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## In Between the Lines

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### **Abstract**

Is respect for the law valuable when it infringes upon human rights? At first glance, Howard Zinn's passion against injustice seems to override Fortas' reserved and technical argument. This essay will show that the position of Judge Fortas is superior to that of Howard Zinn because he proves there are sufficient legal means to successfully propagate change in the modern American system. Furthermore, his distinction between protesters and revolutionaries provides unexpected space for the dictates of individual conscience.

In Between the Lines

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Is respect for the law valuable when it infringes upon human rights? At first glance, Howard Zinn's passion against injustice seems to override Fortas' reserved and technical argument. This essay will show that the position of Judge Fortas is superior to that of Howard Zinn because he proves there are sufficient legal means to successfully propagate change in the modern American system. Furthermore, his distinction between protesters and revolutionaries provides unexpected space for the dictates of individual conscience.

The main question of Fortas' work is "whether violence is essential, lawlessness necessary-- or whether there are effective alternatives" (Fortas 1968). He concludes that within the American system, violence and lawlessness are not necessary since freedom of speech, peaceful assembly, and the right to vote have been used to successfully bring change. Protesters "seek changes within the established order" (Fortas 1968). Since they are working within the established order, they must use legal means. Lawbreaking must be limited to the laws which are being protested, and the convicted must submit to punishment if the courts rule against them. Respect for the law is paramount since protesters rely on the law to enforce eventual changes. His shining example for this process is the civil rights movement of the 1960s. In reference to Dr. King's forbearing acceptance of punishment he said, "This...is action in the great tradition of social protest in a democratic society where all citizens, including protesters, are subject to the rule of law" (Fortas 1968). As we know, the civil rights movement successfully made use of the legal avenues provided by the American system to create massive social change we still feel the effects of

today. Fortas has two principled grounds for respect of the law. First, he states that we benefit from the rule of law because it protects our individual liberties. Then, he appeals to fair play. “Just as we expect the government to be bound by all laws, so each individual is bound by all of the laws under the Constitution” (Fortas 1968). Fair play applies especially to protesters, since they rely on the law to enforce the changes which they hope to enact.

This traditional view is highly contested. It is certainly too reserved for Zinn, who complains that “Fortas would give us a subservient citizen, the student of a puny political science” (Zinn 1968). He thinks that Fortas has an irrational attachment to the rule of law. To him, “law is, like other institutions and actions, to be measured against moral principles, against human needs” (Zinn 1968). When the law ceases to benefit the citizen it should be resisted with every effective means, including the breaking of unrelated laws or even violence. Some injustices are so abhorrent that sedentary, peaceful protest doesn’t cut it. For “how potent an effect can protest have if it stops dead in its tracks as soon as the very government it is criticizing decides against it?” (Zinn 1968). To Zinn, Fortas’ respect for the law outweighs his response against injustice and does not leave any room for effective protest.

Zinn’s response to Fortas’ position seems rational at first glance. Fortas does seem rigid and unsympathetic to the demands of conscience, especially in light of unforgivable wrongs committed by the very law he upholds. However, he redeems his argument when he distinguishes the protester from the revolutionary, and moral arguments from legal ones. These distinctions create unexpected hidden space for violent and lawless protest since he acknowledges the existence of protest both within and without the system. Those who work outside the system through actions involving lawlessness and violence he calls: “programs of revolution” (Fortas 1968). Of course as a judge, he cannot condone such behavior; Fortas himself

takes a strong moral position of complete nonviolence, but this is a moral stance and not a legal one. The unspoken implication is that others may not take his view and may follow their conscience to acts of lawlessness and violence. Fortas cautions these revolutionaries not to expect their violence or lawlessness to be protected by the Constitution. “It is the state’s duty to arrest and punish those who violate the laws designed to protect private safety and public order” (Fortas 1968). It would be unreasonable to expect the state to accept violent acts against itself or its citizenry, but that does not stop an individual from risking it all to follow the dictates of his conscience. In the beginning, Fortas asks “Is there, or is there not, a path that law and integrity mark out through the maze of tangled obligations and conflicting loyalties?” (Fortas 1968) Zinn criticizes Fortas for not addressing this question sufficiently. The truth is that Fortas competently addresses the ways in which law marks out the path of legality and leaves the question of integrity and morality where it should be, in the conscience of the individual.

### **Bibliography**

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