Conscience and Conviction: The Case for Civil Disobedience, KIMBERLEY BROWNLEE, Oxford, Oxford University Press, 2012, 280 pp., Hardback, £38.99, 9780199592944

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Society has long been interested in thinking about how and why citizens act as they do. This book takes the reader on a journey through the pathways of moral conscience and conviction that lead people to act in ways that can sometimes result in civil disobedience. The central message of this interesting and informative book is that the civil disobedience that derives from moral conscientious conviction should not be punishable in law. The book is challenging in tone and content. It takes the reader into sometimes uncomfortable territory where, on the one hand, we laud morally conscionable, heroic argument but, on the other hand, we are complicit in condemning or punishing the civil disobedient act that has emanated from that arguably moral and conscionable thought, reason and argument. Brownlee advocates that civil disobedience is more defensible than private conscience objection. She constructs her argument very effectively by dividing the book into two parts. Part 1 ('Morality') concerns an exploration of conviction, conscience, responsibilities, and rights[1] with a moral framework, and Part II ('Law') looks at how the arguments on conscience and conviction can be translated to legal defences.[2]

Brownlee consistently remains true to the purposes of the book, and she achieves the aims of (1) 'distinguishing conscientious conviction from conscience', (2) defending the moral and legal merits of both conscientious disobedience and conscientious-driven disobedience, and (3) showing that disobedience that falls under either of these headings is non-evasive and communicative rather than private or evasive, through in-depth analysis of moral stances, civil disobedience, and the role and nature of punishment in law. (p. 2)

Part 1 begins with an analysis of the concepts of conscience and conviction. Brownlee challenges the reader to look into the meaning behind words used in society that define, or seek to define, aspects of moral thinking and action. For example she discusses how the common understanding of the term 'conscience' is problematic. Its use includes the descriptive, such as in the Universal Declaration on Human Rights, where conscience is taken to refer to 'our freedom of thought, conscience, and religion' (p. 2). She would, however, prefer to regard conscience as freedom of thought, *conviction*, and religion. Brownlee rejects a theistic conception of conscience as being the voice of God, and also a subjectivist idea of conscience as a type of personal inclination (p. 52). She fills this void by advocating a non-theistic, objective conception of conscience, positioned within a pluralistic moral framework. She sets out a view of conscience as a moral property of genuine, self-conscious, moral responsibilities that make human beings more acutely aware of the moral qualities of conduct. She then outlines what she considers to be the moral place for conscience within a society that is, at the very least, reasonably good. Brownlee convincingly argues that the moral roles that legitimise formal offices have overriding moral importance even in a reasonably good society, and that it can often be morally obligatory to resort to conscience-driven, communicative disobedience irrespective of the goodness of our society. She defends

[1] Chs. 1-4, respectively.
[2] 'Demand-of-Conviction Defence', Ch. 5; 'Necessity Defence', Ch. 6; 'Dialogue', Ch. 7; 'Punishment', Ch. 8.

three specific moral rights; (1) of conscience (pp. 126-128), (2) to inner control and free thought (pp. 128-139), and (3) of conscientious action (pp. 140-151). In doing so, she challenges the legal-right presumption which says that all genuine moral rights are translatable into legal rights. There is something quite persuasive about her interpretation of conscience. Brownlee moves beyond existing understandings of conscience and challenges the reader to engage with multi-layered reasoning; this is the hallmark of effective writing.

