

Composite Critical Criminology & Collective Stewardship (Khalifa): a theoretical exploration of preventing environmental crimes in Malaysia.

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ABSTRACT: This paper identifies and interrogates a novel theoretical lens to address environmental 'crime' understood as a 'composite critical criminological' approach (Quraishi, 2020:90) incorporating three main conceptual strands: 1)Evaluating pertinent scholarship under the umbrella of zemiology and its addressing of social harms and the holistic approach to crime (Tombs, 2018); 2)Ultra Realist (UR) scholarship, particularly the notion of 'special privilege' (Winlow & Hall, 2016; Boukli & Kotzé, 2018) and Islamic Critical Realism (ICR) (Wilkinson, 2015; 2019); 3)Eco-theology and collective stewardship, the relationships and duties between individuals, states and corporations and scholars to prevent environmental harm with specific attention to the Islamic theological concept of Khalifa and the broader lens of eco-theology (Haleem, 2001)

The discussion and analyses are presented via a case study of Malaysia which represents a nation in the Global South with a pluralistic legal system experiencing significant environmental degradation against ambitious policies to counter the same. The case study examines a range of environmental harms, including those from petrochemical production and conspicuous consumption, whilst also advocating for the serious utilisation of an active Malaysian Islamic jurisprudence. Having set out a conceptual stall, the paper links this to a suggested model for future empirical work in this field. The model seeks to identify how social harm caused by environmental 'crime' is understood and articulated by three groups (often with different vested interests) to identify priorities for collective environmental stewardship.

KEYWORDS: Collective Stewardship, Zemiology, Ultra Realism, Islamic Critical Realism, Eco-Theology, Malaysia.

CRIMINOLOGÍA CRÍTICA COMPUESTA Y ADMINISTRACIÓN COLECTIVA (KHALIFA): UNA EXPLORACIÓN TEÓRICA DE LA PREVENCIÓN DE DELITOS AMBIENTALES EN MALASIA.

RESUMEN: Este artículo identifica e interroga una nueva lente teórica para abordar el «delito» medioambiental, entendido como un enfoque «criminológico crítico compuesto» (Quraishi, 2020:90) que incorpora tres vertientes conceptuales principales: 1) Evaluar los estudios pertinentes bajo el paraguas de la zemiología y su tratamiento de los daños sociales y el enfoque holístico de la delincuencia (Tombs, 2018); 2) La investigación ultra realista (UR), en particular la noción de «privilegio especial» (Winlow & Hall, 2016; Boukli & Kotzé, 2018) y el realismo crítico islámico (ICR) (Wilkinson, 2015; 2019); 3) Ecoteología y la administración colectiva, las relaciones y los deberes entre individuos, Estados y corporaciones y estudiosos para prevenir el daño Ambiental con atención específica al concepto teológico islámico de Jalifa y de la ecoteología (Haleem, 2001).

La discusión y el análisis se presentan a través de un estudio de caso de Malasia, que representa una nación del Sur Global con un sistema jurídico pluralista que experimenta una importante degradación medioambiental y ambiciosas políticas para contrarrestarla. En el estudio de caso examina una serie de daños medioambientales, incluidos los derivados de la producción petroquímica y el consumo excesivo, al tiempo que aboga de una jurisprudencia islámica malaya activa. Una vez que un modelo sugerido para futuros trabajos empíricos en este campo. El modelo trata de determinar cómo entienden y articulan el daño social causado por el «delito» medioambiental tres grupos (a menudo con diferentes intereses creados) para determinar las prioridades de la protección colectiva del medio ambiente.

PALABRAS CLAVE: Gestión colectiva, zemiología, ultrarrealismo, realismo crítico islámico, ecoteología, Malasia

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SUMMARY: 1. *Introduction*, 2. *A Composite Critical Criminological Approach*, 2.1. *Zemiology & Social Harm*, 2.2. *Ultra Realism & Islamic Critical Realism*, 2.2.1. *Islamic Critical Realism*, 2.3. *Eco-Theology & Collective Stewardship*, 2.4. *Collective Stewardship*, 3. *The Case Study of Malaysia*, 3.1. *Environmental challenges*, 3.2. *Malaysia & Legal Pluralism*, 3.3. *Applying the Composite Critical Criminological Approach to the Malaysian Context*, 4. *Conclusions*

1. Introduction

The issue of environmental degradation and pollution has long been of interest to criminologists, often under the collective perspective of Green Criminology which includes both green crimes and victimisation (Lynch, 1990; South 1998, Walters, 2017). Some scholars have argued it is more apt to refer to this field as eco-global criminology which is more reflective of the interactions between human societies, cultures and the natural environment (White, 2011). The field is a necessarily complex one, with competing perspectives on concepts, priorities, causes and preventative policies. The purpose of this paper is to provide some conceptual clarity and direction for scholars seeking to undertake future research on the environment and crime and it is illustrated via a criminological case study of Malaysia.

