

Civil Resistance In the Age of Bush and Cheney

A Review of Francis A. Boyle's new book

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“Be the change that you want to see in the world.” – Mohandas Gandhi



The late Philip Berrigan, Dissenter Emeritus, wrote in 1997: “The empire’s wars are killing us.” (1) One of the big props for that empire is the clique in our society, known as the “Military-Industrial Complex.” This is the same powerful special interest that President Dwight D. Eisenhower warned the nation about in his “Farewell Address.” (2) Peace activist Berrigan felt, as a result of the arms race, that the world was moving towards a nuclear holocaust. In any event, Professor Francis A. Boyle’s new book, “Protesting Power: War, Resistance, and Law,” reveals how some courageous individuals have successfully challenged the many outrageous, and ongoing, crimes of our national regimes, via their arrest in a Civil Resistance-type action, and, subsequently, as a defendant in a court of law

before a jury of their peers.

One of the initial things that Professor Boyle does in his excellent tome is to distinguish between the terms “civil resistance” and “civil disobedience.” Often they are confused in the minds of the public. Professor Boyle said that in “civil resistance” cases, you have individuals, acting “peaceably,” who are attempting to “prevent the ongoing commission of international crimes...They are acting for the express purpose of upholding the rule of law, the U.S. Constitution, international, and human rights.” An example of civil resistance would be protesters risking arrest by trespassing in order to prevent the production and use of “First Strike” nuclear weapons, which Professor Boyle claims are “illegal” under International Law.

Classic civil disobedience cases, on the other hand, involved activists, who deliberately choose, by their conduct, to violate domestic laws for the “express purpose of challenging and changing those laws.” As an example, Professor Boyle cited the activists, particularly from the African-American community, during the 1950s and 1960s, who went to jail for various offenses, like in the historic sit-ins, in order to spotlight racially discriminatory laws and to bring about equal Civil Rights for all Americans.

In his demanding role as an educator, attorney, consultant and respected expert witness on International Law, Professor Boyle has been in the trenches taking on the “State Crimes” of various U.S. administrations for close to thirty years. Civil Resistance has been the primary tool utilized by the activists in their legal-based, court room battles. As a result, the civil resisters, he insists, have become the “Sheriffs and the U.S. government officials committing the crimes, the outlaws.”

Professor Boyle underscores how successive U.S. administrations have manipulated the public in order to justify their lawless ways. The Bush-Cheney Gang is one of his prime examples. He said that it is hell bent on stealing the “hydrocarbon empire from the Muslim states and people living in Central Asia and the Persian Gulf.” Essentially, it sells its foreign policy wrongdoings, like the war in Iraq, by posing a “Hobessian” choice to the people. It suggests that there are only two alternatives: Either threaten or use U.S. military force in a particular situation, or allow “the enemies to prevail.” Professor Boyle insisted that they ignore a third way, which embraces diplomacy, peaceful resolutions of disputes, the application of the rules of law and the traditions of fair play. Professor Boyle labeled the conflict in Iraq as “criminal,” and the foreign policy of the Bush-Cheney Gang, which was fueled, in part, by the rabid Neocon ideologues, “as out of control.”

How does civil resistance work within the framework of the American judicial system? Well, Professor Boyle cited the “People v. Jarka” case, among other landmark litigation, to illustrate some of his key points. In 1984, activists protested in front of the Great Lake’s Naval Station base, which is located in Illinois, on Lake Michigan. The focus of the demonstration centered on the issues of U.S.’s violence-producing “intervention in Central America” and also on our country’s buildup of “offensive nuclear weapons.” Ronald Reagan was the president at the time. The defendants were arrested, when they sat in front of the naval base, locked arms, and refused to be moved. They were charged by authorities with the crimes of “mob action and resisting arrest.”

