</sup> Simon Pemberton, *Harmful societies*, 29.

<sup>100</sup> H Achad, Factual Witness Statement.

<sup>101</sup> S Abdighafur, Factual Witness Statement; T Ziyawudun, Factual Witness Statement. 05/06/2021 Hearings. London: UT.

<sup>102</sup> N Ruser, Expert Witness Statement. 06/06/2021 Hearings. London: UT, 8.

<sup>103</sup> Simon Pemberton, *Harmful societies*, 29; Katja Simončič, "Fast Fashion", 346.

<sup>104</sup> G Alwauqanqizi, Factual Witness Statement; A Ayup, Factual Witness Statement; O Bekali, Factual Witness Statement; T Ziyawudun, Factual Witness Statement.

<sup>105</sup> A Muhammad, Factual Witness Statement.

<sup>106</sup> Simon Pemberton, *Harmful societies*, 29.



Relational harms occur in two different non-mutually exclusive manners. The first is social exclusion which results from the non-accession to social, educational, and emotional networks which are necessary to social participation but also to attempts at self-actualisation due to their supportive nature.<sup>107</sup> Because the group observed is constituted, by eleven million individuals, it is not appropriate to talk of individual exclusion from all sorts of social networks. However, emotional networks have been greatly affected. Indeed, most Uyghur families have been separated by deaths,<sup>108</sup> detention,<sup>109</sup> coercive cuts of communications,<sup>110</sup> or boarding-school schemes for children.<sup>111</sup> The second is misrecognition which stems from the non-accession to qualitative social relationships, namely relationships which accept and acknowledge individuals' identity, lifestyle, and membership to a specific religious, ethnic, and/or social group.<sup>112</sup> Unlike the majority of the Chinese population (Hans), individuals of the group observed show a Turkic ethnicity and are mostly Muslim.<sup>113</sup> Beyond this ethno-religious difference, they have a very rich cultural identity conveyed through their own language, traditions, music, and art.<sup>114</sup> This identity has been targeted by the PRC's policies which as whole represent, according to several expert witnesses, a framework to achieve ethnic extinction.<sup>115</sup> Beyond the criminalisation of the Uyghur individual's everyday life, the PRC also perpetrates to an 'eliticide'<sup>116</sup> by targeting influential members of the Uyghur community (for example religious leaders, intellectuals, teachers) in order to prevent, and eventually eradicate, the transmission of the Uyghur culture.<sup>117</sup> The strategy extends to the physical existence of Uyghur

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<sup>107</sup> Simon Pemberton, *Harmful societies*, 30–31; Katja Simončič, "Fast Fashion", 347.

<sup>108</sup> O Bekali, Factual Witness Statement.

<sup>109</sup> R Abbas, Factual Witness Statement.

<sup>110</sup> S Abdighafur, Factual Witness Statement; N Abdureshid, Factual Witness Statement.

<sup>111</sup> J Packer and Y Diamond, Expert Witness Statement, 30-31; R Turdush, Expert Witness Statement. 07/06/2021 Hearings. London: UT; A Zens, 2021. Expert Witness Statement.

<sup>112</sup> Simon Pemberton, *Harmful societies*, 30–31; Katja Simončič, "Fast Fashion", 347.

<sup>113</sup> Human-Rights Watch, *Break Their Lineage Break Their Roots: Chinese Government Crimes against Humanity Targeting Uyghurs and Other Turkic Muslims*, (Stanford: Human Rights Watch, 2019), 7.

<sup>114</sup> United-States Holocaust Memorial Museum, *To Make Us Slowly Disappeared*, 5.

<sup>115</sup> T Biao, 2021. Expert Witness Statement, 4.; D., Byler, Expert Witness Statement. 06/06/2021 Hearings. London: UT; G., Cain, Expert Witness Statement; D., Tobin, Expert Witness Statement.

<sup>116</sup> P., Irwin, Expert Witness Statement. 13/09/2021 Hearings. London: UT; R., Abbas, Factual Witness Statement; H Achad, Factual Witness Statement; J Milssap, Expert Witness Statement; J Packer and Y Diamond, Expert Witness Statement; B Sintash, Expert Witness Statement.

