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Howard Zinn’s critical criminology: understanding his criminological perspective

Kelly Welch*

Villanova University, Philadelphia, PA, USA

Howard Zinn has been classified in a number of ways for his many social contributions. However, despite the breadth of his work, he has never been considered a criminologist. It is likely that this is the result of the inaccurate perceptions many Americans have about crime being a predominantly street-level social problem. Zinn maintains that the social harms caused by those in positions of political and economic power are in fact crimes against humanity that are far more destructive and violent than the actions our legal system has historically deemed criminal. He also points to the ways our criminal justice system is unjust and ineffective, and has demonstrated how social inequality ensures that the disadvantaged will be further subordinated by the criminal justice system. Zinn’s critical contributions about the most significant sources of social harm, the unjust nature of the American justice system, and the influence of social inequality offer an unorthodox criminological perspective that deserves special consideration. His unconventional criminology calls for increasing social justice by means of political dissent, social resistance, and civil disobedience.

Keywords: critical criminology; differential enforcement of law; social construction of crime; social inequality; social justice; white-collar crime

Introduction

Howard Zinn has been classified in myriad ways for his countless social contributions: historian, political scientist, social activist, Marxist, radical, writer, professor, war opponent, civil rights advocate, anarchist, and playwright, just to name a few. He has not, however, been touted as a criminologist in the traditional sense of the term. Though Zinn has directly addressed various dimensions of crime and criminal justice, his writings and teachings have focused primarily on the social injustices created by war, terrorism, political power, unequal distributions of wealth, racial inequality, tyranny, capitalism, imperialism, governmental oppression, and the negative ideology that serves to obscure these social injustices. It is plausible that mainstream society’s incomplete and inaccurate understanding of crime as a predominantly street-level phenomenon – largely believed to be committed by young, poor black men – prevents Zinn’s prolific works from being conceptualized as relevant to the discipline of criminology, even among criminologists. In fact, he has consistently argued that the immoral social injustices created by individuals and institutions with political and economic power should be viewed as acts of crime against humanity, which are more
devastating and far-reaching than actions currently defined as criminal by the American justice system. Thus, Zinn attempts to broaden the scope of the definition of criminality for a culture that has historically been deceived by the reports of those with the power to control public messages about the source of criminal threat.

Aside from promoting ‘radical change in social consciousness’ regarding the social construction of crime (Zinn, 2005a, para. 5), Zinn (1968, 1974, 2003) makes the case that policies and practices of the American criminal justice system itself produce serious injustices. For example, he states that ‘Bad laws and bad policies endanger our lives and our freedoms’ (Zinn, 2003, p. 122). From unjust laws and corrupt police forces to the ‘tyrannical’ American judicial system and cruel punishments, he contends that alleged and convicted criminals are no longer treated as human beings (1974). He acknowledges that offenders are entitled to certain rights of due process, but that the provision of these rights is regretfully subjected to the often arbitrary judgment of those with government sanctioned authority (1968, 1974, 2003). Though he posits that politicians and government bureaucrats are primarily responsible for the conditions allowing the harsh and unjust treatment of criminals, he also says that the media perpetuate public fear that manifests itself in support for these policies (2005b, 2006c). Another negative consequence of social inequality about which Zinn has written is that justice is actually dispensed differently, depending on the social status of the offender (2003; 2006c). Wealthy or well-connected ‘white-collar’ criminals do not encounter the same harsh treatment from the criminal justice system that socially disadvantaged individuals confront. Zinn believes that this kind of disparity lessens the meaning and significance of due process and erodes the principle of equality.

Another body of Zinn’s writings demonstrates that social inequality negatively affects actual involvement in crime, which produces the gross disparities in justice. In noting that ‘our nation, from the start, has been divided by class, race, national origin’, and has endured class conflicts throughout history, Zinn (2000a, para. 4) argues that the maltreatment of those in positions of relative powerlessness encourages criminality and results in diminished rights and pervasive injustice. Though, several elements contribute to social class, Zinn argues that ‘Only when wealth is equalized (at least roughly) will liberty be equalized. And only then will justice be possible in this country’ (2003, p. 181).

Zinn’s critical contributions about the most significant sources of social harm offer an unorthodox criminological perspective that deserves special consideration. Furthermore, his writings and teachings on the unjust nature of our criminal justice system add a distinctive dimension to the discipline of criminology, as does his focus on social inequality and class conflict. His unique approach to criminology advocates a proactive and passionate demand for social justice by means of political dissent, social resistance, and civil disobedience. It is clear that the work he has produced over his lifetime fits nicely within the theoretical framework of critical criminology. Despite not being trained as a criminologist, understanding his work as it pertains to criminology would be very useful for those seeking solutions to the social problems of crime and social injustice.

Howard Zinn redefines social injustice as crime
As a professor and passionate social activist, Zinn has spent most of his life calling attention to the often devastating harm inflicted by those with political and economic
power, even though this harm is rarely illegal according to US laws. He posits that ‘the
test of justification for an act is not its legality but its morality … The ultimate test is
not law, but justice’ (2003, p. 128), thereby redefining crime as that which is immoral
and unjust (1968, 2003). Zinn’s definition of crime, then, includes poverty, racial
oppression, anti-immigrant policies, war, imperialism, and white-collar crime, among
many others. His rationale for categorizing legal social harm as criminal is that

violence by individuals and groups in American history had received much attention, but
that the greatest amount of violence by far has been done by government itself, through
armies and police force, while expanding across the continent, extending national power
overseas, and suppressing rebellion and protest at home and abroad. (2003, p. 142)

Although Zinn acknowledges that our modern government is an improvement over
monarchy, he sees that ‘it is chiefly used by those holding power in society as a demo-
cratic façade for a controlled society and a barrier against demands that threaten their
interests’ (2003, p. 235). These legal, yet unjust actions all function to strengthen the
power of those already in charge, and the rhetoric and laws surrounding them all do
the same, which Zinn says obscures the fact that ‘In the history of secrets, withheld
from the American people, this is the biggest secret: that there are classes with differ-
ent interests in this country’ (2006a, para. 21). Therefore, the social harm committed
by elites is rarely classified as criminal, because these offenders have the power to
control the laws. Zinn argues that it is necessary to redefine crime as those actions that
are unjust, rather than simply illegal.

