

Disenfranchised Silence

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1.1. Approving silence

Silence can sometimes be eloquent. Conversations consist not only in what is said but what is not said—the cold silence, the disapproving silence, the appreciative silence, the reverent silence, the baffled silence. Of particular interest is the approving silence, or the consenting silence, and this will be my topic here.

It is sometimes supposed that the silent witness is, through silence, an approving party to what he observes. The biblical prophet was held to be party to iniquity, if he did not protest against it:

When I [the Lord] say unto the wicked, O wicked man, thou shalt surely die; *if thou dost not speak* to warn the wicked from his way, that wicked man shall die in his iniquity; but his blood will I require at thine hand. [Ezekiel XXXIII: 8, italics added]

On this way of thinking, the ordinary German citizens were party, through their silence, to Nazi atrocities. More recently, anyone who did not march or express protest was held party to the war against Iraq. Activist websites and chain e-mails around the globe urged us to ‘Remember: *silence is consent!*’—by which means they hoped to goad readers into voicing disapproval, voicing refusal to consent to war. Actually, the goading would be pointless if silence really were, in this context, consent: the goading presupposes that I *am* silent, and that I do *not* consent. If I were not silent, I would not need goading; if I did consent, goading would be useless. So the instruction to ‘Remember: *silence is consent!*’ is a pragmatic self-defeater if ever there was one. Its target is not the warmonger, but the too-passive pacifist.

There is point to the reminder, though, the point being that silence can be interpreted as consent and approval, even if I do not intend it as such. To take what will be a salient example from Philip Pettit: in Maoist China, no-one at any level of society

was in a position ‘to criticize Mao with impunity’, but silence was interpreted by the authorities as approval, ‘dreamy adulation in the faces of the masses’.¹ It is not just in Maoist China that silence is interpreted in unintended ways. Such wishful misinterpretation is a common feature of political life, and of personal life as well. Grim examples of the latter are the subject of other activist websites, run by equally liberal-minded folk, this time urging the opposite message—‘Remember: *silence is not consent!*’—this time hoping to encourage potential date-rapists to see that a woman may not mean ‘yes’ until she says so.

Suppose silence really could, sometimes, be a way of approving or consenting. There would be something interesting in the idea that a silence could be a speech act, an illocution of approval or consent. Approval and consent are not quite the same, of course: someone may consent to courses of action of which she disapproves, and refuse consent to courses of action of which she approves. Approval is about whether something has value; consent is about whether something is to be done. If committee work is anything to go by, participants in consensus often find themselves having to disapprove, yet consent; and (more rarely) to approve, yet refuse consent. These subtleties are important, but they will not particularly matter for my present task.² How plausible is it that a silence could be an illocution of approval, or consent? Paradigm cases of illocution, as described by J.L. Austin, were never silences, but utterances, spoken or written; but Austin did allow that in hurling a tomato one can make a protest, and in tapping a stick one can make a threat; so he did allow that certain non-utterances can have illocutionary force.³ If tomato-hurlings and stick-tappings can have illocutionary force, why not silences?

¹ Philip Pettit, ‘Enfranchising Silence: An Argument for Freedom of Speech’, in Tom Campbell and Wojciech Sadurski (eds.), *Freedom of Communication* (Aldershot: Dartmouth, 1994), 45-55. Reprinted in Pettit, *Rules, Reasons and Norms* (Oxford: Oxford University Press, 2002), 366-377. Page numbers in what follows are to the latter, and the Maoist China example is introduced at 374, drawing on Jung Chang’s *Wild Swans* (London: Harper Collins, 1991).

² The difference won’t particularly matter here since I suspect that for Pettit consent and approval go together, as illustrated in his point, to be discussed, about the role of approving silence in building consensus; the upshot is that in conditions of freedom of speech, and absent any obvious, independent reason to the contrary, silence is approval *and* consent.

³ Austin, J.L., *How to Do Things with Words* (London: Oxford University Press, 1962). I imagine an illocution of approval to be verdictive, in Austin’s terms; and an illocution of consent to be commissive.

Sometimes a silence is officially counted as an illocution of consent, by default, and what makes it so is the presence of certain explicit directives or conventions: parliamentary debate that concludes with ‘unless there are any objections’; marriage ceremonies that require objectors to ‘speak now or forever hold their peace’; ‘opt-out’ rules regarding privacy and consumer data-sharing, trade union membership, organ-donorship, even marriage—

“[A] virgin should not be given in marriage except after her permission.” The people asked, “O Allah’s Apostle! How can we know her permission?” [The prophet] said, “Her silence (indicates her permission).”⁴

In such cases, whether silence is counted as consent is an explicit, formal, and (hopefully) predictable, matter. The distinct question of whether silence *should* be counted as consent varies, it seems to me, with the kind of case: for privacy and consumer data-sharing, the answer should probably be ‘no’; for trade union membership, ‘yes’; for organ donorship, ‘yes’; for marriage, ‘yes’ as far as potential objectors are concerned, ‘no’ as far as potential brides are concerned. That, at any rate, is how my list would go, though it would need argument, and the justifications might be variable: the special importance of autonomy, when it comes to consumers and brides-to-be; the special importance of political representation, when it comes to union membership, and so on. If the patterns for default consent look, on the face of it, rather variable, what prospect is there for a more general condition under which silence speaks approval—and why, if there is, should we want it?

