
I Was Arrested at Occupy Denver

A Brief Narrative and an Anarchist's Perspective

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1. My Arrest at Occupy Denver on October 14, 2011

It's not cool. It's trespassing, and that is breaking the rules. Cool people make the rules. They don't break the rules. And if those kids want you to break the rules then they're not really your friends.

— Leslie Knope *Parks and Recreation*

Municipalities are in recent decades increasingly responding to homelessness by ordaining public spaces like parks and

sidewalks to be off-limits for sleeping.¹ Combined with the partitioning of cities into private and public property, and the fact that acts such as sleeping are biological imperatives, these ordinances effectively make it criminal for anybody who does not own or rent property to *be*. Such anti-homeless camping ordinances are an example of what the geographer Don Mitchell calls the annihilation of space by law.²

I happen to hold the opinion that real property should not be a requirement for citizenship or a prerequisite to live and participate in the city. Informed by that opinion, I have recently been preparing to spend my nights sleeping on public property in and around my Colorado hometown as a form of direct action challenging the legitimacy of the legal annihilation of those spaces. That is why when I read Governor Hickenlooper's statement³ that he would begin enforcing the law to remove protesters and homeless who had occupied the state-owned park in front of Denver's capitol building between the hours of 11pm and 5am, I decided to pack my sleeping bag and bivvy shelter into my backpack and head to Denver.

I arrived at the park at about 9:45pm on Thursday (October 13th).⁴ I walked around and sat watching the protesters do their thing until about 1am when it got cold enough that I spread out my sleeping pad on the grass near a statue at the northeast corner of the park (which was a bit away from the main group of tents along the west-side of the park near the sidewalk on Broadway) and got into my sleeping bag. I slept off-and-on between 1am and sometime just before 3am when

¹"Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities." *The National Law Center on Homelessness & Poverty and The National Coalition for the Homeless*. July, 2009. https://www.nationalhomeless.org/publications/crimreport/CrimzReport_2009.pdf

²Mitchell, Don. "The Annihilation of Space by Law: The Roots and Implications of Anti-Homeless Laws in the United States." *Antipode* 29:3 (1997): 303-335. <http://onlinelibrary.wiley.com/doi/10.1111/1467-8330.00048/pdf> Also reworked as Chapter 5 of his book: *The Right to the City: Social Justice and the Fight for Public Space*. The Guilford Press, 2003.

³October 12, http://www.denverpost.com/commented/ci_19100471

⁴All of my times are approximate. My only clock was on my Kindle, which I didn't check very often

I was awakened by the PA system of a police SUV announcing that the park must be cleared within half an hour. I got up and packed my stuff back into my backpack so I wouldn't lose track of anything if I was arrested. The three homeless guys who were sleeping near me packed up and left the park. The SUV returned (to the east-side of the park, on Lincoln) at least twice more to make the same announcement. On these latter occasions it was accompanied by a small number of state troopers in riot gear.

I joined the main group of protesters near the tents. A little before 4am a small army of riot-gear-clad officers (I'd estimate around 80) of the Colorado State Patrol entered the park from the south-east and began searching and dismantling tents. As I watched, I was approached by one trooper who told me to leave the park or face arrest.⁵ I said I wasn't going to leave, and he repeated himself then walked away. I retreated with most of the protesters to the area near the kitchen and first-aid tent, which was the heart of the encampment. When the police finished dismantling the other tents, they then lined up facing us and ordered us to get out of the park and move onto the sidewalk. I refused. The state was going to impose its exclusionary property rules with or without me, the least I could do was make them go to the bother of carrying out their threat of force.

So I sat on the grass.⁶ I sat there and shivered for two hours while the troopers initiated a staring contest with the other protesters who had moved to the sidewalk or had gathered to defend the kitchen. I believe I was the only one to remain on the grass, which gave me a unique perspective of the standoff. I was twice approached by officers (I think from the Denver Police Department) while I was sitting who matter-of-factly told me that I would be arrested if I did not leave. I was usually

⁵I found a photograph of me talking to this trooper (I'm not sure who the photographer is): <photos/talkingtotrooper.jpg>

⁶I found two photos of me sitting by Westword photographers. This one by Jenn Wohletz: <photos/sitting.jpg> and this one by Brandon Marshall: <photos/sitting-closeup.jpg>

sitting within a few feet (sometimes inches) of the troopers (in their riot gear) holding their line. Sometimes a portion of the police line was actually on the other side of me, between me and the protesters on the sidewalk.