Poverty

One major social injustice Zinn says the US government not only tolerates, but fosters,
is poverty, as evidenced by the reality that ‘One of five children in this, the richest
country in the world, is born in poverty. There are more than forty countries that have
better records on infant mortality. Cuba does better’ (2006a, para. 29.) He has written
that the government should be ashamed to continue tolerating the living conditions of
inner cities and slums (he grew up in one), weak education, underemployment, and
the fact that poor Americans do not have adequate healthcare. In addition, he conjec-
tures that poverty is at the root of many other social problems, including the inexplic-
ably high crime rate (1994).

However, Zinn makes clear that this is not an issue of justice that is unique to the
United States. He explains ‘it is impossible to confine economic justice within
national boundaries. The enormous disparity between the richest and the poorest
countries cannot continue if we care about justice’ (2003, p. 175). The reality that the
USA has such terrible poverty within its borders, despite being a wealthy country,
amounts to what Zinn considers crime, as does the fact that as the wealthiest country
in the world the USA also tolerates extreme global poverty.

Racial oppression and anti-immigration policies

Another serious social harm perpetuated throughout history, and certainly since the
inception of the USA, is the oppression of groups of people because of their race or
immigration status. Zinn writes extensively about the tremendous devastation this has
created over time:
We must face our long history of ethnic cleansing, in which millions of Indians were driven off their land by means of massacres and forced evacuations. And our long history, still not behind us, of slavery, segregation, and racism. (Zinn, 2006a, para. 26)

Zinn has equated the government’s mass murdering of Native Americans as crime despite its explicit legality at the time it was done, and points out that there were even monetary rewards for killing them during the Revolution. Another obvious example of social injustice often addressed by Zinn is that of slavery, which was entirely legal for a long period of time, but should have been considered criminal. Even after it was outlawed, it continued in certain areas. Thus, he states

A hundred years after the Civil War, Frederick Douglass’s statement was still true. Blacks were being beaten, murdered, abused, humiliated, and segregated from the cradle to the grave and the regular organs of democratic representative government were silent collaborators. (Zinn, 2003, p. 240)

Zinn (2000b, para. 5) concludes that ‘for revolting barbarity and shameless hypocrisy, American reigns without a rival …’

Until the Civil Rights Movement, blacks were legally segregated from whites – another legal, yet immoral social injustice that Zinn passionately opposed. However, the legal ‘crime’ of discrimination and oppression continues even though segregation was abolished (legally, if not in practice). Among the many examples Zinn (1994) references of times when equal rights were opposed, is an incident when he saw the Federal Bureau of Investigation (FBI) arrest blacks attempting to vote, as well as when he witnessed these law enforcers failing to arrest those who were impeding blacks from voting – both violations of federal law following on from the 1957 Civil Rights Act. Zinn protested against human rights violations like these, and was subsequently arrested (and jailed) several times throughout the course of the Civil Rights Movement. He encouraged similar acts of peaceful civil disobedience among his students while he was a history professor at Spelman College (an all-black women’s school) in Atlanta, Georgia during the 1950s (Zinn, 1995), and then later when he began teaching in the Political Science Department at Boston University in the 1960s.

Zinn has also focused on the hypocrisy and harmful consequences of US anti-immigration policies. The most recent of these have developed following 9/11 to shut out ‘potential terrorists’ (often based on scant or secret evidence) and other foreigners (like ‘migrant workers’ from Mexico) and they do not permit due process or the consideration of humanitarian concerns. Aside from addressing the government’s role in these recent acts of injustice, Zinn emphasizes that this has been a trend throughout the country’s history: those who seek a better life by immigrating to the USA have suffered violence and harm as a result of ignorance and the US government’s unjust policies (2006b). He has written about anti-Irish sentiment in the 1840s and 1850s; the abuse of Chinese labor in the 1860s, and then the Chinese Exclusion Act of 1882 that made the Chinese North America’s first ‘illegal’ immigrants; prejudice against European (especially Italian) immigrants in the 1880s and 1890s; the insistence in the early 1900s that half of the criminals’ were Jewish; the strict quotas of permissible Asian immigrants in the 1950s, to name only a few (2006b). Zinn concludes that the government has used the law to legally assert its power in ways that are unfair and unjust toward those considered ‘others’.
War and imperialism

After his immersion in civil rights activism, Zinn’s attention also turned to another harm perpetuated by the government: direct and indirect injustice caused by the war in Vietnam. Again, he participated in acts of civil disobedience in protest, and was subsequently arrested and briefly jailed. Since then, he has fervently argued that no war is just, including wars with rules as in ‘just war’ (2002a, 2002b, 2003). He applies this standard not only to all wars, nationally and internationally, but to the many acts of imperialism perpetrated by the USA, as demonstrated by the following excerpts:

The history is powerful: the story of the lies and massacres that accompanied our national expansion, first across the continent victimizing Native Americans, then Overseas as we left death and destruction in our wake in Cuba, Puerto Rico, Hawaii, and especially the Philippines. The long occupations of Haiti and the Dominican Republic, the repeated dispatch of Marines into Central America, the deaths of millions of Koreans and Vietnamese, none of them resulting in democracy and liberty for those people. (Zinn, 2005a, para. 21)

We must face our record of imperial conquest, in the Caribbean and in the Pacific, our shameful wars against small countries a tenth our size: Vietnam, Grenada, Panama, Afghanistan, Iraq. And the lingering memory of Hiroshima and Nagasaki. It is not a history of which we can be proud. (Zinn, 2006a, para. 26)

Zinn recognizes the tremendous harm caused to citizens of other countries, but is also opposed on the basis of the injustice suffered by Americans – mostly soldiers – as a result of these violent expeditions. He considers the significant ‘toll of the American young, especially the poor, black and white, a toll measured not only by the corpses and the amputated limbs, but the damaged minds and corrupted sensibilities that result from war’ (Zinn, 2005a, para. 22). The depth of brutality of war has not been properly understood.

