



January 2018

## The Persuasive Brilliance of Fortas

Ethan Pogge

Illinois Wesleyan University, epogge@iwu.edu

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### Recommended Citation

Pogge, Ethan (2018) "The Persuasive Brilliance of Fortas," *Res Publica - Journal of Undergraduate Research*: Vol. 23

Available at: <https://digitalcommons.iwu.edu/respublica/vol23/iss1/14>

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## The Persuasive Brilliance of Fortas

### Abstract

The central question of this piece is how to strike a balance between radical civil disobedience and adherence to the laws put in place by government. Multiple schools of thought on how to obey and protest laws are discussed. Abe Fortas contends that peaceful, non-violent measures must be taken to protest and remedy laws that people support. Howard Zinn argues that more radical measures need to be taken in order to remedy unjust laws. Ultimately, Zinn's concept of radical disobedience misses its mark because the concept of justice is too subjective. The breaking of laws requires a punishment which lends credence to Fortas' claim of a more civil form of protest.

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In order for a civil society to thrive in the twenty first century, obedience to the law is essential. Plato demonstrated Socrates' understanding of the law in *Crito*. In *Crito*, Socrates refuses to rebel against the Athenian laws because he believes that the laws have provided him with a platform to speak and live. In its most primal form, a citizen is bound to the laws like a child is bound to a parent. To disrespect and go against the democratic laws would be like striking a parent. Rather than simply breaking the laws and fleeing to another country, Socrates should try to persuade the laws to believe his claim of innocence. These laws present a scenario in which a social contract is possible. Like John Locke, Socrates believes that a citizen must forfeit some of his "natural rights" to the government in order for that government to provide and protect him or her. This adherence to a social contract coincides perfectly with Abe Fortas' excerpt on *Civil Disobedience and Dissent*. For this reason, Fortas' argument for civil disobedience within the necessary parameters is so imperative. Fortas claims that, "Good

motives do not excuse action that will harm others or unreasonably interfere with them” (Fortas 1968).

Just because an individual feels something is unjust doesn't give them the right to determine that for everyone. While the legal process may be slower, the victory will be more powerful. The quintessential example of this is the civil rights movement. It would have been very easy for Dr. King to break the deeply unjust laws in place. However, Dr. King and many other civil rights activists proceeded carefully, obtaining permits and gaining permission from different cities to protest. Eventually these unjust laws were changed, and the victory was even more rewarding. Fortas also provides another example in his excerpt when he mentions the *Brown vs. Louisiana* case. These African American men were proven innocent because they protested within the legal means. This form of protest made their cause more successful and promoted other protests that followed a similar blueprint. This form of “going against the laws just to prove a point ultimately takes away legitimacy from the noble cause” (Fortas 1968). Moreover, Fortas asserts the notion that the U.S. government offers and protects alternatives to civil disobedience such as peaceful protests, assemblies, and the right to vote. If a majority of the population believes a law to be unjust, they can vote to replace said law.

Proponents of Zinn would contend that the law inevitably sides with the government and not the people. Zinn gives an example of when the law should side with the people and not the government on the grounds of humanitarian reasons. Zinn contends that obstruction of something like traffic is not a law important enough to outweigh the life of a child (Zinn 1968). When you are disobeying a normal law for innate humanitarian values, it becomes justified and shouldn't be punished. Zinn also thinks Fortas' argument falls short when critics examine history. Looking at examples such as Executive order 9066, (the internment of the Japanese

during WW2), it was wartime and the American people were scared. In turn, our government acted unconstitutionally. This is the precise reason why Zinn concludes that those who make the laws do not represent the interests of those without voices. The laws will not accommodate minority and marginalized citizens equally. This makes peaceful or lawful means of protest unviable. Additionally, there are no adequate means through law to right these wrongs. Legal means are not effective enough; these cultural issues need to be addressed in a more aggressive manner.

Fortas counters these statements by claiming that in circumstances of war, the state will respond to fear with means that are often more drastic than justified. However, “there has been a remarkable absence of government effort to curtail the right to dissent and protest” (Fortas 1968). An example of this, is when Abraham Lincoln attempted to suspend civil courts and the Writ of Habeas Corpus. The courts ultimately ruled against Lincoln and his motions were voted unconstitutional. Fortas also strengthens his claims when he adds that not everyone is going to have the same ideas about equality and human rights, or conception of justice. These ideas among citizens are completely subjective. The structure of law, as the interpreter allows for, is an equal and peaceful society where conflicting ideas can exist and be voiced. The breaking of laws requires punishment to be accepted, or tolerated at least, on all sides of any instance of civil disobedience.

### **Bibliography**

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Civil Disobedience: A Necessary Evil

Benjamin Nielsen

As Socrates sits awaiting his death, he argues with Crito about the cons of escaping this punishment. Socrates argues that escaping without the consent of Athens would be trying to have two wrongs equal a right, which he explains to Crito only puts Athens in greater danger, even though Socrates admits that this ruling is unjust because it is the popular majority that wishes to see him put to death. “What we ought to worry about is not so much what people in general will say about us but what the expert in justice and injustice says, the single authority ad with him the truth itself” (Plato 1993). Socrates is incorrect in his assessment that one must obey every law, because even in democracies, there is still potential for groups to oppress minorities. In addition, there are duties that humans owe themselves, and they must act on virtue because it is not “life, but a good life that is worth living” (Plato 1993).

Zinn’s arguments regarding the obedience of citizens to the law is a more complete argument than Fortas’ because Fortas fails to address the significant power disparity between the government and the people, and the continued authorization of legislation that is suppressive in nature.

Socrates’ notion is that since we live in a democracy, we have the ability to change laws that we see as unjust. However, if the state passed the law, and the people see this statute as just, then the people must obey it until they convince the state otherwise. “...you must either persuade your country or do whatever it orders, and patiently submit to any punishment that it imposes, whether it be flogging or imprisonment” (Plato 1993). However, it’s important to note that in a democracy, there is still a possibility that the majority can infringe upon the rights of minorities.