The present paper is prompted by a fuller articulation of what has been termed a 'Composite Critical Criminological' (CCC) approach identified by certain conceptual guiding principles pertaining specifically to issues of crime and victimisation in Malaysia. The full articulation of the CCC approach was borne out of an attempt to analyse and characterise a distinctly Malaysian criminology. Previous scholarship has been driven by questioning the extent to which a British, or Globally Northern, discipline of criminology resonates or departs with conceptions of crime and responses to it in Malaysia (Quraishi, 2020). The conclusion of that analysis led to the formulation of 6 guiding principles to inform future criminological research in Malaysia. The guiding principles include 1) acknowledgement of the key ontological and epistemological philosophical comprehension of the social sciences associated with the founder of Critical Realist philosophy, the late Roy Bhaskar; 2) a leaning towards qualitative methodologies to avoid the pitfalls of empiricist and administrative criminology; 3) acknowledging contributions by Critical Race Theory scholars particularly with regard to Malaysian contexts of ethno-nationalism and ethnogenesis; 4) commitment to the decolonisation of Malaysian criminology drawing on the pioneering scholarship of the Malaysian intellectual

Syed Hussein Al-Attas (Moosavi, 2019); 5) acknowledging the innovation of Ultra-Realist scholarship incorporating zemiology and 6) exploring the relevance of Islamic Critical Realism to Muslim majority states (Quraishi, 2020: 90).

The discussion of the fuller CCC approach is beyond the remit of this paper and therefore only three main strands will be included. The narrowing of the concepts to three from six is prompted by the need for some parameter-setting and to underscore those conceptual strands with specific relevance to ecological pollution and social harm (Quraishi, 2020). Therefore, this paper will focus upon analysing the merits of scholarship under the umbrella of zemiology and its addressing of social harms and the holistic approach to crime (Tombs, 2018); Ultra Realist (UR) scholarship, particularly the notion of 'special privilege' (Winlow & Hall, 2016 and Islamic Critical Realism (ICR) (Wilkinson, 2015; 2019) before discussing Eco-theology and collective stewardship, the relationships and duties between individuals, states and corporations and scholars to prevent environmental harm with specific attention to the Islamic theological concept of Khalifa and the broader lens of eco-theology (Haleem, 2001).

In terms of sequential order, first the paper invites the reader to comprehend the merits of three conceptual approaches to environmental harm, (zemiology, realism and eco-theology) grouped as a Composite Critical Criminological (CCC) approach. It then introduces the case-study of Malaysia in terms of its environmental challenges and legal pluralistic history before exploring a more systematic application of the CCC approach. The conclusion and outcome of the paper is to offer a template or model conceived as 'Collective Stewardship' to guide future empirical research in this field.

2. A Composite Critical Criminological Approach

2.1. Zemiology & Social Harm

The zemiological approach directs criminological focus upon social harms caused by capitalism, nation-states and corporations (Hillyard et al., 2004; Tombs 2018). The approach prompts serious inquiry of what constitutes crime and whether serious harms, including environmental pollution, are marginalised or neutralised within criminal justice systems (Pantazis, 2010; Canning and Tombs, 2021). Criminal justice systems produce differentiated and often subjective tests to determine whether a crime has been committed with an over-emphasis upon the individual. This focus upon the individual is reflected in key concepts in

common law jurisdictions such as mens rea, reasonableness and distinct burdens of proof.

A primary argument advanced by zemiologists is that criminal justice systems render certain crimes invisible and neglect social harms produced in legitimated industries such as agro-chemicals, mining, ammunitions or fishing. Zemiologists argue the net of culpability needs to extend beyond what has traditionally been framed by the criminal law since harms may have been accumulating over many decades, involving many parties, including Government representatives, inflicting what has been termed 'slow violence' (Nixon, 2011; Kressner et al, 2020). Present legal constructions around chains of causation, statutes of limitation and rules around vicarious liabilities effectively scupper legal remedies for parties who have been socially harmed by cumulative damaging behaviour.

According to Boukli and Kotzé zemiological scholarship appears to be advancing on four fronts. First, as a direct challenge or opposition to traditional criminology which has been bound by formal definitions of crime and the criminal justice system. Second, alongside criminology but focusing upon social harm analogous to crime. Third, working within criminology but aiming to create a shared foci and fourth, seeking to remove conceptual and intellectual barriers between crime and harm and between criminology and zemiology (Bouki & Kotzé, 2018:4-5).

One way in which a zemiological lens may re-focus legal attention on environmental matters is via a well-established policy fostered by early eco-activists whereby elements of the natural environment are granted legal personhood (Stone, 1972). By extension, if rivers, mountains and other distinguishable natural environments are granted legal personhood then they may also be categorised formally as victims entitled to due process and rights. Examples of this approach are evident across the globe, including court rulings about the rivers and their environs in Northern India acquiring rights as a legal person and living entity (Kothari & Bajpal, 2017). Whilst such declarations face complex practical issues around access, use and prosecution they nevertheless establish an important precedent for the protection of the environment. As a minimum they represent a symbolic victory for some indigenous communities impacted by deliberate environmental harms in important eco-systems (Pecharroman, 2018).

2.2. Ultra Realism & Islamic Critical Realism

There is a lot to applaud in the conceptual critique of established criminology by Ultra Realist scholarship advanced by Winlow & Hall (2016; 2019). A central vein of their critique lies with an assertion that the established theoretical canons of criminology are impotent and redundant when applied to contemporary political and social contexts. At the same time, contemporary criminological theorists are often marginalised or their ideas misinterpreted. Ultra Realists would like criminology to move away from empirical description and normative discussions of rules. Instead, they argue there exists an urgent need for theorists to coherently address communities and victims of failed left and right forms of political liberalism (Hall & Winlow, 2015; Winlow & Hall, 2016). Furthermore, Ultra Realists attribute crime causation as a direct expression of capitalism articulated by the mutually constituting concepts of the breakdown of the pseudo-pacification process and the idea of special liberty (Hall & Wilson, 2014).