Philip Pettit proposes that there is indeed a condition, a significant one, under which silence is eloquent of approval: it is that of free speech itself. And this ‘enfranchisement’ of silence is something we should want, since it has many benefits for social discourse, social consensus, and the regulation of society via attitude—in short, it

⁴ Sahih Al-Bukhari 7.67, from a website on Islamic marriage law, which includes the comment, ‘Virgins need not speak up to declare that they want a marriage; simply not speaking out against the marriage (her silence) is sufficient consent for a virgin’; and further citation: ‘Malik related to me...that the Messenger of Allah, SAAWS, said, “a virgin must be asked for her consent for herself, and her consent is her silence”.’ <http://muttaqun.com/wali.html>

has vital benefits for citizenship. I shall argue that Pettit's proposal has considerable interest, from both a conceptual and a political point of view (1.2-1.3): but I shall want to ask whether the enfranchisement of silence does indeed have free speech as its condition, whether free speech is construed as a negative republican liberty (2.1 and 2.2), or as a positive liberty (2.3). There are certain grounds for hope, especially for the latter, and one purpose of this essay is to flag the potential, in this context, of a positive liberty conception of free speech. However, my conclusion is, in the end, a critical one: free speech does not, I think, enfranchise silence. I shall argue that the expression of disapproval is often voluntary, and sometimes costly: and this means the expression of disapproval may be masked (3.1). Moreover, disapproval *itself* is sometimes voluntary, and sometimes costly: and this means disapproval may be stifled (3.2). This is particularly clear when (though not only when) one considers relationships that are oppressive or dependent. Some of my argument (3.2) thus takes issue with Pettit's views about the involuntary and cost-free character of the moral sentiments, and hence has implications for his broader views about how social life is regulated by attitude. My main purpose, though, is to put a small question-mark against the hope that the enfranchisement of silence is so readily achieved; and a large question-mark against the hope that we have already achieved it.

1.2. The condition of enfranchised silence: freedom

Pettit proposes that the condition under which silence speaks approval is the condition of free speech itself. When we have free speech,

the silent observer gets as close as makes no difference to the position of meaning or communicating by her silence that she approves of what she observes... silence in the presence of freedom of speech is itself capable of becoming a form of meaning and communication... silence is enfranchised.⁵

So he writes in a paper whose title subject is this enfranchisement of silence. If you are free to speak, and you don't speak, then your silence means something. If you are not free to speak, because speaking gets you jailed or worse, your silence means nothing. Silence goes blank. In Maoist China, a speaker could not use her words to protest with impunity:

and while the resulting silence was taken as approval, it was not approval. Silence can only mean approval when it is given under conditions of freedom.

Note that Pettit's interest is not in formal conventions or directives which make silence 'count' as consent; he is interested in real consent, where saying nothing is legitimately taken as agreement precisely because the person intends it so, and can exploit the knowledge that her silence will be so taken. Under conditions of genuine freedom of speech, silence is rightly interpretable as approval because approval is what it is indeed intended to be.

When speech is free, if you disapprove, you can express your disapproval without fear; which is why silence's default meaning, in such conditions, is approval. Pettit allows, however, that in certain contexts silence can be disapproving: the stony silence, for example, of someone who simply sits, after the lecture, while all those around are voluble in their congratulations. The speaker is free to speak his disapproval, but need not speak it to convey it. This silence is not approval, since there is an 'obvious, independent reason' why the speaker remains silent, given that speech is expected. But silence does have its default setting, he thinks: in conditions of free speech, absent other obvious reasons for silence, approval is what silence gets to mean.⁶

1.3. The point of enfranchised silence: citizenship

This capacity of silence to mean approval matters a great deal, says Pettit, because it assists social discourse, social agreement, and social identity. Eloquent silence matters to one's standing as a participant in political life; it matters to citizenship.

The ability to mean approval by her silence enables someone to have a conversational presence in the life of her community, even if she does not speak.

⁵ Philip Pettit, 'Enfranchising Silence', p. 372.

⁶ Actually, he thinks some other conditions must be met too. In addition to (i) the condition that 'there is no obvious, independent reason why the person should remain silent', it is required (ii) 'that the stimulus is a public act that is significant for others, and (iii) 'that the subject matter involved falls in the domain of free speech' ('Enfranchising Silence', p. 372). The first two of these I discuss later on. The third I do not, partly because I don't think it affects my argument materially, and partly because I'm not sure I understand what it amounts to: I don't see why speech being outside the domain of free speech (e.g. libel?) should ipso facto thwart the possibility of responding to such speech (one can sometimes respond to libel). Perhaps Pettit has

Freedom of speech not only empowers a citizen to speak, but empowers her to the extent that she cannot remain speechless, even when silent.

