



Book Review: Rights, Communities and Disobedience Liberalism and Gandhi, by Vinit Haksar

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RIGHTS, COMMUNITIES AND DISOBEDIENCE: LIBERALISM AND GANDHI BY VINIT HAKSAR (NEW DELHI: OXFORD UNIVERSITY PRESS, 2001) 202 pages.¹

BY BRIAN D. BERRY²

Vinit Haksar's *Rights, Communities and Disobedience* is a collection of seven essays covering a considerable range of topics in political philosophy—from the existence of irreducible group rights to a state's role in interpreting religious traditions. Yet the collection is focused. The book is largely an attempt to articulate the theoretical framework for Gandhi's model of civil disobedience and to defend this model against other theories of civil disobedience, most notably that of John Rawls. To this end, Haksar argues that in certain circumstances civil disobedience may be the most effective means for alleviating grave social injustices and that the kind of civil disobedience practiced by Gandhi is morally justified in such circumstances because the acts contemplated are non-coercive. Haksar's book is thus a valuable contribution to the literature on civil disobedience, both for its careful reconstruction of Gandhi's own ideas about civil disobedience and for its lucid discussion of these Gandhian themes in the context of contemporary political philosophy.³

Haksar and Rawls believe that the chief justification for civil

³³ Judy Fudge, "Consumers to the Rescue? Campaigning Against Corporate Abuse of Labour" in Boyd, Chunn & Menzies, *supra* note 1, 146.

¹ [*Rights, Communities and Disobedience*].

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³ Given the theme of this special issue, I have elected to focus on the second part of Haksar's book, which expressly takes up the topic of Gandhian civil disobedience. The first part of the book (four essays) concerns civil disobedience more indirectly.

disobedience is found in the political nature of the act. The political justification for civil disobedience is to be contrasted with more personal justifications—Antigone’s flouting of Creon’s edict on the grounds that religious custom trumps man-made law,⁴ for instance, or Thoreau’s refusal to pay taxes on the grounds that one should not become complicit with evil governmental policies.⁵ The political justification defends civil disobedience on the grounds that it is one way we may rightly achieve social change.

Civil disobedience must not be violent or coercive, according to Haksar and Rawls. Rather, it should address the authorities and the general public in a persuasive, peaceful fashion, which includes voluntarily submitting to any legal penalties that may attach to law-breaking. Such submission serves an essential communicative function because it demonstrates the strength of the civil disobedient’s convictions and forces the authorities to acknowledge publicly and discuss in its own courts the underlying social injustice. Civil disobedience may not be effective against an evil regime, since by definition the officials in an evil regime lack conscience and so are unlikely to be moved either by the message of the protesters or by the prospect of punishing their morally justified acts of social protest. Submitting to the punishment of such a state may not only be ineffective, but it may also be immoral to the extent that voluntarily submitting to the authority of an evil regime may be an implicit acknowledgement of its legitimacy.⁶ However, civil disobedience would appear to be effective against a near-just regime, since it is one in which the principles and ideals of the state are fair, even if the authorities have strayed from them at the level of policy. But Haksar borrows an argument from Brian Barry and claims that the distinction between evil regimes and near-just regimes creates a dilemma: civil disobedience appears to be ineffective against evil regimes because the power of persuasion is impotent against evil officials, but civil disobedience appears unnecessary against near-just regimes because non-disobedient modes of persuasion should suffice to sway the conscience of basically moral officials.

⁴ Sophocles, *The Antigone*, trans. Gilbert Murray (London: Allen & Unwin, 1941) at 39-40.

⁵ I do not claim that Thoreau does not also offer political justifications for civil disobedience, only that Thoreau believes the imperative to keep one’s hands clean is a sufficient warrant for civil disobedience: “It is not a man’s duty, as a matter of course, to devote himself to the eradication of any, even the most enormous wrong; he may still properly have other concerns to engage him; but it is his duty, at least, to wash his hands of it, and, if he gives it no thought longer, not to give it practically his support.” Henry David Thoreau, “Civil Disobedience,” in Hugo Adam Bedau, ed., *Civil Disobedience in Focus* (London: Routledge, 1991) 28 at 34.

