

Kimberley Brownlee

Conscience and Conviction: The Case for Civil Disobedience.

Oxford University Press 2012.

260 pages

\$66.00 (Hardcover ISBN 9780199592944)

Brownlee's *Conscience and Conviction* is an ambitious contribution to the literature on civil disobedience that analyzes its moral, political, and legal status in liberal democratic societies, while contrasting it with private conscientious objection. Private forms of dissent have generally been viewed as normatively superior to the public challenge to democracy that civil disobedience represents, and thus deserving of greater moral and legal protection. Brownlee challenges this standard liberal picture in the first part of the book by developing moral arguments for civil disobedience based on her analysis of the two core concepts of conscience and conviction. The second part of the book examines the legal implications of her arguments by discussing two different legal defenses a civil disobedient might make, as well as possible judicial responses to these defenses in light of a communicative theory of punishment.

The analysis of conviction in Chapter 1 centers on the descriptive property of conscientious moral conviction. One who has such convictions has 'a sincere and serious, though possibly mistaken, moral commitment that she is willing both to articulate to others and to bear the costs for holding' (1). This understanding of sincere moral conviction results from examining both civil disobedience and conscientious (or 'personal') objection, and accepting some of the commonly cited features of these practices as criteria of conscientiousness while rejecting others. Civil disobedience is 'a deliberate breach of law taken on the basis of steadfast personal commitment in order to communicate... condemnation of a law or policy to a relevantly placed audience' (18). Personal objection is 'a refusal to follow an injunction, directive, or law on grounds of perceived personal conviction' (27), and may be either evasive or non-evasive, depending on whether 'we seek not to be seen to be acting as we are' (29). For Brownlee, the civility or conscientiousness of civil disobedience is not demonstrated by the non-violent and public nature of the act, nor by the actor's willingness to accept its legal consequences. Instead, it is the communicative nature of civil disobedience that is the source of its civility: the disobedient assumes that her audience is composed of rational moral agents whom she seeks to persuade of the correctness of her views, while recognizing that her own fallibility requires some constraint in the choice of acts that will best communicate her message. Civil disobedience is thus necessarily communicative, while personal objection is not. It is civil disobedience, rather than personal objection, that satisfies the four conditions of Brownlee's communicative principle of conscientiousness. Only the civil disobedient can claim to recognize that judging an act to be wrong means (1) avoiding that act herself, (2) condemning the act when others do it, (3) bearing the risks of honoring this judgment, and (4) communicating that judgment to others. Conscientious moral conviction grounds both a right to free thought, or control of the inner domain of our own minds, and a limited right to express our genuine moral convictions in action, which amounts to a right to conscientious disobedience. Such a right is more applicable to civil than personal disobedience, because the former is more conscientious than the latter.

While conscientious moral conviction is understood descriptively, conscience is clearly a normative property. The essence of conscience, for Brownlee, is self-conscious responsiveness to a complex and fundamentally pluralistic moral reality. In Brownlee's version of pluralism, there are different fundamental values that cannot be reduced to a single one, these will conflict with one

another in practice, and yet rational choices can be made among them, a view that bears a strong resemblance to Ross's account of *prima facie* duties. A well-developed conscience means that we can recognize and appreciate different moral values. The moral values that conscience should privilege are those that arise from our specific moral responsibilities, and these in turn arise from our moral roles. Moral roles and the responsibilities they generate are understood in terms of moral reasons that come to apply to us (or apply with greater stringency) as a result of the role. The moral role of raising a child, for example, generates specific responsibilities toward that child, because one who raises a child now has reasons to act that she may not have had before. Moreover, conscience generates a right providing space within which to privilege these responsibilities, and thus protects acts of disobedience that are motivated by conscience and reflect a greater priority given to these responsibilities.