Conscience is intrinsically linked to conviction. Brownlee describes the term 'conscientious conviction' in some detail, linking it to both what she terms monistic and objective pluralistic accounts of conscience. She defends the latter perspective, where an objective pluralistic view of conscience requires 'genuine sensitivity to the pluralistic nature of morality and the moral quality of our conduct' (p. 50). She provides an illuminating exploration of the differences between conscientious conviction as a descriptive property and conscience as a moral property (p. 3). Conscientious conviction, according to Brownlee, must satisfy four specific criteria; consistency in judgement (pp. 30-34), universality in application (pp. 34-37), a non-evasive condition whereby the disobedient cannot just be seen to evade consequences (pp. 37-42), and a dialogic condition where an attempt is made to explain specific actions taken (pp. 42-46). Where these four criteria are met, the principle of conscientiousness of action is in place. This principle is used by Brownlee to advocate her position that the communicative practice of civil disobedience should be regarded as 'conscientiousness' instead of non-communicative personal disobedience (p. 50). Brownlee distinguishes between conscientious objection and civil disobedience, and gives a full and persuasive account of different types of moralities. Moral action consists of some sort of continuum of action between moral duties, moral rights, moral responsibilities, and moral roles. There is no portrayal, however, of how consensus is reached within a pluralist society as to what actions are moral and what are not. Nevertheless, a compelling argument is made that the communicative practice of civil disobedience can contain the mantle of 'conscientiousness' more than non-communicative personal disobedience which is often seen to embody 'conscientious objection'. The conviction that emanates from this type of conscientiousness recognises that people are reasoning and feeling beings who can form deep moral commitments, but those commitments bring with them related expressive and communicative needs. This first section of the book is compelling reading for anyone interested in moral or political philosophy. We are drawn into well thought out and explained reasoning about the morality of action and inaction.

Part II of the book shifts to a new focus, that of legal theory. It involves a transition from morality as a theoretical concept to morality as it is enacted in the law, in the practical sense of looking at civil disobedience as something that derives from a particular moral stance and examining how the law treats this civil disobedience. The transition between morality and law is not, however, always wholly convincing and the link between the two is sometimes tenuous. Brownlee turns her attention to an exploration of how changing perceptions of civil disobedience and personal disobedience impact upon how the law should respond to these practices. In Chapter 6 she sets out legal defences and argues strongly for necessity as a defence for civil disobedience. She teases out the complexities that apply to necessity and argues for a pluralistic account of necessity defences that is bound to the idea of non-contingent basis needs. This represents a move to the recognition that necessity should be used as a defence not only in dire situations of emergencies and conflicts, but also in contexts where acts are committed that are linked to issues such as political recognition, social inclusion, and respect. This account contrasts with a narrower, less humanistic account that

'frames necessity simply in terms of emergencies and conflicts where a danger of death or serious injury is present' (p. 206).[3]

Brownlee then introduces the practice of punishment into her deliberations. This should be a simple task for law makers and breakers; the punishment must fit the crime. But what, Brownlee queries, goes beyond passive acceptance of punishment of crime? She asks the reader to consider what action(s)should be punishable. In so doing, she considers the justifiability of punishing civil disobedience and contends, rather radically, that we have a moral right not to be punished for disobedience.[4] At this stage in the book, unfortunately, the argument becomes semantically challenging and overly jargonistic, especially in the context of consideration of a theory of punishment. Brownlee outlines a series of problems associated with the prevailing accepted theory of punishment. She calls for the adoption of a pluralistic communicative theory of punishment because it takes into account the efforts made by offenders to communicate their values and their reasons for acting as they do. This approach would render mercy to offenders and represent a more 'genuine dialogue between civil disobedients and their society' (p. 237). She argues that the moral right to civil disobedience includes a right against state punishment. However, she concludes by indicating that this moral right is not absolute, and argues that it is not moral for a state to punish someone who acts in a way which is in accordance with their conscience.

One of the strengths of this book is the way in which the argument is peppered with examples from human life where civil disobedience leads to greater freedoms for humanity. These practical examples cause the reader to engage with clearly expressed theoretical arguments. If people, such as Nelson Mandela, had not engaged in civil disobedience over generations, would we have the type of equality, flawed as it may be, that exists in many societies? Have our struggles to improve the human condition not always involved some form of civil disobedience?