<sup>117</sup> R Abbas, Factual Witness Statement; H Achad Factual Witness Statement; J Milssap, Expert Witness Statement; J Packer and Y Diamond, Expert Witness Statement; B Sintash, Expert Witness Statement.

culture through the destruction of cultural property. It is estimated that in October 2019 the authorities demolished between 10,000 and 15,000 thousand religious sites.<sup>118</sup>

### *Relevant but incomplete*

In the context of the harms experienced by the Uyghurs, it is fair to argue that the zemiological critique of the concept of crime is relevant and valuable as it qualitatively and quantitatively broadens the criminological scope of inquiry. However, beyond a valuable broadening, this zemiological critique does not put forward tangible solutions to improve the Uyghurs' situation. This shortage is symptomatic of one of zemiology's failures, namely, to articulate solutions.<sup>119</sup> Certain academics claim that zemiologists concentrate too much on castigating criminology and not enough on developing their discipline.<sup>120</sup> Nevertheless, this obsessive focus on criminology potentially affects zemiology's legitimacy as an independent discipline but does not annul the value of the zemiological critique in the context of the situations experienced by the Uyghurs. Despite a few elements with a debatable relevance, Pemberton's identification and categorisation of harm allows the improvement of this paper's understanding of the severity, scope, and origins of the situation. However, the application of Pemberton's tool to the case of the Uyghurs highlights a zemiological contradiction, namely zemiology's political character. Indeed, zemiology blames criminology for the contingent, political, and ideological character of its underpinning concept, but the identification of harms proposed above undeniably also has an ideological bias.<sup>121</sup> For instance, the negative judgement of an education emphasising the value of communism can be considered as a liberalist bias. Indeed, despite a significant contribution towards the ontological grounding of the concept of harm, Pemberton acknowledges that a need-based approach is inevitably vulnerable to a lack of objectivity due to the concept of harm being value laden notion.<sup>122</sup> Nevertheless, besides highlighting a similarity with the discipline zemiology has been founded in

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<sup>118</sup> B Sintash, Expert Witness Statement, 8.

<sup>119</sup> Lynne Copson "Beyond 'Criminology vs Zemiology', 38; and Majid Yar, "Critical Criminology, Critical Theory and Social Harm", in *New Directions in Criminological Theory*, eds. Stephen Hall and Simon Winlow (New York: Routledge, 2012), 59.

<sup>120</sup> Ian Loader and Richard Sparks *Public Criminology?* (Abingdon: Routledge, 2011), 25.

<sup>121</sup> Simon Green, Gerry Johnstone and Craig Lambert, "What Harm, Whose Justice?: Excavating the Restorative Movement", *Contemporary Justice Review* 16, no. 4 (2013), 445.

<sup>122</sup> Simon Pemberton, *Harmful societies*, 32.

opposition to, this contradiction does not discredit the achievements of the framework presented above.

## **Conclusion**

A thorough assessment of criminological and zemiological contributions to the field of atrocities allows this paper to argue that the criminological lens provides valuable tools for the analysis of atrocities but simultaneously displays non-neglectable flaws. This paper argues that despite not being straightforward, a zemiological lens attempts to remedy these criminological shortages through two main tools.

The first, namely the zemiological critique of crime, enables a more thorough consideration of more harmful events. This quantitative and qualitative broadening of the criminological scope of inquiry is achieved by endorsing an approach bereft of several excluding factors such as intentionality. However, this approach reveals a symptomatic pattern of zemiology which is a more intense focus on criminology than on the development of an independent and complete discipline.

Secondly, Pemberton's categorisation allows an enhanced understanding of the seriousness, magnitude, and origin of the harm experienced by the Uyghurs in Xinjiang by going beyond the 'crime lens'. Nevertheless, it also reveals zemiology's contradiction on the contingency of criminology's underpinning concept by displaying an ideological bias. Overall, the zemiological framework identified is judged relevant and valuable in the context of the harms experienced by the Uyghurs. The two zemiological shortages identified potentially affect the prospects of zemiology as a discipline independent from criminology but they do not invalidate the value of the zemiological framework in the context of atrocity studies.

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