Brownlee focuses on the specific set of moral roles 'that credibly underpin and inform the formal legally-entrenched offices and positions of a reasonably good society' (93). An office or formal position, in contrast to a moral role, 'is a formally recognized post governed by formal rules' (93). However, these offices embody the moral roles that arise out of society's basic concerns, and these roles include that of protector, educator, mediator, healer, and so on. The formal office of police officer, for example, arises from the socially essential moral role of protector. The distinction between moral roles and formal offices raises the question of what we should do when the demands of the two conflict, for it is one of Brownlee's central claims that they will conflict, at least on occasion. Conflicts will arise because there is a gap between the formal demands of an office and the moral responsibilities from which that office arises; this is the 'gap thesis' (86). When this happens, our moral responsibilities should be privileged over our formal offices; that is, we should follow our conscience as a matter of decision making. When we do follow conscience in this way, we do what is morally correct. Society has a duty to make the gap between moral responsibility and formal offices as small as possible in order to avoid overly burdening the potential occupants of the offices. If we are always expected by society or law to privilege conformity with the demands of formal offices over our moral responsibilities, this is too burdensome, and fails to respect our status as rational agents capable of forming and communicating serious moral commitments.

Brownlee now smoothly shifts from the moral and political analysis of the previous chapters to its implications for the legal treatment of civil disobedients, who 'have had a chequered experience before the law' (155). She sees three positions emerging from recent judicial decisions on the relationship between civil disobedience and ordinary offending: (1) civil disobedience is more serious than ordinary offending in virtue of its threat to democracy; (2) civil disobedience is 'indistinguishable' from ordinary offending; (3) civil disobedience is less serious than ordinary offending, since the conscientiously motivated protests of the civil disobedient often serve society's interest. Opting for the last of these views, Brownlee argues that conscientious moral conviction supports a demands-of-conviction defense providing an *excuse* for the disobedience, while conscience supports a necessity defense *justifying* the disobedience. Acts of civil disobedience responding to basic human needs for survival, political recognition, and social inclusion could be claimed to be necessary.

Assuming that there will be cases of civil disobedience that cannot be adequately defended in these two ways, and that will therefore be punished, on what grounds is such punishment justified? Rejecting the traditional deterrence and retributivist theories of punishment, Brownlee argues for a communicative theory, according to which 'the purposes of punishment are both convey the state's condemnation for a certain type of conduct and to lead the offender to repent and reform her conduct' (212). Appealing to her pluralistic moral theory, she claims that sensitivity to other moral values—

such as mercy—provide grounds for mitigating the punishment of the disobedient. Showing mercy reflects the state's concern for the well-being of the disobedient as a conscientiously motivated person. In concrete legal practice, such concern could be demonstrated by praising the character of the civil disobedient, and commenting on the value of civil disobedience as a practice. More radically, the state might regard civil disobedience as a civil rather than a criminal wrong, 'not as a crime to be censured, but as a conflict to be resolved' (252). Not only would this change in legal classification recognize the underlying moral motivation of the act, it would remove the stigma of 'criminal' from the civil disobedient, and would also 'affirm society's commitment to its own moral betterment, through constructive, democratic, egalitarian means' (252-53).

The book covers a significant amount of philosophical ground in moral, political, and legal theory with admirable dialectical clarity. The concern with concise arguments, objections, responses, subtle conceptual distinctions, and the sensitivity to language that are the hallmark of analytic philosophy are all on magnificent display here. Brownlee succeeds at both critiquing and furthering an already wide-ranging philosophical conversation on civil disobedience. *Conscience and Conviction* is a rigorous treatment of both the theoretical and practical issues surrounding civil disobedience that moves beyond attempts to define the practice to considering how the legal systems of liberal democracies ought to respond to it. If, as King once observed, the long arc of the moral universe bends toward justice, then civil disobedience resulting from conscientious moral conviction is the very opposite of a threat to democracy: it is an essential part of a democracy's continuing efforts to perfect its union by becoming more just, rather than less. Brownlee convincingly argues that liberal democracies have more and better moral, political, and legal resources for recognizing and addressing civil disobedience than philosophers have previously thought.

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