⁶ Haksar rejects this argument on several grounds, including that such submission may show only that one endorses the legitimacy of the constitution and not the evil regime. See Haksar, *supra* note 1 at 113.

Haksar defends Gandhi's model against this attack. Gandhian civil disobedience rejects Rawls' claim that "justifiable civil disobedience is normally a reasonable and effective form of dissent only in a society regulated to some considerable degree by a sense of justice."⁷ Gandhi believes that civil disobedience might sometimes be used against less-just regimes as a means of creating or awakening the officials' moral sensibilities. Now, it is true that there are lawful ways to induce and publicize politically motivated personal suffering, such as fasting in the town square, but these are inferior modes of political address to the extent that the suffering is self-inflicted. Typically it will be more effective to cause the state to confront squarely the civil disobedient's position by inviting the state to decide whether to arrest and how to punish the unlawful acts. The decision whether to engage in lawful or unlawful acts of self-sacrifice, or both, is context sensitive. One must weigh the effectiveness of the means and their ethics given that in some instances lawful acts, such as fasting, would be less ethical than law-breaking to the extent that they cause greater social unrest than would acts of civil disobedience.

Since the civil disobedient puts him or herself at the mercy of an unjust regime, Gandhi, unlike Rawls, cannot commend the kind of cozy civil disobedience in which officials are expected to reduce or waive punishment altogether out of their sense of justice.⁸ Rather, the civil disobedient must be prepared to undergo significant sacrifice and suffering at the hands of the substantially unjust regime. Haksar suggests that this more austere model of civil disobedience can explain why officials in a regime that is generally insensitive to lawful appeals may become sensitized and may ultimately convert to the civil disobedient's point of view. Rawls' cozy brand of civil disobedience, on the other hand, appears to lack sufficient expressive force to melt the hard hearts of recalcitrant officials. Consequently, this less sacrificial brand of civil disobedience is redundant.

Granting, as I think we should, that Haksar's defense of Gandhian civil disobedience avoids the second horn of the dilemma, there is still the question of whether he is stuck on the first, that is, whether Gandhian civil disobedience can be effective and justifiable against evil regimes. In other words, is the kind of civil disobedience that is effective against these regimes really only persuasive, or does it shade into coercion? A significant portion of Haksar's book can be seen as an attempt to answer this question.

Gandhi believed that one should never resort to coercive tactics; yet

⁷ John Rawls, "Definition and Justification of Civil Disobedience," in Bedau, *supra* note 5, 103 at 118.

⁸ Haksar, *supra* note 1 at 111.

he endorsed non-cooperation with the government in order to make it difficult for the government to effectuate its policies. Haksar attempts to reconcile this *prima facie* inconsistency by arguing that “civil disobedience and non-cooperation ... do not constitute a threat or coercion *in any evil sense*.”⁹ The effect of non-cooperation on the government is supposed to be analogous to the effect of a shopkeeper raising his prices on a consumer. Just as the shopkeeper who refuses to cooperate with the purchaser by selling the goods at the lower price pressures the purchaser into accepting the higher price, the civil disobedient who refuses to cooperate with officials by obeying the law pressures the government into changing its policies. In neither case is there any pernicious coercion. Not all strategic advantages on the market are exploitative monopolies, and not all strategic advantages gained by non-cooperation are coercive. But this analogy comes apart. For if enough people refused to cooperate such that it was nearly impossible or impracticable, as opposed to merely difficult, for the government to carry out its policies, then the non-cooperation movement would have effective monopoly power. It follows that non-cooperation would be justified only if sufficiently few people engaged in it, that is, only if the non-cooperation movement made it merely difficult, and not impossible or impracticable, for the government to carry out its policies.