While the protesters alternated between cursing the police and asking them to join the protest, the police remained largely stoic and unresponsive. The trooper nearest to where I was sitting, however, engaged me in conversation a few times: he once asked me if I was doing okay, then joked that he had been standing for so long he might have to sit next to me, and another time asked where I was from. Other than that I don't remember seeing any other attempt at the police to engage the protesters in dialogue.

Finally, around 6:20am, the police lined up for their final push, right in front of me. Before the push, the officer directly in front of me pointed to me and told the trooper next to him, "he is a passive". They then deliberately stepped around me as they began their assault on the protesters defending the kitchen, leaving me sitting alone on the grass. I watched them begin to break up the few remaining protesters, who had linked arms around the kitchen, for a minute before state troopers in standard uniform (no riot gear — they were the mop-up team) noticed me. They spent a minute or so trying to convince me to leave (they could tell I was concerned about my backpack and told me if I was arrested it would probably be "lost"), before they finally arrested me. I refused to stand, and after informing me that I was resisting, two officers lifted me by my arms and handcuffed me with plastic cuffs.

My arresting officer read me my charge (18-9-117 "Unlawful Conduct on Public Property") and placed my backpack in an orange bag with my cuff number written on it.⁷ This is the first time I've ever been arrested. When we arrived at the process-

⁷All of my property is still (two weeks later) in the possession of the Executive Security Unit of the Colorado State Patrol. They have been unable to give me an estimate of when I will be able to reclaim it. Update: the CSP has lost my property (I stupidly had most of my camping gear with me, worth about \$1,700). I'm told it is probably thrown away.

ing center he asked if I felt at least a little bit silly for being arrested. The cognitive disconnect in that question was striking to me: here was a man who just participated in a senseless waste of other people's time and money insinuating that the guy who disobeyed a law in accord with his conscience was the one who should feel silly about his actions.

I counted twenty-two other protesters who were arrested (I was the third arrestee to arrive at the processing area). They transported us a few blocks to the Van Cise-Simonet Detention Center, where they processed us quickly enough that we were able to have our bond hearing the same day. Two of my sisters and a friend found out about my arrest and were in the courtroom during my hearing which was a nice surprise. The Denver Anarchist Black Cross had arranged for attorneys to be present on our behalf. Most of us, including me, were released with no bond and less than twelve hours after our arrest. My first appearance in court was October 21. The National Lawyer's Guild and other organizations found enough lawyers to volunteer that each of us, including 24 who were arrested during demonstrations the next day, had representation at our hearings. The Denver Police Department has confronted protesters in riot gear on several additional occasions since my arrest, and over 100 protesters have been arrested since that first confrontation.⁸

1.1. Trial

So that was my first experience with civil disobedience. It is discouraging because it has made plain to me how easily living my life openly in accordance with reason and conscience can bring me into conflict with the state, and how easily conflict with the state can bring me to spending my time in a concrete room. Which is a bummer, because that seems like an

⁸Whipple, Kelsey. "Occupy Denver update: 100-plus arrests, more charges added, one case misplaced." *Westword*, 21 Feb 2012. <https://www.westword.com/news/occupy-denver-update-100-plus-arrests-more-charges-added-one-case-misplaced-5903435>

otherwise good way to live my life. I think I understand now why Diogenes could never find an honest man on the streets of Athens: he never looked in the prisons.

It is a difficult balance resisting the crimes of the state without either becoming complicit in its actions through obedience, or mimicking its actions through violence. In trying to walk that balance I adopted Tolstoy's tactic of non-resistance to evil by force (or what I would call non-forceful resistance to evil) by not leaving the park when I was told to, not standing up to help the officer in arresting myself (for which I was charged with the crime of "Obstructing a Law Officer"), not accepting any of the plea deals I was offered, and also not actively or violently resisting. I feel I navigated the balancing act rather successfully.

My case went to jury trial April 30, 2012. Several of my friends and family members came to watch the proceedings (many for the entire day — thank you everybody!) My attorney did an excellent job presenting a negative defense given the law and facts of the case. The prosecution's case was not especially strongly argued, despite fairly clearly having the law *and* the facts on their side in at least one of the charges ("Unlawful Conduct on Public Property" — it was undisputed that I ignored a police officer's request to leave a public park). During jury selection voir dire he smartly emphasized the oath the jury took to determine only the facts of the case, and not to decide whether a law is just. He even implied that *all* laws must be obeyed in a sensible society. I wish I (or my attorney) had asked them to think about the absurd implications of that and to consider whether an oath which will cause more harm than good is an ethically binding oath.