Brownlee's central argument for a general right of civil disobedience on the grounds of conscience is worthy. She sets out constitutive conditions for sincere moral conviction that seem to be inspired by a worthy view of connecting with the way in which society should morally function. The difficulty comes when theory meets practice. Could these convictions stand up in a court of law? If we take Brownlee's case to its final point, we would have a situation where law breaking could not be punishable in a court of law if it is seen to be based upon morally righteous argument and reason. The book challenges us in many ways to put our money where our mouth is. If we believe that the cause has moral right, then actions to highlight this cause, even including civil disobedience, are themselves moral and, as a consequence, should not be punished in law. However, this argument recalls the old chestnut, 'someone's terrorist is another's freedom fighter'. Could such an interpretation of conscience not be overly dependent upon personal value systems? At present judges can apply discretion in assigning punishment. They will always take on board particular factors. To a large degree this approach works, and it would be difficult to institutionalise some sort of value-based rationale for the non-punishment of civil disobedience in a prescriptive way.

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[3] Ian Howard Dennis, for example, proposes a narrow view of necessity: 'Necessity as a Defence to Crime: Possibilities, Problems and the Limits of Justification and Excuse' (2009) 3 *Criminal Law and Philosophy* 29. Dennis, according to Brownlee, 'restricts the kinds of 'undesirable events or dangers' that could exculpate necessary action to cases of emergencies and conflicts of duty where a danger of death or serious injury is present' (p. 188).

[4] Ch 8.

This description of the nature of punishment, as outlined in the final chapter,[5] is of key relevance to those interested in the place of punishment and restitution in the criminal system. Her views present a personal challenge to members of society. If we advocate that, as a society, we should become more dialogical, more in tune with *why* people are civilly disobedient, is there a risk that we could perpetuate social inequality even more? Let's take one example of how this might work in practice. An articulate, well informed person is able to describe how he burnt out a car on a public highway. His reasons are worthy and his motivation is valid. He has sufficient linguistic ability to articulate his own convictions and he is convincing in his arguments. He is not, therefore, punished according to Brownlee's framework. In another situation, the local 'vandal', a bit too drunk, a bit too befuddled, sets fire to another car. His conscience-driven motives are equally sound, based upon political and moral reasoning, but he is unable to put forward a coherent rationale of conscientious conviction underpinning his actions. He would, therefore, be punished if Brownlee's categorisation of non-dialogical reasoning is adopted. The two actions are committed from the same conviction, but one action does not include an ability to publicly verbalise a private conviction. I am not convinced that Brownlee has sufficiently navigated the difficult terrain of whether punishment, or lack thereof, should be linked to a perceived ability to verbalise conscientious conviction. But what Brownlee has succeeded in doing is to open our minds to the fact that punishment should not be an automatic response to civil disobedience, and that a mature society needs to interrogate why it punishes civil disobedience.

Why is this book of interest to a wide cohort of readers? There is a wealth of knowledge here that adds to our understanding of what constitutes morality, conscience, conviction and the place of punishment within society. Knowledge is not presented, however, in a didactic format. The book is dialogical in nature; it puts forward Brownlee's ideas but does so in a manner that makes the reader question their own moral frame of reference. The book entrances us with its fairly radical idea that some moral acts are not really punishable at all. Whether we agree is not all that relevant. The strength of the book is its impact on the reader. We find ourselves mentally defending our own stances, but being intrigued by the evidence-based arguments that Brownlee puts forward with conviction and enthusiasm. There are parts of the book where she has meandered, in my opinion, too much into analysis of nuanced semantic differences of interpretation of terminology. But this serves its own purpose, as Brownlee weaves in and out of these discussions with consummate ease. We know that we are in the hands of someone who knows her subject well, and so we meander with her, increasing in knowledge and understanding of a complex and challenging moral and legal area. This is a powerful book that will resonate with the reader long after it is put down. It causes us to think, to interrogate the way our society and our legal system function. That is no small feat.

[5] Ch. 8.