Zinn equates these acts of war and imperialism with crime, and their organizers as criminals. He has said ‘our leaders are just thugs in suits’, naming several presidents to whom this label applies, and has explained that:

Thugs are gangsters, brutes, violent people. Our leaders are engaging in the large-scale violence of war. The fact that they are in suits, that is, are officials, does not change the nature of their actions, nor soften the immorality of whatever they do. (Zinn, 2005c, p. 68)

In fact, he explicitly claims ‘there are all these presidents who commit mass murder, and we don’t call them mad’, as we would call a street murderer (cited in Young, 1996, p. 96). He also draws a parallel between drug crime and national weaponry, suggesting that the government’s offenses are far worse than those of drug users:

The weapons addiction of all our political leaders, whether Republican or Democrat, have the same characteristics as drug addiction. It is enormously costly, very dangerous, provokes ugly violence, and is self-perpetuating – all on a scale far greater than drug addiction. (Zinn, 2003, p. 287)

Zinn argues that if any US citizen were to act in a manner similar to the government, in terms of taking property that does not belong to it, murdering innocent people, and using violence to get its way, it would most certainly be considered a crime for which he or she would be convicted and punished harshly. Zinn has
explained that the true nature of these violent acts is offensive – not self-defensive as often claimed – and self-serving, but this fact is obscured by lies spread by government authorities. He suggests American citizens need not permit this to recur, stating that:

A more honest estimate of ourselves as a nation would prepare us all for the next barrage of lies that will accompany the next proposal to inflict our power on some other part of the world. It might also inspire us to create a different history for ourselves, by taking our country away from the liars and killers who govern it, and by rejecting nationalist arrogance, so that we can join the rest of the human race in the common cause of peace and justice. (Zinn, 2006a, para. 30)

Zinn has proclaimed, ‘It’s very sad to think that the United States is first militarily and a backward nation when it comes to human values’ (cited in McEnany, 1993, p. 5).

**White-collar harm**

Zinn recognizes that the social harm produced by corporations and government bodies in the pursuit of profit and ‘success’ in the US capitalist economic system far outweighs the harm caused by traditional street crimes. Among these myriad white-collar injustices is the physical and mental damage caused by industrial and highway accidents, economic exploitation, racial humiliation, imprisonment, poor housing, substandard health and sanitation provisions, which cause problems like infant mortality, malnutrition, sickness, and early death (Zinn, 2003). Zinn most definitely considers these white-collar offenses – transgressions committed for material gain by individuals in positions of power or prestige – to be included in his conceptualization of crime, regardless of whether those actions are officially illegal or not.

One argument is that capitalism has made corporate profit more important than the safety and well-being of individuals in society. Thus:

The drive for profit is ruthless. Because its chief motive is making money, it may not matter how it makes this money, what it produces, and what happens to human beings in the process. The capitalist drive for profit is based on what has been called ‘rational self-interest,’ and the idea is that if everyone pursues their rational self-interest, the economy will grow and the world will be a better place. (Zinn, 2003, p. 169; emphasis in original)

But Zinn argues that this ‘rational self-interest’ has not improved conditions in the world, and in fact, has only served the interests of the wealthy. Furthermore, he asks

Why should rich corporations have the right to deprive families of electricity, of gas to cook with, of fuel to heat their homes. These are life’s necessities, like food, air, water. They should not be the private property of corporations, which use them to hold us hostage to the dark, to the cold, until we pay their price. (Zinn, 1997, p. 221)

In addition to writing about how businesses gouge the poor to make more money, he also writes about the ways in which workers are abused by their employers, for the sake of profit. He references examples of victims of white-collar harm, like miners who develop ‘black lung’ disease and workers who inhale deadly asbestos fibers as a result of fulfilling the duties of their jobs (Zinn, 2003). He equates the robber barons of the past (who required their employees to work in factories for 14 or more hours a
day) to modern day chief executive officers (CEOs) ‘making enormous sums of money and laying off their workers without taking care of their health insurance; leaving the workers in the lurch when they are fifty or sixty years old, after having lost their retirement benefits’ (Zinn, 2006c, p. 3).

Zinn has also addressed the widespread hypocrisy of US government leaders regarding various laws and policies that amount to legal ‘crimes’. For example, he references how in 1989, President George H.W. Bush called a ‘war’ on drugs to combat illegal traffic in cocaine and other substances, but Zinn notes that:

He did not speak of tobacco, which brings immense profits to certain huge corporations and which is far more murderous than cocaine. Indeed, American tobacco companies, not content with poisoning people in this country, sought and received government help to push tobacco onto foreign markets, especially in Third World countries. All under the guise of ‘free trade’. (Zinn, 2003, p. 169)

This assertion was then followed by other examples of destructive free trade policies responsible for killing people. The US government has also lied to the country on numerous occasions – as in the case of the released Pentagon Papers – and has not suffered negative consequences (Zinn, 1994). The government appears to sense no irony about characterizing certain harmful actions as criminal, while it lawfully commits very similar offenses that are often even more damaging.

