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# **Anarchist criminology: a new way to understand a set of proven practices**

Duane Ruth-Heffelbower

## **Abstract**

An anarchist theory of criminology would describe the response of a society to harmful acts when there is no ruling authority imposing a system of legal order. The author describes this theory and then demonstrates how restorative justice practices can be seen to meet the requirements for an anarchist theory of criminology.

Anyone who has had to teach or take a course titled something like “Theories of Criminology” knows that there are a lot of them, and that the differences boil down to a small group of family trees. What they all have in common is support for a ruling class tamping down social deviance to a level and type that it deems acceptable. In the United States this generally takes the form of providing middle class jobs to one sort of people who then seek to restrain another sort of people for the benefit of the ruling class. This pacifies the middle class group in the process.

Americans broadly accept the idea that their criminal justice system is not working well. (Cole, 2001) US Senator Jim Webb recently wrote “America's criminal justice system has deteriorated to the point that it is a national disgrace. Its irregularities and inequities cut against the notion that we are a society founded on fundamental fairness. Our failure to address this problem has caused the nation's prisons to burst their seams with massive overcrowding, even as our neighborhoods have become more dangerous. We are wasting billions of dollars and diminishing millions of lives.” (Webb 2009) Webb has introduced legislation to address these issues.

During the 2008-10 financial crisis for governments there was stirring around the subject of how to incarcerate fewer people, and to lower the cost of keeping those who are imprisoned. Not surprisingly efforts to change sentencing laws were protested by people who still seem to believe a nation can arrest its way to security. Equally unsurprising was the barrage from the correctional officer associations aimed at anything that might diminish the flow of inmates.

Observers can't help but notice that most people in prison have been involved with illegal drugs, usually on the distribution and sales end of the business. The question is starting to be asked in respectable circles whether we are made safer by making drugs illegal, and whether we can afford that particular safety.

Societal response to all of these issues is determined by elites with the understandable concern about holding on to their place on the gravy train. One only has to follow the money to see why the elites calling for the status quo take the positions they do.

The situation is made worse by those in the field of criminology who continue to bolster these pro-incarceration elites with studies that can be interpreted to show the efficacy of a system which is obviously broken. A criminal justice system that imprisons 1% of the total adult population and a much higher percentage of the darker-skinned population is not working. No other nation comes close to the US incarceration rate. Worst of all, paroled felons are forced into a netherworld of unemployables from which few escape. This rising tide of formerly incarcerated persons must be added to the currently incarcerated to get a true picture of the situation. (Beck, 2006)

In 2003 the Christian Science Monitor reported that:

More than 5.6 million Americans are in prison or have served time there, according to a new report by the Justice Department released Sunday. That's 1 in 37 adults living in the United States, the highest incarceration level in the world. (Christian Science Monitor 2009)

DOJ 2009 statistics show 1 in 33.

### ***A proposal***

Change in the US criminal justice system has been all but impossible due to entrenched elites, supported by unionized middle class employees, whose power is bound to the current system. People do not willingly relinquish power; it must be taken by those who seek change. Since the power elites of the criminal justice system are elected officials and those they hire to administer the system, who in turn support re-election of these officials through union financial contributions, only removal of power by voters can effect rapid and significant change. Defeating particular elected officials is not useful. The power must be removed from all elected officials and their appointees to create the degree of change necessary in the criminal justice system.

Anarchist criminology can show the way to this vast change in how citizens work with each other to keep social deviance within bounds acceptable to society. What follows is a description of an anarchist theory of criminology which supports this goal.

### ***Anarchist criminology—what is it?***

The word anarchy comes from Greek *αναρχία* (anarchíā), "without ruler." It does not connote a lack of order, but rather the lack of a ruler. Since there are few places without a ruler these days, the word has come to be used as a synonym for lack of order or a lawless territory, and is usually used in this way by those who would like to impose their own brand of order.

Any collective has within it the capacity to create de facto rule over some thing or some group, so we will not split hairs over the true definition of anarchy. For our purposes here anarchy exists where there is no central authority with the ability to impose its will. An anarchist will be a person who desires no central authority exercising control over him or herself. Anarchist criminology under these definitions is a theory of criminology which does not require a central authority for its operation.