Simply put, the theory of pseudo-pacification is prompted by an observation of a decline in officially recorded violent crime in the 20th Century across various capitalist nations including the UK. Rather than viewing this downward trend as a reflection of progress or greater civility, Hall, asserts it represents a reconstitution of that violence which needs to be acknowledged (Hall, 2012). Drawing upon Freudian psychoanalytical concepts of libidinal energy, drives and sublimation, individuals in such capitalist societies are being 'pseudo-pacified' into the socio-symbolic norms and practices of capitalism. Sublimation is the shifting of aggressive libidinal energy into socio-economic competition, enterprise and consumption which sustains capitalism (Hall, 2012). Linked to this pseudo-pacification is the concept of 'special liberty', which describes the tendency of individuals to abrogate ethical codes in the pursuit of desires actively promoted by capitalism in its goal to generate wealth.

The twin strands of pseudo-pacification and special liberty have prompted criticism for the assertion they are mutually reinforcing processes. Furthermore, the approach represents a 'direct expression theory' whereby crime causation is reduced to an 'unmediated expression of economic political conditions alone' (Wood et al., 2019:642). These critiques aside, the expression of special liberty is manifest in values, trends and behaviours in contemporary capitalist societies which promote competitive individualism, ostentatious displays of rapidly accumulated wealth and hedonistic consumption (Daloze, 2003; Zaloom, 2009; Moya, 2023). Focusing upon tourism, the industry denies racially discriminatory environmental harm whilst wealthy tourists from the US and Europe justify

extravagant vacations upon the unsubstantiated claim that 'the economic impact of their consumerism is 'improving' the poor and deprived global South' (Smith & Raymen, 2018:71). Although the US and European nations are amongst the top global spenders on international tourism, it is the Chinese who are the highest spenders prompting food for thought about the accuracy of the Global North and South binary and who is most responsible for tourist related environmental harm (World Tourism Organization, 2018).

2.2.1. *Islamic Critical Realism*

The Critical Realist canon has been recently supplemented by the development of Islamic Critical Realism (ICR). ICR is attributed to the work of British Muslim scholar Matthew Wilkinson who established his perspective whilst examining multi-faith education (Wilkinson, 2015) and Islamist violent extremism (Wilkinson, 2019). Wilkinson bases his work on the traditions of kalām (speculative theology and logic) and falsāfa (Arabized Greek philosophy) connecting these to Roy Bhaskar's concept of the embodied personality and distinct yet interrelated dimensions of the spiritual, intellectual, affective-cultural, civic and instrumental (Wilkinson, 2015:13).

The approach is driven by an urgency for Muslims to reconnect historical thinkers to contemporary multi-faith and secular contexts highlighting a meta-theoretical affinity between Islam and Critical Realism based on two primary parallels. First, the need to underlabour or clear the philosophical ground to enable a coherent interdisciplinary reading and analysis of the Qur'an. Second, the approach should rest upon a commitment to philosophical and spiritual seriousness which represents an 'a priori consistency between a statement of belief and a commitment to act in daily life' (Wilkinson 2015: 43). Furthermore, Wilkinson draws upon the Critical Realist concept of real determinate absence, in this case referring to the jurisprudential period following the death and hence physical 'absence' of the Prophet Muhammad¹ (P.B.U.H.) asserting the ICR approach can clear the ground of 'false intellectual and existential dichotomies, 'all or nothing' worldviews and cultural blocks, literalistic and un-nuanced religious absolutism and inessential cultural paraphernalia masquerading as authentic Qur'anic and Prophetic principles' (Wilkinson 2015: 42).

Another important dimension to ICR is the concept of epistemological relativism applied to Islam which rests on the assertion that 'the fact God has been known

differently does not mean that the God that is known is different' (Wilkinson 2015: 58). A clear distinction is drawn here between being and knowing and between God (Allah) and Islam. Therefore, the approach allows for the possibility for the uncreated word of God to exist before any human interpretation, the Qur'an, as revealed to the Prophet Muhammad (P.B.U.H.). The latter falls within the realm of ontological realism. In contrast, the acts of interpreting the Qur'an fall 'into the realm of epistemological realism' and are 'therefore potentially fallible' (Wilkinson 2015: 59). Such fallibility is of great significance when examining the processes by which Islamic law (Shari'ah) is interpreted and applied in contemporary Muslim legal systems including the Malaysian context.

Whilst ICR is a relatively recent theoretical perspective, it has begun to make a substantial and critical contribution to criminology via research within prison contexts (Irfan et al., 2021; Quraishi et al., 2021; Wilkinson et al., 2021a&b; Schneuwly Purdie et al., 2021; Wilkinson et al., 2022; Quraishi & Wilkinson, 2023; Wilkinson & Quraishi, 2023).