The defendants, in “Jarka,” elected a trial by jury. The trial judge, the Hon. Alphonse F. Witt, permitted testimony on their behalf from eight expert witnesses on International Law. They

testified how the actions of the Reagan administration, in Central America, were in violation of well settled legal principles established by the UN Charter, the Geneva Convention, the Hague Convention and other precedents. They also specified how a nuclear weapon would kill potentially hundreds of thousands of people and cause horrific harm to “combatants and noncombatants alike,” and that their use would violate the principles of “necessity and proportionality” under International Law. In Illinois, a defendant has a right, under certain circumstances, to raise the Common Law defense of “Necessity.” In other words, the defendants were permitted to argue to the jury that their supposed criminal conduct, [the blocking the road into the base], was justified’ in order to “avoid a public or private injury ‘greater’ than the injury that might reasonably result from his or her own conduct.” The judge actually instructed the jury that “the threat or use of nuclear weapons violated international law.” Needless to say, all the defendants were acquitted.

The “Jarka” case also spotlights one of the hallmarks of a civil resistance action. The defendants in it sincerely believed that they “hadn’t violated” any criminal laws. Professor Boyle put it this way: “From their perspective, [it’s the] U.S. government officials [who are] on trial...Civil resisters disobeyed nothing—to the contrary, they obeyed international law and the U.S. Constitution.”

In “Jarka,” Professor Boyle served as counsel to the lawyers handling the precedent-setting case, and also in a companion matter of “Chicago v. Streeter.” He praised the work of all of the trial lawyers involved in the two cases, and also the “vigorous efforts of the ‘Lawyers Committee on Nuclear Policy’ (LCNP).”

Professor Boyle also discussed cases involving the crime of Trespass. It’s a “specific intent” offense and is one of the charges usually leveled at someone for participating in a civil resistance action. In order to convict, however, the government must prove that the defendant acted with an “unlawful purpose.” Often, in order to make their point about government evildoing, a “resister” will go on the property of a federal facility, like the National Security Agency or the Pentagon, without permission. In those kinds of situations, Professor Boyle said the defense lawyer should consider making this argument to the jury: “The defendant did not do so for an ‘unlawful’ purpose, but was instead acting for the express purpose of upholding the requirements of international law...in order to prevent the commission of international crimes by U.S. officials there and elsewhere.”

Professor Boyle highlighted some of the antiwar groups in the country who have utilized “Civil Resistance” over the years. He mentions the legendary Plowshares, Gulf War Resisters, the Anti-Apartheid Movement, Greenpeace, Sacred Earth, the Sanctuary Movement and the Pledge of Resistance, among others. (3) He wrote that by the year 2004, “Nuclear Resister” had estimated that there were more than, “9,400 antiwar-related arrests in the U.S. alone.” All of this caused the former U.S. Attorney General, Ramsey Clark, to comment: “Our jails are filling up with saints.”

Also in his book, Professor Boyle writes, in detail, about the possible strategies to adopt in a Civil Resistance case; a trial, in Wisconsin, involving opposition to the “Trident II,” a nuclear missile submarine; the constitutionality of the Persian Gulf War; and the legality of President Bill Clinton’s “invasion of Haiti.” It’s his treatment, however, of the opposition to the illegal and immoral Iraq War, by gutsy members of the U.S. military, like Staff Sergeant Camilo Mejia (US Army Reserves), and First Lieutenant Ehren K. Watada (US Army), that I believe readers will find most riveting.

Finally, Professor Boyle has been a true champion of the U.S. Constitution and of the rule of law. He has continued to demonstrate his commitment to his principles by demanding the impeachment of President George W. Bush, Jr. for committing “high crimes and misdemeanors.” (4). In a way, his highly informative book, “Protesting Power: War, Resistance, and Law,” is simply an extension of his love of justice and his deep concern for our Republic, which continues to drift dangerously towards the creation of a police state. I say: Read Professor Boyle’s well written and fully documented book. It is filled with valuable lessons for all activists. (5) This is especially so for those whose conscience, living in the Age of Bush and Cheney, may dictate that “civil resistance” is a moral and legal choice for them to exercise.

Notes:

1. http://www.jonahhouse.org/PB/Phil_PoPplowshare.htm
2. <http://www.americanrhetoric.com/speeches/dwightdeisenhowerfarewell.html>
3. <http://www.iraqpledge.org/>
4. <http://www.counterpunch.org/boyle01172003.html>
5. For another relevant book on resisting the Iraq War, see, <http://baltimore.indymedia.org/newswire/display/16292/index.php>

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