## ***Current examples of anarchy in action***

Perhaps the largest organization that runs on anarchist principles is Alcoholics Anonymous and related groups that follow a form of AA's twelve steps. There are over 59,000 local AA groups in the US and Canada, and many more worldwide, with no central authority. Each group is autonomous. While various local and regional offices have been created by collectives of groups for convenience of coordination, none of these bodies has any authority over individual groups. AA celebrated 75 years of existence in 2010. The books *Alcoholics Anonymous* and *12 Steps and 12 Traditions* are what AA groups have in common. Groups that claim to follow these guides are considered to be part of AA by regional and national coordinating bodies.

Churches of the Anabaptist stream, including Mennonite, Brethren, Brethren in Christ, Church of the Brethren and a number of smaller groups, have no central authority. Each congregation is autonomous. Regional and national groupings are formed voluntarily. There are other church denominations which have the congregation as the highest authority. The Anabaptist churches have been following this model since 1525, which may be a record for any anarchist collective.

Christianity itself was originally created to operate without any human central authority. A good example of anarchist process in the early church is found in Acts 15 where serious decisions had to be made about what it meant to be Christian. A consensus process was used, and all stakeholders were satisfied with the outcome. After the emperor Constantine legalized Christianity in the 4<sup>th</sup> century the wealth and power of imperial preferment motivated the creation of what became the Roman Catholic Church with strong central authority. The Anabaptist movement was one of several renewal movements aiming to return to the anarchist beginnings of the faith.

Tribal societies throughout the world have had local authorities, but it was not until the advent of nation states in the late second millennium CE that most larger groups of people had a recognizable central authority that could exert effective control. Nation states also created an inevitable movement toward the rule of law. Petty overlords can use idiosyncratic personal whims as a basis for justice in their subject villages, but this does not work well as one scales up. The tighter central control gets, the less it can allow local variations.

The Roman Empire and others like it were franchise operations. The franchisee would use the branding materials and maybe some supplies provided by the central authority, but its day-to-day operations were under local control. The Roman taxation system is a good example. Taxable territories were put out to bid. The winning bidder could collect taxes in any way and any amount so long as the franchise fee was paid.

Some parts of the world have an awkward mix of central authority and anarchist traditions. West Pakistan, for instance, is a tribal area that has never been conquered by any invader and is not under the control of the central government. National military forces enter these tribal lands when allowed to do so by the tribes. The southern Philippine Islands are only periodically controlled by the central government. Many

countries have insurgent movements which deny the authority of the erstwhile central government, and effectively prevent central government control of their area.

In Afghanistan and west Pakistan the traditional jirgas (groups of elders and other leaders) still exercise more control than the central government, and by doing so demonstrate the resilience of anarchy. (Yousufzai and Gohar, 2005) Despite the prevalence of de jure nation states, anarchy is the de facto system of governance in much of the world.

Anarchy is alive and well and working in the world today, no matter whether its detractors think that is possible.

### ***Current responses to crime***

Herbert L. Packer described two models of the criminal process in a chapter by the same name. Packer names the two models the Due Process Model and the Crime Control Model. (Packer, 1968) He sees these two models as extremes between which all practices can be placed. Packer describes them as two value systems.