2.3. *Eco-Theology & Collective Stewardship*

There is a well-established academic field of Eco-Theology which includes a wide spectrum of approaches to environmental protection including examining the role of spirituality within indigenous communities such as those in Latin America (Forbes, 2001; Hallum, 2003). With regards to Islamic jurisprudence, scholars highlight prohibitions on environmental harm (Husaini & Ahmad, 1980; Sardar, 1985; Khalid & O'Brien, 1992; Haleem, 2001; Foltz, 2000; 2001; 2004; Khalid & O'Brien, 2002). These approaches centre upon core legal sources of Islam (The Qur'an and Hadith) and learned opinions of jurists from a range of Schools of Islamic Thought (fiqh). A key assertion from this literature is that Classical Islamic jurisprudence includes limiting social harms to the environment which should also be reflected in formal legal codes. However, the legal systems of many contemporary Muslim states are the product of former colonial powers who established criminal laws primarily modelled on draconian British Victorian penal codes (Quraishi, 2020). Similarly, influence from contemporary Islamist interpretations of Islamic law in a range of Muslim nation-states, such as Pakistan and Malaysia, have tended to interpret and emphasise particular offences strictly (e.g. adultery, rape, murder and apostasy) (Samuri & Quraishi, 2014; Quraishi, 2016; 2020). By contrast, issues of culpability for

¹ It is Islamic custom to insert the words 'Peace Be Upon Him' abbreviated to 'P.B.U.H.' whenever citing the Prophet's name.

environmental social harms have not traditionally featured in such criminal codes despite theological and jurisprudential precedents prohibiting them (Nasr, 1968; Ackerman & Joyner, 1996; Khalid & O'Brien, 2002; Foltz, 2004). Nevertheless, issues of environmental activism and pollution have attracted recent scholarship in Muslim majority nations such as Iran and Pakistan (Abdul Haq et al, 2020; Mir Mohamad Tabar et al, 2022).

It is also worth acknowledging that some studies have asserted that Christians and Muslims are less likely to prioritise action or activism on climate change owing to their perceptions of Divine intervention when compared to secularists (Hope & Jones, 2014). Whilst previous research has found that highly religious Judeo-Christian consumers were no less receptive than others to environmental messages and green practices (Martin & Bateman, 2014). Therefore, this is a contested and often contradictory arena warranting further inquiry and investigation.

The philosophical and practical template for responsible behaviour towards fellow humans, animals and the environment is centred upon the Qur'anic (and Abrahamic) concept of the 'Steward' (khalifa). More specifically, the idea of humans as stewards (khalifa) or trustees of God on Earth is contained in the Qur'an, sura³ 2, aya⁴ 30, Al Baqarah (The Heifer) (Abdel Haleem, 2016:7). The Qur'an and Prophetic tradition (hadith) contain many references to ethical duties towards all living things and advocates for balance (mizan) in the use of natural resources (Nasr, 1968; Khalid & O'Brien, 2002). Importantly, in the Islamic conception of the world, flora and fauna are in constant prostration to God and function according to laws which maintain peaceful harmony. However, it is only humans who have the freewill to reject God and hence the potential to upset the balance and wreak havoc on Earth (Murad, 2010). Scholars have identified that Islam's ecological ethics, in addition to khalifa, are founded upon tawhid (Divine unity and that all existence reflects unity in plurality) and belief in the akhirah (the hereafter). Acknowledging the akhirah underscores an Abrahamic belief whereby humans will not only be called to account for their deeds and misdeeds whilst on earth but also in the afterlife (Saniotis, 2011).

Islamic theology translated into practical environmental applications as Islam spread from Arabia to Asia, Africa and Europe in the 7th Century

AD (Goody, 2004). Muslims adopted and added to previous technologies and methods to produce the Islamic sciences. Simultaneously, Islamic rulers encouraged environmentally sensitive management and developed laws including injunctions on ownership of land and use of natural resources (Khalid & O'Brien, 2002). Intervention extended to the founding of conservation zones (hima) and sanctuaries for wildlife (haram) which were owned collectively by the Muslim community rather than the preserve of elite individuals or groups. Wildlife sanctuaries were also linked to Islamic holy sites such as in Mecca, Saudi Arabia (Saniotis, 2011). Water management in particular was extensively regulated whereby public interests in riparian and water rights were prioritised. Muslim communities drew upon innovations from previous nations such as desert-reclamation, canalisation and limiting water evaporation in hot climates (Wilkinson, 1990).

Therefore, given this history of respect and careful management of the environment by Muslim rulers and communities, what is responsible for the subsequent and contemporary environmental degradation in Muslim majority nations? Scholars identify a series of plausible explanations for this negative turn. First, the collapse of Muslim civilisations following the sacking of Baghdad by Mongolians in 1258 which altered the nature and quantity of trade along the traditional Silk Route. Second, the influence of Cartesianism during the European Enlightenment which viewed nature in Utilitarian terms. The processes of European colonisation of Muslim nations further established a relationship whereby the environment, and its native peoples, were primarily available for materialistic exploitation which buttressed the capitalist economies of their colonial masters (Nasr, 1968; Saniotis, 2011).