While Zinn has been critical of the harmful, yet legal, policies and practices of corporate executives and politicians, he has also been outspoken about the illegal actions taken by those with power, as well as the differential treatment they receive from the justice system. Zinn claims that ‘the illegal abuses of individuals are insignificant compared with those committed by business corporations for profit and government representatives for power’ (cited in Joyce, 2003, p. 143), but that ‘The crimes of the rich and powerful go mostly unpunished’ (Zinn, 1994, p. 150). He has cited numerous examples of government organizations, like the FBI and Central Intelligence Agency (CIA), violating laws without having to face the consequences of their crimes (Zinn, 1968, 1994, 1997, 2003), and has also written about powerful government officials, like Nixon, Reagan, and Oliver North, among many others, who have been ‘found guilty of violating the law, but none go to prison’ (2003, p. 113). He explains that the reason these government employees are not punished for their crimes in the same way that average citizens are sanctioned, is that ‘The powers of citizen and government are not equal; hence their rights are not’ (1968, p. 88), therefore,

when the government does violate the law – whether it is a policeman committing murder, or the nation violating treaties to commit mass murder – it has no punishing body standing over it as does the citizen; it does not accept the rule of law as final. National power prevails. (Zinn, 1968, p. 24)

This is particularly troubling, since this explicitly violates Constitutional principles of equality. He therefore states that

Equal Justice under Law is the slogan one sees on the marble pillars of the courthouse. And there is nothing in the words of the Constitution or the laws to indicate that anyone gets special treatment. They look as if they apply to everyone. But in the actual administration of the laws, are rich and poor treated equally? Blacks and whites? Foreign born and natives? Conservatives and radicals? Private citizens and government officials? (Zinn, 2003, p. 113)
Obviously, Zinn concludes that the answers to these rhetorical questions is ‘no’; those with power have access to a more privileged kind of justice than other American citizens.

Of course, this double standard of justice applies not only to government officials, but also to the wealthy, for whom the government has tailored various protective measures (1997; 1968): ‘When the rich commit the truly grand larcenies, which become too flagrant to ignore, their lawyers work out deals with the government and no one goes to jail, as would happen to a petty thief’ (Zinn, 2003, p. 157). Zinn argues that the interests of corporations and the government are closely interconnected, and that for each to thrive in our capitalist economy, the interests of the powerful must prevail over the interests of others. He explains that

The people who define crime are connected to those in the suites. They are the ones who say what it is. If somebody holds up a store or robs someone on the street, of course those are crimes. If somebody robs consumers of millions of dollars or robs workers of their lives because of unsafe work conditions, that’s not crime. That’s business. The media constantly focus on mayhem being done by ordinary people. But what is being done by the corporate giants usually doesn’t get into the media until it explodes in a wave of scandals as we have now. There are other reasons for the emphasis on street crime over corporate crime. Street crime is overt, whereas the corporate variety is secret. It is therefore important to have some individuals point out what is being done in secret. (Zinn, 2006c, p. 2)

Zinn strongly believes that we must halt unjust white-collar harm and discontinue the practice of unequal justice.

**Zinn on the injustice of American criminal justice**

Aside from proposing an alternative vision of the social injustices the USA should consider criminal (as discussed above), Zinn has argued that,

the system of justice in America seems terribly unbalanced in favor of the rich, that there have been terrible instances of brutality in American jails and prisons, and that the system sometimes seems more productive of crime than its cure. (Cited in Joyce, 2003, p. 142)

While he finds the principles espoused in the Bill of Rights and the US Constitution to be noble, he knows that reality does not consistently correspond to them, because ‘on the street ... it is the police who decide if that right exists. Or the local judge. The Supreme Court is far away and cannot help at that moment when the policeman says, “Get going!”’ (Zinn, 1974, p. xi). This cynicism is rooted in a variety of experiences, and developed pursuant to both his own involvement with the criminal justice system, having been arrested and incarcerated temporarily for acts of protest and civil disobedience and hearing the tales of others encountering unjust laws, police practices, court procedures, and punishments (Zinn, 1968, 1974, 1993, 1994, 1997, 2003, 2005b).

**Laws**

Regarding the use of laws in general, Zinn has said
It is not hard to show that there is value to specific good laws; they fix, strengthen, remind us of some moral proposition, like that against murder, against driving recklessly on a public highway, against barring someone from a public place because of his race. (Zinn, 1968, p. 11)

However, he argues that ‘to support a wrong rule of law does not automatically strengthen the right rule of law, indeed may weaken it’ (1968, p. 27). He feels that laws must be just for citizens to be expected to follow them, and that support of the rule of law is insufficient justification for obeying bad laws (Zinn, 1968, 1997):

Due process did not bring justice; it replaced the arbitrary, identifiable dispenser of injustice with the unidentifiable and impersonal. The ‘rule of law’, replacing the ‘rule of men’, was just a change in rulers. (Zinn, 1997, p. 647)

Historical analysis reveals that often, ‘the distinction between law and justice is ignored’ by government bodies, thus missing the intent of law in the first place (Zinn, 2005b, para. 10). Zinn explains that ‘Absolute obedience to law may bring order temporarily, but it may not bring justice’, and asks ‘Are we not more obligated to achieve justice than to obey the law?’ (Zinn, 2003, p. 109). Those seeking to achieve social justice would be likely to respond in the affirmative. Some may argue, as Plato, Abe Fortas, and others have throughout history, that due process and the rule of law must always be respected for order to be maintained, on the basis that the process by which justice is achieved is more important than the actual outcome of a given situation. But Zinn (2003, p. 110) counters that, ‘The orthodox notion is that law and order are inseparable. However, absolute obedience to all laws will violate justice and sooner or later lead to enormous disorder’, as when Hitler declared the need for obedience to maintain law and order. Zinn (1968) wants citizens to be aware of whether laws achieve justice or merely reinforce government power, and argues that one need not comply with laws that only do the latter. Though he has oscillated on whether this actually makes him an anarchist, he has written that

Anarchists believe the phrase ‘law and order’ is one of the great deceptions of our age. Law does not bring order, certainly not the harmonious order of a cooperative society, which is the best meaning of that word. It brings, if anything, the order of the totalitarian state, or the prison, or the army, where fear and threat keep people in their assigned places. All law can do is artificially restrain people who are moved to acts of violence or theft or disobedience by a bad society. And the order brought by law is unstable, always on the brink of a fall, because coercion invites rebellion. (Zinn, 1997, pp. 650–651)

Therefore, he is not convinced that ‘order’ can actually exist in a society where law is superior to justice, because ‘If law and order are only ways of making injustice legitimate, then the “order” on the surface of everyday life may conceal deep mental and emotional disorder among the victims of injustice’ (2003, p. 110).

