

Should I Be Arrested?

By Robert J. Burrowes

Many nonviolent activists eventually confront the question: should I be arrested? In my view, this question - with its profound personal and political implications - should be considered very carefully.

There are many types of nonviolent action; few involve civil disobedience: the deliberate, open and peaceful violation of particular laws, regulations or instructions which are believed to be morally objectionable or unreasonable.¹ However, those actions which do involve breaking the law are often powerful ones with important personal consequences. Before participating in an action which involves the risk of arrest, two questions are worth considering. Will this action help to achieve the campaign's strategic aims? And are you willing to pay the personal price?

The first question can only be answered by reference to the strategic aims themselves. If these aims (and their derivative goals) are not clearly identified, there is no way of gauging the strategic utility of any tactic including those involving arrest. The second question can only be answered by reference to your own conscience. And this may require considerable deliberation. Let us consider the second question in more detail.

Arrest

From a political perspective, there are many reasons for accepting arrest as part of a well-planned nonviolent action. Firstly, it is a clear statement of commitment which many people in our audiences will respect. Secondly, it enables the arrested activist to engage in dialogue with the police and other officials - this may facilitate the process of derolling them and undermining their support for your opponent's position. Thirdly, the activist may then choose to use court appearances as a forum for presenting feelings and information to audiences which may not ordinarily choose to listen. Fourthly, court cases may be used to explore ways in which the law can be used to defend our world rather than sanction its destruction. Fifthly, overcoming the fear of arrest (as well as trials and imprisonment) is an important step in the development of a nonviolent activist and is one part of the process of becoming a 'fearless' and committed activist for social change. And sixthly, arrest may provide the opportunity for activists to present their case to a wider audience via the media.

Whatever the political advantages of arrest, each activist must deal with a range of personal issues which accompany it. In my experience, the most frequent concerns of activists include the following: their fear of the reaction of family, friends and colleagues; their fear of being assaulted by police (or hurt by less disciplined activists) during the action itself; their fear of being charged with criminal offences; and their fear of the implications of these charges (if convicted) in relation to their personal life, their career and travel overseas.

Apart from those concerns arising from the risk of arrest, some activists may need to deal with issues arising from the threat of other types of legal

action. These actions include Strategic Lawsuits Against Political Participation (SLAPPs) - a piece of civil litigation (such as an action for defamation) designed to intimidate activists into silence - and claims for damages under Section 45D of the Trade Practices Act.²

But whatever their source, the best way to deal with these fears is to discuss them beforehand in a forum designed for the purpose. Ideally, this gathering would include a facilitator who is able to assist the group to create a safe space for the expression of personal feelings, an experienced activist who has been arrested several times and who can answer practical questions, and a sympathetic lawyer who can provide a reliable guide to the type of charges which are likely to arise from the arrest (or litigation) as well as explain the legal implications of them (particularly in relation to personal assets, career and travel).

The facilitator should encourage individuals to express their feelings (perhaps in pairs or small groups) and to explore ways in which they can deal with their fears. This might include discussing ways in which individuals can raise the issue with their families, agreeing to be arrested in pairs or (preferably) affinity groups so that individuals can support each other, and deciding on a 'code of nonviolent ethics' to which all participants will be asked to commit themselves so that the risk of activist-provoked violence during the action is minimised.

Once you have had a chance to deal meaningfully with your fears and feelings, you are in a better position to decide the nature of your participation in the action: Will you risk arrest? Will you support those arrested? Or will you do something else on this occasion?

So if you are arrested, how should you behave? My view is that activists should cooperate fully with their arresting police officer. This is because, ultimately, your struggle is not with the police (even if they represent your opponent on the day). My policy is to introduce myself to my arresting officer, to ask their name (but drop it if they treat this question suspiciously), to make light conversation initially and, if they seem willing to talk, to ask them how they feel about the issue. If I am asked, I say what I feel.

When I am formally charged, I always give my name, address, birthdate and occupation as requested. If asked, I give a brief explanation of why I participated in the action. Lawyers will usually advise activists not to 'say too much' because it may preclude certain types of legal defences. These days I am more interested in expressing my conscience in court so I speak honestly rather than try to be clever. If 'requested', I also agree to be photographed and fingerprinted. I have given up trying to remember in which states of Australia this is a violation of my legal rights: I am proud of what I do as an activist and I am happy for anyone to know about it.

Apart from being arrested as part of a well-planned act of civil disobedience, you might also consider refusing to accept any bail conditions and being jailed immediately as a result. Ideally, you should consider this possibility - and plan the necessary support for it - before undertaking it.

Court

When I was arrested during the Franklin River campaign, I was really keen to explain to the magistrate why I had travelled all the way from Melbourne to save a wilderness area that I had not previously seen. But a Wilderness Society 'legal heavy' told me that all the important and poetic things had already been said so there was no point in me speaking! Given that I had spent considerable time working out what I might say but lacked the confidence to insist on my right to do so, I found this very disempowering. On the bright side, however, it made me realise the importance of creating court spaces so that even the most nervous activist can say what they feel about the issue in question. This can be done in many ways.