During the postcolonial era following World War II, newly independent Muslim majority nations in Africa and Asia rushed to demonstrate their aspirations to modernise by emulating Western economic developments in their infrastructure. The Aswan Dam in Egypt, built under the rule of Gamal Abdul Nasser, is an example of complex post-war geo-politics in the Middle East but also one with significant environmental impact. Whilst the Dam enabled the irrigation of crops all year round, it interfered with the cycle of seasonal flooding of the Nile increasing soil salinity and starved the latter of mineral rich deposits traditionally used as natural fertiliser for farming along its banks (Saniotis, 2011). Despite the catalogue of

² khalifa is the singular, khala'if is the plural

³ sura is Arabic for section or chapter and there are 114 in the Qur'an and Al-Baqarah is the longest.

⁴ aya is Arabic and means verse.

significant environmental damage overseen by administrations in Muslim majority nations, there is evidence that contemporary Muslim populations care significantly about environmental protection (Pew Research Center, 2009).

Islam-centric contemporary attention to environmental degradation has persisted for many decades. Significant inroads have been made, for example, by the Global Environmental Forum's Jeddah Environmental Declaration in 2001. Furthermore, the pioneering work of Fazlun Khalid's Islamic Foundation for Ecology and Environmental Science in the UK initiated the Islamic Declaration on Global Climate Change in 2015 at the Islamic Climate Change Symposium, Istanbul (Wijsen & Anshori, 2023).

Nevertheless, returning to the central concept of the Steward, scholars have argued that it has been interpreted ambiguously and often in a contradictory way in Islam and Christianity (Wijsen & Anshori, 2023). Furthermore, theological conceptions of environmental stewardship have been criticised for being at odds with a secular ethos of biodiversity and conservation more broadly. Critics argue that narrow Judeo-Christian interpretations of stewardship risk compounding prejudices connected to an anthropocentric view of nature and social systems based upon elitism, patriarchy and sexism (Mathevet et al., 2018).

It is also worth noting that some scholars have identified parallels between environmental protection in Islam and ecofeminist perspectives. Both posit the cause for environmental degradation as allied to other behavioural and cultural factors such as excessive consumption and domination of the environment and violence towards children and women (Ammar and Gray, 2017). Nawal Ammar, a pioneering scholar in this field, is keen to point out that the Qur'anic concept of khalifa applies equally to both women and men, a point lost in patriarchal readings of the Qur'an (Ammar, 2003).

Therefore, the contemporary sense of environmental stewardship has been revised and expanded, in part by practitioners and activists, to address some of the previous narrow interpretations and to counter stark human/nature or owner/conquest binaries (Welchman, 2012). An example of a softening of the binaries mentioned is represented in the findings of a recent study by Wijsen and Anshori (2023). They undertook a mixed method approach to researching eco-theology in Indonesia amongst the majority Muslim population. A challenge, for Muslim nations, centres upon a potential paradox between being inducted to be servants of God (Abd Allah) as well as

the stewards of God (khala'if). The answer lies in emphasising jurisprudential guidance that although Muslims are taught nature has been subjugated to humans, they have a religious and ethical duty not to go beyond limits which cause harm and injustice. Evidence of these limits was reflected in the findings of Wijsen and Anshori who concluded that their respondents conceived a nature-centric perspective of stewardship whereby the steward or caretaker was not a leader over nature but rather 'as partner of or participant in nature' (Wijsen & Anshori, 2023:111).

2.4. Collective Stewardship

Activists, scholars and policy makers have long acknowledged that any significant change in limiting environmental harm will require collective action. Collective stewardship against environmental harm has also been a long-established perspective although it has arguably lacked adequate conceptual attention (Hilser, 2021; Cárcel-Carrasco et al., 2022). Bennett et al., (2018) address this gap by identifying the need for local environmental stewardship which they define as:

'the actions taken by individuals, groups or networks of actors, with various motivations and levels of capacity, to protect, care for or responsibly use the environment in pursuit of environmental and/or social outcomes in diverse social-ecological contexts' (Bennett et al., 2018:599).

Within this conception, stewardship is construed as being dependent upon three elements, actors, motivations and capacity which are influenced by the socio-ecological contexts that converge to produce both environmental and social outcomes. The actions are dependent upon both intrinsic motivations manifest in ethics, values and beliefs and extrinsic motivations such as financial rewards (Bennett et al., 2018).

The emphasis within collective environmental stewardship upon a common goal to prevent harm raises a fundamental conceptual issue regarding the reconciliation of competing and often contradictory values, functions and aims of the parties to such a collective. For example, how are mercantile or capitalist values and aims to monetize, increase profit and wealth squared with indigenous community values and desires for pollution-free subsistence? Are such attempts to find common goals between parties with fundamentally conflicting values idealistic and ultimately incompatible with an aim to collectively reduce environmental social harms?

3. The Case Study of Malaysia

3.1. Environmental challenges

Malaysia is facing several serious environmental challenges because of human exploitation of natural resources and the impact of recent climate change. The key concerns relate to rainforest deforestation, particularly from palm oil production, air pollution and water pollution and the corrosive impact of this on biodiversity and wildlife (SPOTT, 2019; IUCN; 2023; Energy Tracker, 2023). Hazardous air pollution in Malaysia has been exacerbated by illegal slash and burn practices in adjacent Indonesia which caused the closure of hundreds of schools in 2019 (BBC, 2019). The Chinese ban on importing plastic waste in 2018 prompted the redirection of this trade to Malaysia where it was processed by unregulated recycling operators who subsequently polluted natural waterways. Although the import of such plastic waste was eventually formally banned by the Malaysian government, there have been assertions the illegal trade has continued (Greenpeace Malaysia, 2018). This situation has meant the nation is amongst the top 10 which mismanaged plastic waste to ocean per capita per year in 2023 (Utility Bidder, 2024).