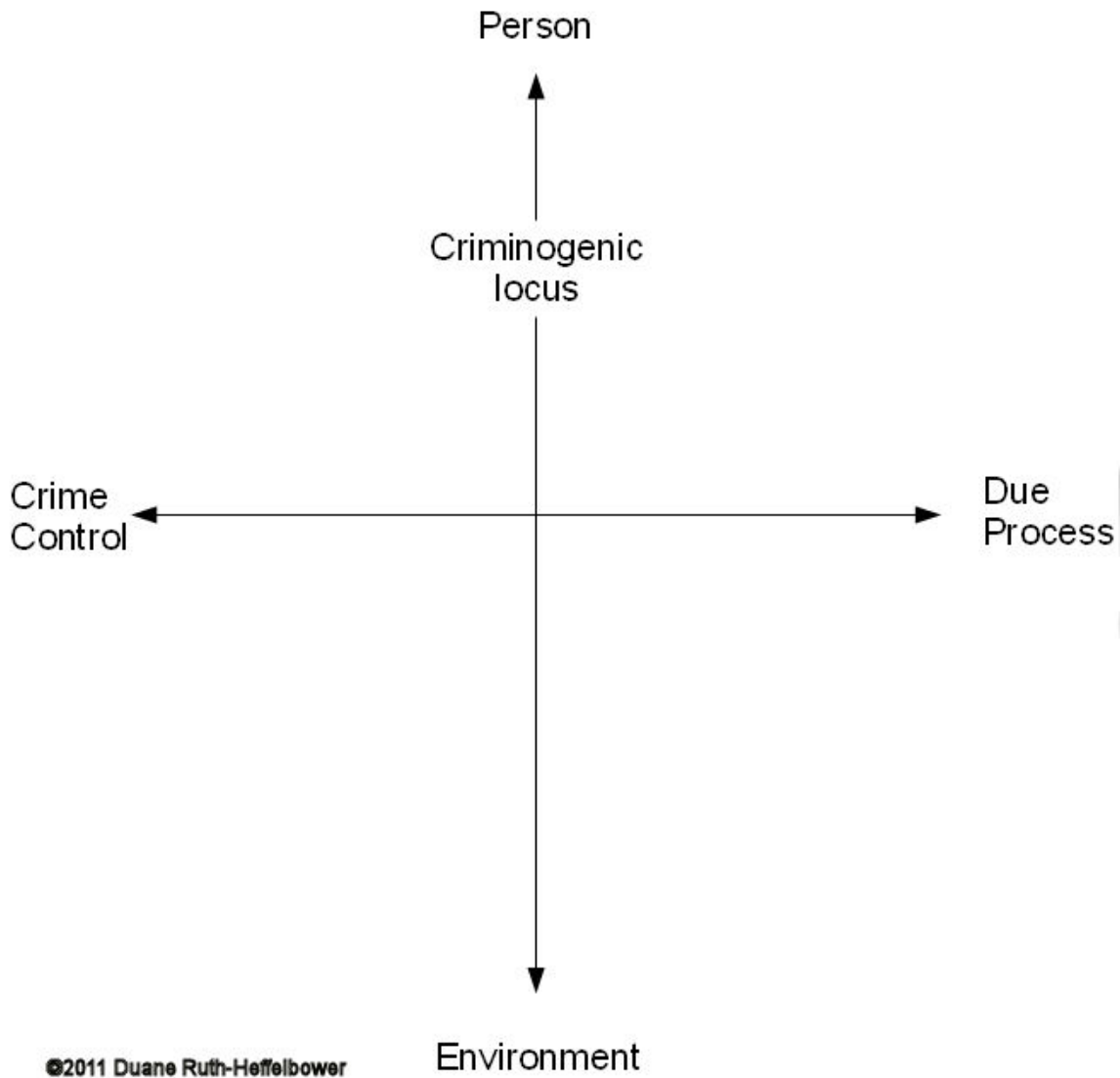
“The value system that underlies the Crime Control Model is based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process.” (Packer, 1968) “If the Crime Control Model resembles an assembly line, the Due Process Model looks very much like an obstacle course. Each of its successive stages is designed to present formidable impediments to carrying the accused any further along in the process.” (Packer, 1968)

Neither of these two poles has ever been practiced, according to Packer. The Due Process Model acts as a restraint on those enamored of the Crime Control Model. “The Due Process Model insists on the prevention and elimination of mistakes to the extent possible; the Crime Control Model accepts the probability of mistakes up to the level at which they interfere with the goal of repressing crime, either because too many guilty people are escaping or, more subtly, because general awareness of the unreliability of the process leads to a decrease in the deterrent efficacy of the criminal law.” (Packer, 1968)

The dominant system in the United States at present falls midway between these two poles. Those of the control persuasion think it tends much too far in the due process direction, and vice versa. The tension between the camps results in back-and-forth movement in the various jurisdictions depending on the players.

If we use Packer’s two poles to mark the x axis of our criminological theory graph, the y axis will describe where the criminogenic focus is. At one end we find the person themselves, and at the other end the environment. Any criminological theory can be plotted on this graph (fig. 1). The anomie theories would fit in the lower left quadrant while the classical theory fits in the upper left. This categorization not being our focus the reader is welcome to place the various theories where they go on the chart.

## Criminological Theory Graph



An anarchist theory of criminology fits on the x axis in the center. Where there is no central authority the crime control model cannot develop unhealthy momentum, and in the absence of such forces the due process model has no need to restrain overzealous prosecutors. Whether we are discussing fluid dynamics or family systems, it is axiomatic that all systems work toward equilibrium. Packer's polar opposites find their equilibrium in the center of the graph.

On the y axis an anarchist theory of criminology sees the characteristics of an individual and his or her environment as a dynamic system in constant movement. Human character

and behavior is not determined by DNA or environment. This indicates that anarchist criminology finds itself where the axes cross.