This inference creates a few problems for Haksar’s defense. First, those who believe that individuals have a personal obligation (not just a right) to disobey evil laws, will find this conclusion especially troubling, if not incoherent. Second, since the non-cooperation contemplated is carried out against an evil government, it seems that anything less than such a monopoly would be ineffective to sway the officials. For if there remained a competitive market for public cooperation, why would the evil officials choose to change their policies? The dilemma is that if the non-cooperators have monopoly power then they are coercive, and if they do not have monopoly power then they are not effective. Either way, non-cooperation is not justified. But what about a situation where the pressure placed on the government does not come from the civil disobedients themselves but from some other source? In other words, does the same dilemma exist in cases where civil disobedients take advantage of a strategic advantage not of their own making?

Haksar gives an illustration of such a situation when he reconstructs what he calls Gandhi’s “safety valve” argument, namely that civil disobedience is justified in situations where it is a more peaceful alternative to imminent violence, even if the acts of civil disobedience will precipitate

⁹ *Ibid.* at 142 [emphasis in original].

some violence.¹⁰ The success of a civil disobedience movement is tied to the likelihood of violence which threatens to undermine its claim to being merely persuasive. But Haksar contends there is a moral difference between threatening the use of violence and using the background of imminent violence as leverage in one's arguments against the government. The former is coercive, while the latter is persuasive. Gandhi practised and taught ways of reducing violence, and so it would be unfair, according to Haksar, to claim that Gandhi threatened violence when he gave the likelihood of violence as a reason for the officials to meet the legitimate demands of the resisters.¹¹ Yet this defense is uncomfortably akin to the situation of a pharmaceutical company that capitalizes on the likelihood of an anthrax outbreak while claiming clean hands because, after all, it is in the business of curing illnesses, not causing them.

Haksar responds to this line of objection by arguing that the Gandhian non-cooperator and the pharmaceutical company are not engaging in coercion because, should their offers be refused, the planned courses of action do not violate any moral duties—assuming, of course, that there is no moral duty to obey the law or to refrain from seeking competitive advantage on the market, respectively. The thrust of the argument is that there would only be a violation of moral duty if, in effect, the price of the offer was exploitatively high. To the extent that one does not take unfair advantage of another's vulnerable position, there is no violation of moral duty or coercion in offering to help the person extricate him or herself from such a situation. In the case of the pharmaceutical company, then, there would be no violation of moral duty if the company offered to sell the anthrax antidote at a price slightly above cost.¹² The company would be taking advantage of the consumers' vulnerability, but this advantage would not be unfair. Similarly, in the case of civil disobedience, there would be no violation of moral duty if the protesters offered their more peaceful form of protest, given the more costly option of widespread violence. "Admittedly," Haksar writes, "such civil disobedients do in a sense compel recipients when they leave them with no choice but to submit to their demands, but ... those who use such compulsion are not necessarily involved in the violation of any moral duty or duty of fairness"¹³

One of the virtues of Haksar's book is that it makes a strong case

¹⁰ *Ibid.* at 146.

¹¹ *Ibid.*

¹² Haksar uses a slightly different example to illustrate the same point. *See ibid.* at 165-66.

¹³ *Ibid.* at 166.

for the counter-intuitive position that a civil disobedient can leave officials with no choice but to submit to his or her demands and yet not be guilty of coercion. A good case is made for how Gandhian civil disobedience can be both effective and persuasive whenever it is carried out against the background of imminent violence and social unrest. In such situations the civil disobedients deal with the officials more fairly than do those who are threatening violence. However, it seems the case for Gandhian civil disobedience is less strong when this violent alternative is lacking; for this introduces the dilemma that either the protest movement must generate monopoly power for itself and so deal coercively with the officials, or the movement will be ineffective against evil officials for want of greater negotiating leverage.