According to the World Health Organisation (WHO), 21 per cent of deaths in Malaysia are attributed to air pollution which represents four times the WHO air quality guideline value. Furthermore, approximately 60 per cent of deaths from diarrhoea in Malaysia are caused by unsafe drinking water, sanitation and inadequate personal hygiene (WHO, 2023). Further pollution is created from tourism as Malaysia is a significant tourist destination and received 10 million tourists in 2022 (Statista, 2024). Although tourism brings in revenue for the Malaysian economy, green criminologists have highlighted how tourist consumption may reflect a more corrosive consumer philosophy. One well-trodden liberal defence of the tourist industry centres upon the assertion that it creates employment for local communities. However, research in locations such as the Maldives, illustrates that only a small fraction of well-paid employment is represented by indigenous people. Simultaneously, profits are taken out of the local economy because of high levels of foreign-owned property and expatriate employment (Smith & Raymen, 2018).

3.2. Malaysia & Legal Pluralism

What makes Malaysia a particularly interesting case study for the present discussion is that it represents a nation with a British colonial history which left an indelible mark on the structure and jurisprudence of the contemporary legal system (Quraishi, 2020).

Malaysia's contemporary pluralistic legal system is reflective of a complex colonial history and inter-ethnic conflicts between three dominant ethnic groups- the Bumiputras & Malays (who represent approximately 70 per cent of the population), the Chinese (who represent around 23 per cent) and the Indians (who represent around 7 per cent) (Department of Statistics, Malaysia, 2021). The term 'Bumiputras' refers to the 'sons of the soil', in effect all Malaysian citizens who are neither of Chinese or Indian origin, and all those which represent indigenous Malaysia. Political power has rested with Malays who are Muslims and hence Islamic jurisprudence has shaped the legal system which nevertheless retains secular dimensions. Therefore, Malaysia has both a generally secular federal civil system and individual state Islamic (syariah⁵) provision. A reflection of such legal pluralism is that, despite national laws being drawn from statute and common law, some judges utilise secular and Islamic principles when interpreting common law and statutes (Shuaib, 2009).

The legal pluralism mentioned is further diversified by the autonomy of states in determining their form of Islamic courts and there is no uniform requirement for the appointment of Islamic judges. However, in 1997, a body known as JAKIM (The Malaysia Department of Islamic Development) was established with the remit to develop Islamic institutions overseeing the interpretation and application of Islamic law. The Department of Syariah Judiciary Malaysia (JKSM) subsequently worked with JAKIM in providing financial and other advice to states intending to refine their Islamic legal infrastructure. This period of Islamisation of the Malaysian law witnessed the introduction of specific religious enforcement units pursuant to the Syariah Criminal Offences Enactment focused upon 'offences against the precepts of Islam'. Prohibited behaviour includes insulting Islam and its holy texts, omitting congregational Friday prayers, use of intoxicants, gambling and not observing fasting during the Islamic holy month of Ramadan (Ismail, 2015).

Another controversial pseudo-judicial office in Malaysia is occupied by the role of the 'Mufti' in all states contributing to the Fatwa Committee. The power

⁵ Note that this is the Malaysian spelling of the term which is more commonly spelt 'shariah' in English.

of the Mufti is granted by the Administration of Islamic Law Act 1993 of the Federal Territory, and he advises the Sultan on all religious matters. There is legislative authority for the Mufti to primarily follow the Shāfi'ī School of Islamic jurisprudence although sources from other Islamic Schools is permitted where relevant (Ismail, 2015).

The interpretation and the application of syariah in Malaysia has drawn criticism for its concentration upon controversial offences such as adultery and apostasy coupled with an authoritarian ethnocratic Hobbism when it comes to the characteristics of the law (Balasubramaniam 2012; Samuri & Quraishi, 2014; 2017; Quraishi, 2020). Nevertheless, the role of contemporary Islamic legal scholarship in Malaysia and its influence upon the training and advising of the Islamic judiciary remains a vibrant one and may offer an avenue for defining and adjudicating the social harms of pollution via the Qur'anic injunctions of stewardship.

Interestingly, some scholars on Islamic eco-theology have suggested Malaysia could set a worthy precedent to address environmental degradation in Muslim majority nations. Arthur Santiosis wrote rather optimistically in 2012:

'perhaps Malaysia's social model for the future referred to as Vision 2020 offers a blueprint that combines western principles of governance with environmental ethics' (Santiosis, 2012:162).

Unfortunately, rampant corruption, racial and ethnic division, gender inequality and political instability ultimately meant that Malaysia was unable to realise Vision 2020 (Jamal, 2021, Human Rights Watch, 2024). This has not stopped later administrations in 2019 from launching a Shared Prosperity Vision 2030 the progress of which is to be determined in the near future. Furthermore, the Malaysian government has established a Renewable Energy Roadmap (MyRER) which aims for 40 per cent of the nation's energy needs to be met from renewable sources by 2035 and net zero by 2050 (SEDA, 2024).