As far as evidence, the prosecutor's strategy was to first demonize the Occupy Denver camp and then to condemn me by association. Unfortunately my attorney was so focused on his negative defense he didn't focus on the hypocrisy of the State's actions nearly as much as I'd have liked. For my part I wasn't sure whether to defend Occupy Denver, to defend myself, or to explain why it is unjust to criminalize living in

public. When I finally took the stand to testify I was too nervous to say much of anything. The trial went late, so after both sides finished presenting their case the Court decided the jury would return in the morning to deliberate a verdict. After my rather narrow defense, the verdicts the next morning were not surprising to me:⁹

- Unlawful Conduct on Public Property: Guilty
- Obstructing a Law Officer: Not Guilty
- Criminal Trespass: Guilty

After several weeks to allow for a pre-sentencing investigation, I was sentenced on June 29th:¹⁰

- \$249.50 in fines and fees
- 32 hours of useful community service to be completed by October
- 12 months of unsupervised probation

2. Anarchy and The Occupy Wall Street Movement

Liberty without socialism is privilege, injustice;
socialism without liberty is slavery and brutality.

— Mikhail Bakunin

The Occupy movement has been criticized for being vague and not standing for anything definite. But there is some edu-

⁹For a more detailed account of my trial and May Day in Denver, see: https://americancynic.net/log/2012/5/6/my_may_day_2012/

¹⁰For a few of my thoughts on the sentencing, see: https://americancynic.net/log/2012/7/6/my_sentence/

cational opportunity, at least, arising from the pluralistic nature of this movement. Vaguely disaffected individuals are attending events or following them on the Internet and, potentially, discovering almost 200 years of anarchist and Marxist thought. Even so, I cannot get excited about the entitled attitude which seems to saturate the “1% vs 99%” rhetoric, or the reformist/progressive elements of the movement. It’s not that the progressives are fighting a losing battle, but that they are fighting the wrong battle.

Capitalism, a system of production whereby the worker of capital and owner of capital are two different individuals, is not a salvageable system. Saving capitalism from plutocracy still leaves us with capitalism and with wage labour. Those who identify as “the 99%” seem more focused on comfort than autonomy. They don’t care who owns their workplaces or the products of their labour, as long as they have workplaces and their wages are high enough. It’s been said that Man does not live by bread alone. The point of eating is to live; capitalism has it backwards.

Government, a system of organizing people by force (in which capitalist production is an example form), is not a salvageable system. To ruin an old programming joke: Some people, when confronted with the problem of concentrated wealth and capital, think “I know, I’ll solve it with government.” Now they have two problems. I do agree with the sentiment held by many of those participating in the occupations that if we are going to be governed through representative democracy, then it should be elected by and representational of sentient people rather than corporations. And again, if we are going to control credit through centralized banking, and create credit through fractional-reserve banking, then those banks should be guided by macroeconomic policy in such a way that they contribute to the wealth of everyone, rather than to just a few. But at the root, government (historically if not logically) is a tool of the ruling class to preserve the status quo. Restoring capitalism to health is no great accomplishment. What good is it to gain the world of economic justice if it costs your soul?

Libertarian socialist political views like this, which reject both authoritarian government and the private ownership of capital which depends on and perpetuates such governments, were advanced by 19th century philosophers and revolutionaries who called themselves anarchists (from the Greek for “without a ruler”). Anarchist political theories are often challenged on grounds of feasibility (“Sure anarchism may sound good, but it would never work because human nature...”). While there are many points of specific debate, these challenges ask in general, “Can and will libertarian socialism result in a better (happier/safer/wealthier/...) world than current social organization?” This is a consequentialist approach: it seeks to determine what policies to pursue by trying to judge the goodness of their consequences. While I believe convincing arguments can be made in favor of libertarian socialism on this basis, I do not believe consequentialism to be a necessary or sufficient theory of ethics.

The problem all consequentialist theories must face is that as individuals our ultimate consequent is already known. To prioritize ends over means is to prioritize death over life. My anarchism¹¹ is not merely a political recommendation; it is a moral philosophy. The goal is not to establish a utopian future by whatever means necessary. The future can worry about itself. The goal is to live a meaningful life *now*. The basic assumptions of anarchism are equality and reciprocity. So anarchists won't rule others and will resist being ruled. They won't claim ownership of others' labour, and will resist others' claims to what they use and produce. From squats to cooperative collectives to challenging unfair property rules by sleeping in a park, living anarchism will not bring about the revolution; it *is* the revolution. As Leo Tolstoy put it in his essay *On Anarchy*, “There can be only one permanent revolution — a moral one: the regeneration of the inner man.”¹²

¹¹And of course many who identify as anarchists will disagree with much of what I've said here

¹²Tolstoy, Leo. “On Anarchy” in *Pamphlets. Translated from the Russian*. 1900. Online: http://theanarchistlibrary.org/HTML/Leo_Tolstoy_On_Anarchy.html