Zinn has claimed that ‘the grossest injustices stem not from the violations of the law, but from the workings of the law’ (2002a, p. 196). This is not to suggest that he believes all laws are bad, just that assessing this can be difficult. On this point, he has said that:

Surely not all rules and regulations are wrong. One must have complicated feelings about the obligation to obey the law. Obeying the law when it sends you to war seems wrong. Obeying the law against murder seems absolutely right. To really obey that law, you should refuse to obey the law that sends you to war. (Zinn, 2003, p. 108; emphasis in original)
There are additional kinds of laws Zinn has classified as immoral and unjust, including those that limit civil rights of minorities, women, the poor, immigrants, protesters against war, and those people designated by the Attorney General as ‘terrorist supporters’ (who are deported or jailed without due process). He also passionately resents the hypocrisy of many laws and the double standard the government uses. For example, Zinn recently remarked:

> As I write this, Republicans and Democrats are trying to work out a compromise on the rights of immigrants. But in none of these proposals is there a recognition that immigrants deserve the same rights as everyone else. Forgetting, or rather, ignoring the indignation of liberty-loving people at the building of the Berlin Wall, and the exultation that greeted its fall, there will be a wall built at the southern borders of California and Arizona. (Zinn, 2006b, p. 16)

He also considers the 2001 passing of ‘The Patriot Act’ to be an instance where the law itself is unjust and hypocritical, because it gives the government permission to avoid the rule of law and due process protections established by the US Bill of Rights (Zinn, 2006b). Woodrow Wilson’s Espionage Act and the Sedition Act (which resulted in the incarceration of nearly 1000 protesters) is another example cited by Zinn (2006b) of the abuse of the law by the government. These are only a few of many such instances about which he writes to demonstrate that law does not equate with justice. Ultimately, according to Zinn,

> the ‘rule of law’ merely codifies, standardizes, and legitimizes all the basic injustices of pre-modern times – the maldistribution of wealth, the tyrannical abuse of power, the widespread use of violence, the authoritarian control over private human relationships and even over the mind itself. (Zinn, 2002a, pp. 196–197)

**Police**

Zinn (1974; 1994) became distrustful of law enforcement early in his life when he first saw that laws were routinely ignored or blatantly violated by officers and that police protection offered was contingent on who would be receiving it. He witnessed, and was in fact occasionally among, the illegal arrests of many non-violent protesters of racial segregation and later the war in Vietnam. Once, he saw a group of pacifists singing ‘America the Beautiful’, when

> Suddenly the police descended on them, declared them under arrest, and had them spread-eagled against a police car. It was clear that they were being arrested not for something they had done, but for who they were and how they looked. (Zinn, 1994, p. 147)

When Zinn asked the police why they were being arrested, he was arrested too. But, this was only one of several occasions on which Zinn was arrested for acts of civil disobedience, all of which were non-violent in nature, which gave him the opportunity to understand that due process rights were not always ensured by those tasked to ‘protect and serve’. He has written the following about the police duty to protect the First Amendment and freedom of speech:

> The state and its police were not neutral referees in a society of contending interests. They were on the side of the rich and powerful. Free speech? Try it and the police will be there with their horses, their clubs, their guns, to stop you. (1994, p. 173)
... most situations involving freedom of expression never make it into the courts. How many people are willing or able to hire a lawyer, spend thousands of dollars, and wait several years to get a possible favorable decision in court. That means that the right of free speech is left largely in the hands of local police. What are policemen likely to be most respectful of – the Constitution, or their own ‘police powers’? (Zinn, 2003, p. 198)

Unfortunately, it became apparent to Zinn that the police were not only not equally protecting civil liberties, but that they were often responsible for violent acts of brutality, for which they were apparently not admonished: ‘Policemen can commit murder with far less chance of punishment than an ordinary citizen (and indeed they do …)’ (1968, p. 89). Supporting this contention, he provides the example of the mass arrests and bloody beatings of peaceful civil rights activists (mostly blacks) by police forces during the 1965 Bloody Sunday march in Selma, which also resulted in the clubbing to death of a white minister and the shooting of a black man, Jimmie Lee Jackson (Zinn, 1994, 2003). Zinn references the example of Sam Block, who was falsely accused of burglary, and was terribly beaten by police, having received no due process (1994). Zinn commented, ‘Police, I learned over the years, are like soldiers, normally good-natured people, but part of a culture of obedience to orders and capable of brutal acts against anyone designated as “the enemy”’ (1994, p. 148). He was also troubled by the non-violent corruption of the FBI and CIA, who were essentially operating like ‘secret police’, illegally opening mail, burglarizing, and keeping illegal files on citizens, stating as follows:

What all this indicates is that, despite the Constitution, despite the First Amendment and its guarantees of free speech, American citizens must fear to speak their minds, knowing that their speech, their writings, their attendance of meetings, their signing of petitions, and their support of even the most nonviolent of organizations may result in their being listed in the files of the FBI, with consequences no one can surely know. (Zinn, 2003, p. 210)

Beyond the corruption and brutality Zinn observed among police, he was also particularly disturbed that they were often complicit with illegal and violent acts of others. He observed the following:

Freedom Riders were attacked with fists and iron bars. The southern police did not interfere with any of this violence, nor did the federal government. FBI agents watched, took notes, did nothing….It was a feeble act by the most powerful government on earth, refusing to enforce its own laws, allowing mobs to do violence to citizens peacefully riding buses, allowing local police to neglect their function of protecting people against assault. (Zinn, 2003, p. 245).