3.3. Applying the Composite Critical Criminological Approach to the Malaysian Context

This paper has suggested a conceptual guide to promote future intellectual and practical engagement to address and challenge environmental social harms. Rather than discussing specific incidents of harmful behaviour, the paper advocates for three perspectives

which will arguably assist in a theoretically coherent approach to challenge environmental harm in Muslim majority nations such as Malaysia and beyond.

The first suggestion centred upon the usefulness of a zemiological approach which moves beyond formal legal rules as well as examining harmful yet legitimated practices. Malaysia has significant legal enterprises from petrochemicals (Samuel et al., 2013), palm oil production (Hosseini and Wahid, 2015) and plastic waste recycling (Chen et al., 2021). In 2013, researchers concluded Malaysia had no common framework to assess sustainable petroleum production at the industrial level (Samuel et al., 2013). However, the largest Malaysian gas and oil company is PETRONAS and as a major international petrochemical company it is inevitably implicated in pollution linked to such activities including water contamination in locations across the globe (Pelz, 2017). In 2021, a coalition of indigenous (Kadazun-Dusun) populations in Sabah brought a RM329 million (€63 million) damages claim for environmental pollution against PETRONAS stretching back over 47 years. Although most Kadazun-Dusun people are Roman Catholic Christians, the claimants have drawn upon indigenous customs and native law expressing:

"We are entitled under our native law to claim for damages to our ecological beingness in the form of 'sogit'⁶ in the form of combined haematic animal sacrifice and monetary compensation for the socio-spiritual ecological damages since the establishment of Petronas 47 years ago." (Santos, 2021).

Although there is little official response to the Kadazun-Dusun claim, PETRONAS have set a net zero carbon emissions target by 2050 and developed an ambitious sustainability approach based on their alleged commitment to 'continued value creation, safeguarding the environment, positive social impact and responsible governance' (PETRONAS, 2024).

The claim reflects a zemiological approach in that it seeks redress based on indigenous rights, challenges social harm accumulating for many decades and via legitimated industrial practices.

Turning to Ultra Realist perspectives, conspicuous consumption in contemporary Malaysia typifies aspects of special liberty evident in many capitalist nations. As with other affluent nations, indicators of opulent lifestyles can be inferred from symbols of wealth such as luxury homes, vehicles, membership of

⁶ *Sogit*- means punishment, atonement or redress in the Kadazun-Dusun language.

exclusive clubs and purchases of extravagant imported goods. During periods of economic prosperity, rich Malaysians, particularly in the capital and its environs, displayed their wealth in several conspicuous ways. Some selected luxury hotels for berbuka puasa (breaking fast during Ramadan) or organised lavish open house parties with hundreds of guests for Hari Raya (marking the end of Ramadan) which symbolises the commercialisation of religious events passed-off as tradition (Talib, 2000). Nevertheless, in terms of ethnicity and wealth, Muslim Malays or Bumiputera represent the poorest population in terms of average income when compared to the more affluent minority ethnic Chinese and Indians (Khalid & Yang, 2019). This distribution is further underscored by the fact that of the top 10 most affluent billionaires in Malaysia, 9 are Chinese, 1 is Indian and none are Malay (Forbes, 2023).

How does the ostentatious consumption by the very wealthy and some middle classes in Malaysia translate to attitudes to income redistribution? Scholars at Universiti Tunku Abdul Rahman surveyed over 1200 respondents to gauge their reaction to a government policy to 'tax the rich and subsidise the poor'. The research concluded that respondents relayed reduced financial satisfaction with the policy instead favouring larger income differences to act as incentives for individual efforts (Chan et al., 2020). This reflects a typical trait in capitalist nations, according to Ultra Realist analysis, where individualism is often promoted and advanced over collective values. However, it would be inaccurate to portray this trend as specific to Malaysia and there is some evidence to actively challenge this characterisation of the nation. For example, Malaysia currently ranks 31st in the World Giving Index for charity above Finland (42nd) and Germany (45th) and has previously been ranked in the top 10 global nations willing to donate money, help a stranger or volunteer time (Charities Aid Foundation, 2023). Furthermore, as a Muslim-majority nation and despite some significant inefficiencies, Malaysian State Islamic Religious Councils have well-established protocols to manage the compulsory annual Islamic tax (zakat) in terms of collection and distribution to the needy (Razimi et al., 2016).

Turning to collective environmental stewardship, we have already noted the concept of 'stewardship' has been construed via both secular and theological lenses. As a Muslim-majority nation, Malaysia has an active Islamic legal system dependent upon a fully trained judiciary but also civil servants, such as those belonging to the Mufti Council, responsible for specific theological interpretations and application of policies (Samuri & Quraishi, 2014; Quraishi, 2020). Adopting an Islamic Critical Realist perspective to Malaysia would

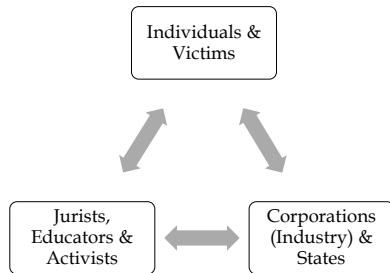
emphasise the importance of underlabouring to distinguish between genuine Islamic precedents and particular cultural practices or interpretations of scripture masquerading as jurisprudence (Wilkinson, 2015). Importantly, the message in the present paper advocates for the retention, refinement and reinvigoration of Islamic jurisprudence in Malaysia and not for its marginalisation. Therefore, this is an emic approach which draws upon Malaysian scholarship, Malaysian worldviews and an active Malaysian Islamic jurisprudence.