In practice, a politically effective court appearance requires thoughtful preparation. It requires time to deal with any personal feelings (including fears) in relation to the court appearance, time to consult (and perhaps appoint) a sympathetic lawyer, time to learn court procedure (perhaps by attending the court cases of other activists) as well as time to prepare a legal defence or personal statement (or both).

When members of the Melbourne Rainforest Action Group were preparing for their trial for attempting to reload the timber ship Arawa Bay, we had several meetings so that we could consult lawyers about the possible legal defences that we could use in court, plan the nature of our defence and roleplay the courtroom drama (using friendly lawyers in the roles of judge and prosecutor). This allowed us to familiarise ourselves with court procedure and to practice making our personal statements.

At one of our early meetings we decided that we wanted to represent ourselves collectively - with different members of the group accepting responsibility for different sections of the proceedings - and that we did not want to rely on a technical legal defence which would shift the focus away from our environmental concerns to various legal points. Consequently, we negotiated an agreed set of facts with the police prosecutor which stressed the nonviolent nature of our action and, with the help of friendly lawyers, prepared the minimal legal argument necessary to ensure that the magistrate could not silence us preemptively. We then concentrated most of our time on learning the necessary court procedures and preparing our personal statements. These statements tended to emphasise our moral convictions rather than our legal rights. On the day of our major roleplay, we invited the police prosecutor to be present so that he would thoroughly understand what we intended to do. He observed our roleplay throughout without participating.

When we went to court, all thirty-two of us made a personal statement explaining that we had broken the law in response to the call of our conscience and as part of our struggle to save the world's rainforests. We were, predictably, convicted but we were also empowered by our collective action.

Given my experience with courts to date, I have serious reservations about cooperating with trials. And yet, by doing so thoughtfully, I am conscious of

a trial's political value: even a 'guilty' verdict can help to achieve particular campaign goals. A trial can be used to raise the consciousness of court officials, the police, the media and others who are present; it can be used as a way of drawing politically inactive lawyers into the struggle; and it can be used to help activists overcome their fear of 'authority' if court appearances demystify the legal system. While I am not convinced that these advantages always justify the quality energy put into formulating creative but usually doomed court defences, my belief is that it is a part of the process that activists need to experience in order to fully liberate themselves.

Most activist trials lead to convictions and either community service orders or fines. Should you refuse to accept a community service order or to pay your fine?

Jail

The long history of nonviolent struggle makes it clear that activists who choose to accept jail sentences often make a significant strategic contribution to the success of their campaign. There are many reasons for this: they are similar to the reasons for accepting arrest. Moreover, spending time in jail can be a personally empowering experience.

But before deciding to resist bail conditions, fines or community service orders - and thus risk imprisonment - the same two questions identified earlier (in relation to arrest) are worth considering. Will this action help to achieve the campaign's strategic aims? And are you willing to pay the personal price?

As with the question of arrest, the first question can only be answered by reference to the campaign's strategic aims; there is no way of gauging the strategic utility of any tactic which is not derived from these aims. And like its equivalent above, the second question can only be answered by reference to your own conscience and personal circumstances. Let us consider this question more fully.

In my experience, the most frequent concerns of activists in relation to jail include the following: their fear of the reaction of family, friends and colleagues; their fear of being strip-searched or assaulted by police or prison warders during the time of their imprisonment; their fear of being assaulted or raped by other prisoners; and their fear of the implications of their time spent in jail in relation to their personal life, their career and travel overseas. As with my response above, in my view, the best way to deal with these fears is to discuss them beforehand in a forum designed for the purpose. But, in addition to that, each activist will need to consider their personal circumstances in order to gauge whether time spent in jail is the most effective use of their time.

If, after careful deliberation, you decide to go to jail, you (and your affinity group) might choose to prepare for your jail experience. Importantly, this might include considering how you might spend your time in jail. In my experience, jail time can be very boring. Whether you are locked in a police cell or a major prison, you will probably be confined to a small

cell - which is lit for twenty-four hours a day - for most of the time. Depending on your personal inclinations, you may decide to spend time with your affinity group (if you have one), learning about the lives of other prisoners, meditating, doing yoga and/or catching up on your reading. The important point, in my view, is to define the nature of the experiences that you wish to have in jail.

If you decide to treat your cell as a library, you will need to take books with you (although there is no guarantee that you will be able to take them into prison or to bring them out again). If you decide to treat your time in prison as a time of spiritual renewal, then you should prepare whatever rituals you will need in order to make your cell a sacred place (again with little prospect of taking any sacred objects safely into and out of the prison).

After it's over

Whether you have just been arrested, in court or in jail, it is valuable for you to emotionally debrief and to evaluate your experience. An experienced facilitator can help you and your group to express and deal with any outstanding feelings so that you fully recover and benefit from your interaction with the legal system. And the evaluation will ensure that you integrate any insights derived from it.

References

1. Gene Sharp. *The Politics of Nonviolent Action*. Parts 1-3. Boston: Porter Sargent, 1980. pp. 315-319.
2. For a discussion of SLAPPs, see James Prest. 'The muzzling of the Dingo Forest Mob'. *Chain Reaction*. 70, January 1994. pp. 20-22.

Nonviolence Today 39, Jul/Aug 1994

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