In another instance, two men were illegally detained by FBI agents in conjunction with a civil rights protest, and Zinn asked the highest ranking FBI officer present if those agents would be arrested for violating federal law. The officer said he did not have the power to make an arrest, but Zinn realized,

It was a lie. The FBI has the power to make arrests when federal law is violated before its eyes. Would its agents let a bank robber do his work and just watch and take notes? They would apprehend a bank robber, but not a local southern policeman violating a black man’s constitutional rights. (Zinn, 2003, p. 247)

Despite his optimistic hopes for the future, Zinn lost faith that America’s police forces were just.
**Courts**

After having witnessed and heard about many unjust court proceedings and judicial decisions, Howard Zinn (1974; 2005b) believes that the judicial branch of government favors the interests of the government and is inherently biased against the poor, against people of color, and against dissidents. He is disheartened that ‘The courtroom, one of the supposed bastions of democracy, is essentially a tyranny. The judge is a monarch. He is in control of the evidence, the witnesses, the questions and the interpretation of law’ (Zinn, 2003, p. 135). Part of the reason, then, that ‘Courtrooms are not places where one is allowed to get to the heart of the matter’ is that judges are politically oriented, since they are either appointed or elected, and most of them are white men (Zinn, 1994, p. 153), with only limited perspective from which to use their ‘absolute power over the proceedings’ (2003, p. 134). Therefore, ‘The quality of justice in the United States is strained through the sieve of the power and prejudice of judges. Free speech in the courtroom does not exist, because the judge decides what can and cannot be said’ (2003, p. 135). These judges are deciding who can testify and who cannot, who is credible and who is not, who should be punished and who should go free, and how many years of a person’s life should be spent behind bars. He appoints attorneys for the poor (my students found the average lawyer’s consulting time with defendants was seven minutes – that’s how feebly blows the trumpet of Gideon in the city court), and then decides the fate of each in a few minutes. (Zinn, 1993, p. 56)

Even in those situations when a trial is determined by a jury instead of a judge, Zinn writes that a jury ‘of one’s peers’ is one of the myths of the legal system. A jury is always a more orthodox body than any defendant brought before it; for blacks it is usually a whiter group, for poor people, a more prosperous group. (Zinn, 1994, p. 142)

As a result, a jury is never comprised of individuals positioned to make a ruling from an equal social standing. But, even if the problem of classifying peer groups for the purposes of judgment were resolved, ‘Another lesson about the justice system: the way the judge charges the jury inevitably pushes them one way or the other, limits their independent judgment’ (Zinn, 1994, p. 142). After serving as an expert witness on the importance of civil disobedience in several trials, and feeling particularly restricted in how he was allowed to testify, Zinn argues,

To have the mechanical requirements of ‘due process’ – a trial, contending arguments, and decision by a jury of citizens – is insufficient if the arguments are not fully made, if the jury does not know what is at stake, and if it cannot make a decision on the justice of the defendants’ action, regardless of legality. Supposedly, it is the judge who sees to it that the law is made clear to the jury, but then it is up to the jury to see that justice is done. However, if the judge prevents the jury from hearing testimony about the issues, the jury is being compelled to stay within the narrow, technical confines of the law, and the democratic purpose of a jury trial is extinguished. (Zinn, 2003, pp. 134–135; emphasis in original)

Despite the appearance of relinquishing authority to jurors in certain circumstances, judges always ultimately rule courtrooms.

Zinn acknowledges that despite the nearly unrestricted power of judges and diminished due process in judicial proceedings, ‘the American courtroom is also a place
where people, against great odds, may challenge the authority that threatens to imprison them, where some lawyers, judges, and juries occasionally stand apart from their colleagues and act according to their conscience’. (1994, p. 152) But, he says ‘…it is always a struggle in the courtroom to get the judge to agree to admit into evidence those things that will allow the jury to vote its conscience’ (Zinn, 2003, p. 139), because jurors are typically instructed to make rulings according to matters of law and not morality. He laments that, overall,

The courts have never been on the side of justice, only moving a few degrees one way or the other, unless pushed by the people. Those words engraved in the marble of the Supreme Court, ‘Equal Justice Before the Law,’ have always been a sham. (Zinn, 2005b, para. 23)

And, so he therefore explains the significance of social activism for these situations:

We begin to understand why civil disobedience – protest beyond the law – is so precious for the rectification of wrongs in our society; because whatever the law says in theory, as applied by the federal courts, including the Supreme Court, in practice, it is not a dependable shield for free expression. (Zinn, 1968, p. 87)

For this reason, Zinn (2003) approves of jury nullification (the act of a jury disregarding the specifics of law and judicial instructions to make a court ruling based on moral principle) to enhance social justice.

**Corrections**

Zinn remarks that ‘there is a sure sign of sickness in society when we lead the world in the number of people in prison’ (2006a, para. 29). Having been previously incarcerated for brief periods of time for offenses related to civil disobedience and after becoming acquainted with convicted prisoners, he is convinced that ‘As long as there are prisons, we live in an unjust society’ (Zinn, 1997, p. 434). He explains that ‘My few brief times in jail were to have an impact the rest of my life. They gave me the smallest glimpses into the ordeal of the long-term prisoners I came to know’ (Zinn, 1994, p. 149). In response to one such experience, Zinn made the following statement:

That night, in my cell, I didn’t get much sleep. The talk, sometimes shouts and screams, in the cellblock, the lights on all night, the cockroaches racing around my bunk, the constant clanging of steel doors. I made up my mind: not one more night. I would pay the rest of my fine and get out of there….Also, I had an engagement in Oregon to talk about the war. And – maybe above all – the cockroaches! (Zinn, 1994, p. 144)

Over time, he said he ‘had spent just enough time in jail (it takes only twenty-four hours) to understand why Karl Menninger, a psychiatrist who worked for years with prisoners, spoke of “the crime of punishment”’ (Zinn, 1997, p. 433). However, he feels somewhat fortunate because he realizes his situation could have been worse if he were poor or a minority:

It was a long night in the D.C. jail….I lay back on my bunk and thought about people I love, and how lucky I was to be white and not poor and just passing briefly through a system which is a permanent hell for so many. (Zinn, 1994, p. 149)
But blackness is only part of the story. The poor are the ones who inhabit the jails. Is it because they commit the most crimes? They are the ones who most often get caught committing crimes, because they have the least resources for getting away with their crimes, for covering up their deeds, the least resources for paying fines, arranging bail, hiring first-class counsel, making the right contacts. (Zinn, 1997, p. 436)

Zinn contends ‘It must surely be a tribute to the resilience of the human spirit that even a small number of those men and women in the hell of the prison system survive it and hold on to their humanity’ (1994, p. 150). In fact, he concludes that incarceration amounts to torture:

to imprison a person inside a cage, to deprive that person of human companionship, of mother and father and wife and children and friends, to treat that person as a subordinate creature, to subject that person to daily humiliation and reminders of his or her own powerlessness in the face of authority, to put that person’s daily wants in the hands of others who have total control over his life … is indeed torture … (Zinn, 1997, p. 434; emphasis in original)

Over the years, Zinn visited many inmates held in minimum and maximum security and taught several classes in prisons, and has determined that ‘Keeping people in prison was cruel to the inmates and dangerous for the rest of us’ (Zinn, 1997, p. 433). Not only does he feel that institutionalization is ineffective, but also that it does nothing to reduce crime:

imprisonment is a way of pretending to solve the problem of crime. It does nothing for the victims of crime, but perpetuates the idea of retribution, thus maintaining the endless cycle of violence in our culture. It is a cruel and useless substitute for the elimination of those conditions – poverty, unemployment, homelessness, desperation, racism, greed – which are at the root of most punished crime. The crimes of the rich and powerful go mostly unpunished. (Zinn, 1994, p. 150; emphasis in original)

Along with most criminologists, Zinn recognizes the frustrating truth that recidivism rates in the USA are high, and that aside from retribution, the various objectives of punishment – rehabilitation, deterrence, incapacitation, and restitution – are not sufficiently fulfilled by mass incarceration. Therefore, society is no safer as a result of our system of criminal corrections.

The tremendous flaws of incarceration lead Zinn (1974, 1997) to believe that prisons should no longer be used. He argues that ‘Prisons cannot be reformed, any more than slavery can be reformed. They have to be abolished’, but he realizes this remains unrealistic ‘until people think differently about punishment, about law, about crime, about violence, about property, about human beings’ (1974, p. 190; emphasis in original). He laments that ‘virtually no one in high public position has called for an end to the system of punishment’ or ‘has challenged the idea that the proper response to a hurtful act is to hurt the person who committed the act’ (cited in Joyce, 2003, p. 142). Zinn (1990/1991) is opposed to ‘cruel and unusual punishment’, but would like to see cruel and ‘usual’ punishment eliminated, as well. However, his desire to end ineffective and cruel sentences does not only apply to jails and prisons. He states that:

The U.S. ranks number one in capital punishment. More and more states are imposing the death penalty. Politicians line up calling for more and more executions. Yet, evidence shows that the death penalty is racist, targets the poor, kills innocent people and fails to deter crime. (Zinn, 1996)
Hence, Zinn supports abolishing the use of the death penalty.

**Social inequality increases crime**

Zinn suggests that social inequality may contribute to high crime rates. The substandard treatment of the poor, racial and ethnic minorities, immigrants, and others encourages criminality among individuals who may feel they have no other options (Zinn, 2006c) or who can no longer endure inferior treatment (Young, 1996). Zinn has said:

> When laws which violate the human spirit are maintained (like the segregation laws), or intolerable conditions are protected by the rule of law (like the poverty of Harlem amidst the wealth of Manhattan), and the victims have not found an organized way of protesting via civil disobedience, some will be spurred to ordinary crimes as a release for their suppressed needs. (Zinn, 1968, p. 13)

In reference to property crimes, Zinn quoted an economist who said “‘If crime is a rational response to poverty wages, we can expect crime to rise.’” Certainly, the most terrible violence, and the proliferation of dangerous drugs, including tobacco and alcohol, are provoked by the profit motive’ (2003, p. 169). He believes that poverty and economic oppression could lead one to commit crime and analogous behaviors, and that ‘What we should be most concerned about is not some natural tendency toward violent uprising, but rather the inclination of people faced with an overwhelming environment of injustice to submit to it’ (Zinn, 1997, pp. 388–389).

The tremendous gap between different social classes in America is a topic on which Zinn has spent much time focusing. He reasons that by having the rich and poor living in such disparate conditions, ‘Who could be surprised that crime, violence, and drug addiction would accompany such contrasts? Or that psychic disorder, broken families, and alcoholism would accompany such insecurity?’ (Zinn, 2003, p. 148).

Street crime, he explains, is the result of relative deprivation:

> The contrasts between rich and poor, the flaunted luxury of the very wealthy alongside decaying cities, the pressure on everyone to make lots of money – there must be a connection between all that and the great number of violent crimes in this country, the frighteningly widespread use of drugs, the alcoholism, the mental illness, and the broken families. (Zinn, 2003, pp. 172–173)

He supports this position by referencing how much more crime and violence there is in the USA than in other countries:

> It’s not hard to understand the violent crime we have in the United States when you see the extremes of wealth and poverty in the United States. If you look at countries that have much much less crime, it’s countries where there is a greater equalization of the wealth in the country. (Zinn, 1998, para. 82)

Zinn realizes that the rights granted to each US citizen do not protect all equally, despite the rhetoric of ‘equality’ and ‘liberty’ inherent to the Constitution:

> The guarantees of the Bill of Rights have little meaning so long as we have a class society with enormous differences of wealth and income. The rights of free speech and press depend on having the resources to use them. The right to legal counsel is different for rich and poor. The right to be free from unreasonable searches and seizures is different.
for a family living in a mansion and another living in a housing project, or out on the street. (Zinn, 1993, p. 65)

He explains that our system is actually organized to maintain *inequality*, and that the structures implemented to ensure equality and due process are inadequate, which only makes the disadvantaged feel as though it is their fault that they are not better situated. Thus, he states that:

The rule of law does not do away with the unequal distribution of wealth and power, but reinforces that inequality with the authority of law. It allocates wealth and poverty (through taxes and appropriations) but in such complicated and indirect ways as to leave the victim bewildered. (Zinn, 2003, p. 111)

Certainly, the frustration of those who are living in poverty or with oppression could lead some to ‘drug addiction, alcoholism, mental illness, crimes of violence’ and the like, problems that Zinn (1968, p. 20) says are tolerable to the upper class so long as they are not directly affected by it. However, he contends that maintaining this vast social inequality serves an ulterior purpose for political and economic elites: it creates a group of individuals more or less driven to commit crime, which distracts the citizenry from being outraged about the offenses of the powerful. So, as he asserts:

How wise to turn the fear and anger of the majority toward a class of criminals bred – by economic inequity – faster than they can be put away, deflecting attention from the huge thefts of national resources carried out within the law by men in executive offices. (cited in Neuchterlein, 1981, p. 36)

Social inequality serves the interests of the elite; they have convinced the public that the real threat to safety is not from their own harmful actions, but from those of the lower classes.

Zinn argues, however, that to even feign as though equality is an important American virtue is to imply a duty for those in positions of power to enforce that right: ‘To say that people have an equal right to life, liberty, the pursuit of happiness, means that if, in fact, there is inequality in those things, society has a responsibility to correct the situation and to ensure that equality’ (2003, p. 151). He has come to the conclusion that the crime provoked by relative inequality will be diminished by the abolition of prisons, and will not happen ‘until our society works differently: until wealth is equally distributed, and people don’t live in slums, and the motivations for crime and punishment become very weak, and the desire to live cooperatively with other people becomes very strong’ (Zinn, 1974, pp. 190–191). In addition, he explained ‘I think to create conditions in which resources are equalized, and people have a kind of sense of living decently, is to really undercut racism and sexism and crime’ (Zinn, 1998, para. 82). In essence, Zinn speculates that by decreasing social inequality, we would be able to reduce crime and other social ills all at once.

**Conclusion**

Howard Zinn’s understanding of crime and justice differs in a variety of ways from the traditional manner in which the US government conceptualizes it. Along with critical criminologists, he has challenged the idea that the primary threat to public
safety derives from ‘street crime’, and instead attributes many of society’s greatest social problems to the illegal and legal harms perpetuated by the wealthy and powerful. He also believes that our criminal justice system itself is inherently unjust, and that social inequality only makes conditions worse for the disadvantaged, who not only have an increased financial incentive to commit crime, but then suffer more punitive treatment because of their social standing. But, Zinn’s interest in this is not merely academic. His perspective on crime and justice promotes dramatic social change to enhance social justice by means of political dissent, social resistance, and civil disobedience.

According to Zinn, this approach is justified because ‘The false promises of the rich and powerful about ‘spreading liberty’can be fulfilled, not by them, but by the concerted effort of us all, as the truth comes out, and our numbers grow’ (2005a, para. 26). He argues that ‘the struggle for justice should never be abandoned because of the apparent overwhelming power of those who have the guns and the money and who seem invincible in their determination to hold on to it’ (Zinn, 2004, para. 8), because, otherwise the realities of wealth and power that determine our everyday liberties will remain unshaken by new statutes, new Justices, new leaders, new court decisions – unless counter-forces appear on the very ground where liberty is taken away: on the street at home, in schools, hospitals, courts, prisons, places of work. (Zinn, 1993, p. 56)

In addition, Zinn has cautioned that

When unjust decisions are accepted, injustice is sanctioned and perpetuated; when unjust decisions appear and are violated on those occasions when they appear, it is a healthy discrimination between right and wrong that is fostered; when unjust decisions become the rule, then the government and its officials should be toppled. (Zinn, 1968, p. 29; emphasis in original)

Therefore, he recommends that civil disobedience be employed as a method to reject injustice, and that the public refuse absolute obedience to the law on the grounds that ‘The ultimate test is not law, but justice’ (Zinn, 1997, p. 388). He has suggested that ‘We must ask, however: Can a decent society exist … if people humbly obey all laws, even those that violate human rights?’ (Zinn, 1997, p. 382). Zinn would certainly support civil disobedience to oppose the social harm perpetrated by social elites, as well as the many varieties of social inequality. As for his ideas about protesting against the treatment of America’s law violators, he has specified that

the only way to begin is from below, with the prisoners themselves, with their families, their friends, people in the community who begin to care. It is they – we – who need to organize to resist, to pressure, to demand, to persuade, to jolt people into new ways of thinking by confronting them with the horror and unworkability of prisons, the need to abolish them, and what that means for changing so much else. (Zinn, 1974, p. 191)

It is evident that he places a great deal of responsibility for justice on individuals ‘the invisible roots of social change’ (Zinn, 1995, p. 99), rather than simply, and foolishly, waiting for the government to take action on its behalf: ‘We, the citizenry, had better augment our own power, because we are the most dependable defendants of our own liberty’ (Zinn, 1968, p.119). He also suggests that ‘Perhaps we are beginning to learn that we cannot depend on paternal government, its bills of rights, its statutory reforms,
its judicial rhetoric – but must support one another in an endless assertion of our own freedom’ (Zinn, 1993, p. 57).

None of this is to suggest, however, that Zinn is opposed to all laws or believes that index crimes are not harmful. On the contrary, he believes

The law may serve justice, as when it forbids rape and murder or requires a school to admit all students regardless of race or nationality. But when it sends young men to war, when it protects the rich and punishes the poor, then law and justice are opposed to one another. (Zinn, 2003, p. 109)

and in that case, his greater obligation is to justice. Although Howard Zinn’s primary academic disciplines are history and political science, it is apparent that the collection of his work, informed by extensive study and countless personal experiences, adds a unique and valuable perspective to the study of crime and justice in America. It may be instructive for those endeavoring to foster a significant proliferation of social justice.

References