Whilst environmental laws and protection are not prominent within Islamic law curricula in Malaysia there are, nevertheless, some examples of positive movement in this regard. For example, the Universiti Kebangsaan Malaysia (UKM) includes postgraduate courses engaging with Islamic jurisprudence related to the environment (fiqh al-Bi'ah). Furthermore, citizens in Malaysia and other Muslim majority nations, have the opportunity to influence environmental protection via adopting non-binding instruments such as religious rulings (fatwas) or acting upon impactful mosque sermons (khutbah). Whilst their non-binding nature and mapping into specific practical outcomes is challenging, these measures nevertheless represent opportunities to prioritise environmental protection in Malaysia via existing theological frameworks and to resonate with Muslim worldviews (Ramlan, 2020). Furthermore, there is some evidence to suggest that journalism on environmental issues in Malaysia are influenced by Islamic values such as the unity of God (tawhid) and faith (iman) (Saleh, et al., 2021). A more ambitious aim is for Islamic scholars to actively develop legally binding redress for environmental damage and related social harm based on an established jurisprudence to serve both as a deterrent and means of restitution.

One of the more challenging aspects of the debate centres upon the potential for an effective collective stewardship of the environment in Malaysia. As we have already discussed, collective environmental stewardship advocates for the meeting of diverse interest groups with a common goal to end or limit our exploitative and harmful relationship with the environment (Hilser, 2021). As a first step, there is a need to capture and articulate social and zemiological harm caused by environmental degradation. There is therefore a need to map how different parties construe, rank and prioritise environmental harm. How else can one identify common ground or significant conflicts as well as points which are fundamentally irreconcilable? In the Malaysian context an aim to identify common ground, conflicts or entrenched problems on

environmental issues could be advanced on the proposed model in figure 1.

Figure 1. Proposed model for collective environmental stewardship in Malaysia.



Source: self made

The model proposes a conception of stewardship based on interaction between three main groups, 1. Corporations (Industry) and states, 2. jurists, educators and activists and 3. individuals and victims. The model is qualitative rather than quantitative in that it does not imply equity of power, capacity or impact between these groups. Furthermore, the categories are not mutually exclusive within one group or between them. For example, individuals may be both victims and conscious or unwitting perpetrators of environmentally harmful behaviour. Equally, activists may be victims of environmental harm which is often their motivation for becoming activists. Nevertheless, as a conceptual prompt, the model provides a guide for gathering multiple perspectives (micro & macro) from diverse groups, organisations or persons. It should assist in the mapping of shared goals for environmental protection as well as identifying seemingly intractable vested interests. Presently, the model remains a conceptual suggestion, but it could serve as a template for empirical studies when mapped onto the Composite Critical Criminological approach advanced in this paper.

4. Conclusions

This paper has been framed by specific parameters to offer a novel theoretical and conceptual lens addressing environmental crime understood as a 'Composite Critical Criminological' (CCC) approach. CCC is based upon three prudent strands illustrated here via the case-study of Malaysia as a nation experiencing significant environmental degradation yet having ambitious goals for a carbon neutral near future. The first strand advocates focusing on harmful behaviour via a zemiological approach emphasising a holistic lens going beyond formal legally defined crimes to include legitimated yet 'culpable' harmful practices. The limits of current legal systems which are ill-equipped to deal with long term environmental harm and culpability is

illustrated, for example, by the reliance by claimants such as the Kadazun-Dusun upon native law and indigenous customs as a basis for rights and reparation.

The second strand invites serious engagement with more recent interpretations of Realism, distanced from how Realism has traditionally been comprehended within Criminology. Whilst early traditional Realist criminology was split between the left/right binary, each with diametrically opposed political philosophies and crime policies, a more nuanced Realism has been advanced by Ultra Realists (UR) and Islamic Critical Realism (ICR) (Wilkinson et al., 2021b). More specifically, this paper examined the usefulness of the concept of 'special liberty' when examining ethically and environmentally harmful conspicuous consumption within contemporary capitalist consumer societies. Furthermore, the prudence of advocating ICR is reflective of an emic rather than an etic approach which connects with current Islamic jurisprudence, scholarship and policies in the Muslim-majority nation of Malaysia. This second strand connects to the third limb of the CCC approach drawing upon eco-theology and more specifically collective stewardship.

Collective environmental stewardship acknowledges that the health of physical environments is dependent upon various groups of people, often with competing vested interests and functions, seeking a common protective goal. Nevertheless, prior to the development of prudent interventions, there exists a need to map how social harm pertaining to environmental degradation, is conceived, understood and articulated by different parties. This paper offers a suggested model to investigate such conceptions across three main groups detailed above. The paper acknowledges the fact these groups are not strictly mutually exclusive, but the model can nevertheless serve as a guide for empirical studies to ascertain common interests or indeed irreconcilable barriers to collective environmental stewardship.

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