## ***Restorative Justice***

The concepts that came to be referred to as “restorative justice” are common to many indigenous cultures. A new awareness of these principles and their potential value in dominant cultures emerged in the 1970’s in the United States and Canada. Howard Zehr is often identified as the most important writer and practitioner in the description of these principles and recognition of their value. (Zehr, 1990) The key RJ principles as described by Zehr and others are: 1. Crime is a violation of people and relationships; 2. Justice should identify needs and obligations and make things right; 3. Justice encourages dialogue and agreement, giving victims and offenders central roles; 4, Justice is tested by the extent to which responsibilities are assumed, needs met and healing encouraged.

Notable in this list is the lack of any mention of law. When people are harmed by the acts of others, whether or not some law was violated does not make much difference to the victim. Also absent is any obvious role for a central authority. Central authorities make and enforce laws, but rarely do much for those harmed when laws are violated. The author is not aware of a criminal justice system operated by a central authority that focuses attention on the needs of the victim. These systems inevitably target the offender for their efforts. Punishment of deviance from lawful behavior is easier than trying to figure out in each case what justice requires.

As practiced in the United States, and most other jurisdictions following the common law tradition, RJ is usually seen as a second track outside the criminal justice system. Cases are diverted to a restorative justice service provider, or sent to the provider after sentencing for collection of restitution. These providers can be inside or outside the government, but are always seen as a divergence from normal practice.

Only New Zealand, of the common law countries, sends nearly all juvenile cases through an RJ system. This is the only country which has actually changed its criminal justice system, on the juvenile side, into a restorative justice system. Having been in operation since 1989, the New Zealand system has worked well in that setting. Larger countries (the New Zealand population is around three million) have yet to make such a change.

For purposes of our discussion here the question raised by New Zealand is whether it demonstrates an exception to the idea that restorative justice is inherently anarchist. Having visited New Zealand and spoken with many people involved in its juvenile system, the author is satisfied that New Zealand is not an exception.

While organized by the central authority and operated by agents of the central authority, the restorative practices of New Zealand are still anarchist. The central practice used in New Zealand and most other places by RJ practitioners is a victim offender dialogue led by a facilitator with other stakeholders present. The decisions made by the group in working to meet the needs of the victim and providing the offender with an opportunity

to be accountable to the community do not reference law, nor is enforcement by the central authority a key feature. Only when the offender refuses to be accountable to the group does the central authority stand ready to enforce laws by punishing the offender.

### ***Principles of Anarchist Criminology***

The following is an opening attempt to describe some principles of an anarchist criminology that could also serve as principles of restorative justice.

1. Harm creates needs and responsibilities.
2. Collectives respond to harm by assessing the needs of those harmed and providing a process allowing those harmed and those responsible for the harm to meet the needs created with the assistance of the collective.
3. Collectives provide pro-social support for those engaged in responding to needs created by harm.
4. Collectives respect and celebrate efforts to respond to needs created by harm.
5. Collectives offer alternatives for those who are unable or unwilling to avoid causing harm, to assist the collective in avoiding harm.

Ron Claassen has listed eleven principles of restorative justice. (Claassen, 1996). While divided into finer gradations, they are all consistent with the five principles offered here. The focus of the five principles is the work of the collective in addressing harm. No central authority is required for the operation of these principles, and they could be applied by a collective of any size.

These principles do not call out punishment as a goal. Practically speaking, punishment does not repair harm. It may have some deterrent effect, but that is about all it does for a collective. If the only punishment used is imprisonment, punishment actually harms the collective by requiring the support of unproductive members in a relatively expensive way, followed by the need to rehabilitate a person who has been kept in an unproductive status for a period of time.

These principles do not require a central authority for their operation. A collective at any level of societal organization can follow them. Central authorities are actually a hindrance to the good use of these principles, since they remove those directly affected from the process, and tend to focus more on consistency than functionality of the remedies selected in a particular case.

These principles do not preclude the use of incarceration as a technique for protecting the collective from people who cannot or will not live without creating harm. The experience of those in New Zealand is that incarceration is rarely seen as the best way to respond to harm. In those rare instances where a person needs a structured environment, less structure than a typical prison may be sufficient.



## ***Conclusion***

The principles of restorative justice and the principles of anarchist criminology are compatible, if not identical. Thanks to the opprobrium attached to the term “anarchy” in modern usage it is likely to be best for RJ practitioners to continue use of the term restorative justice. For those who study anarchist thought and try to learn from it, watching the practices of restorative justice practitioners can offer valuable insight into the workings of a world not controlled by central authorities.

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