The second benefit concerns interpersonal consensus. Where there is consensus, people not only believe the same things, but believe that they each believe them: and given that in a large community not everyone can vocalize their beliefs, the evidence of consensus will rest on the significance of silence in communicating assent. This, in turn, is crucial to a citizen's social identity.

Unless we are each in a position, without fear of delusion, to identify what we all think in a group, and what it is commonly believed that we all think, then none of us is in a position to identify in a significant and sensible way with that group. We are deprived of perhaps our most important connection to the life of the community.

The third benefit concerns the 'intangible hand' whereby we are capable of controlling one another's behaviour, not through overt actions, not through words of praise or censure, but by the mere manifestation of our attitudes of approval and disapproval. This connects with an important theme in Pettit's philosophy, the capacity we have as a group to police ourselves out of collective predicaments. It is sometimes complained, he says, that uncooperative predicaments cannot be solved by appealing to people's approval of co-operation and disapproval of non-cooperation. After all, even if we did know that strategic approval and disapproval would help make others cooperate, if we are not spontaneously co-operative to start with, 'why go to the trouble of approving or disapproving?' This complaint is misconceived, thinks Pettit. The formation of attitudes of approval and disapproval is spontaneous, and cost-free: it 'is not intentional, and involves no trouble for the agent'; in these respects, attitudes are unlike overt actions of praise or blame. And this is where eloquent silence plays a role. Free speech, with its consequent enfranchisement of silence, allows free play of attitude, and imputation of attitude. Free speech allows attitude to be manifest to others, and to be attributable by

the special cases of 'silencing' speech in mind, e.g. hate speech or pornography, that are arguably self-entrenching and hard to protest about.

others. If silence is unable to convey the attitude of the subject, as it could not in Maoist China, then attitude is unable to exercise this vital control over others.⁷

Three reasons then, for thinking it matters that silence be given a voice: even when silent, the citizen can be an active presence in the conversation of the community; she can be an active party to the emergence of consensus; and she can be an active regulator of the behaviour of her fellow-citizens.

2.1. Free speech as republican negative liberty

The enfranchisement of silence gives us additional reason for thinking that free speech itself matters, according to Pettit: the enfranchisement of silence constitutes a neglected, independent argument for freedom of speech, since it is in the presence of freedom of speech that silence attains its significant voice.⁸

On Pettit's account, freedom of speech is a negative liberty, freedom from interference, but it is not the bare absence of interference. You have not got freedom of speech until you have *resilient* non-interference. What Pettit proposes here is a special instance of the republican ideal of freedom he develops elsewhere, the ideal of freedom as non-domination. You are dominated when someone has the *capacity* to interfere, on an arbitrary basis, in certain choices you are in a position to make: choices, for example, about whether to speak, and what to say. You do not have freedom of speech if you merely happen not to be interfered with, but others still have the capacity to interfere. On this account, while freedom of speech is essentially a negative liberty, it has something positive about it, as does every republican freedom: for 'it needs something more than the absence of interference; it requires security against interference'.⁹

⁷ The quotations regarding the second and third benefit are from Pettit, 'Enfranchising Silence', p. 376.

⁸ A further point of interest about this argument is that it appears to offer a justification for free speech that is not obviously intrinsic and not obviously instrumental either: free speech matters not (only) in itself, but because it enfranchises silence; yet this enfranchisement is not (only) an effect of free speech, but something enabled by it, in the way that voting is illocutionarily enabled by relevant voting laws (not, or not just, caused by such laws). In Kantian terms, it is perhaps a conditioned value but not an instrumental one.

⁹ Pettit, *Republicanism: a Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), p. 51.

Now, I find this a very interesting proposal, from a conceptual point of view, and from a political point of view as well; and I shall take a few moments to say why, before proceeding to further business. There is a nice paradoxical flavour to the central idea of the *silencing of silence*, and how republican freedom aims to prevent it. What is this silenced silence: how could silence be made silent, if it already is silence? In speech act terms, there is no paradox: the idea is that something that could have had illocutionary force is deprived of that force. Something that could have meant approval, in the presence of genuine freedom, has gone blank. I am tempted to describe this as the *illocutionary disablement* of silence. To illustrate illocutionary disablement, imagine an actor who seeks genuinely to warn his audience with his words, ‘Fire! Fire! I mean it! Look at the smoke!’, and who cannot warn, since those are precisely the words the play requires him to utter at that juncture. Imagine a woman who writes a book of protest against the pornography industry and finds it being sold as pornography. Imagine a woman who says ‘no’ to sex, yet finds her ‘no’ failing to count as a refusal. These are cases where something that could have had illocutionary force is deprived of that force. And there is, perhaps, a similar disablement in the phenomenon of silenced silence.¹⁰

A different point of interest is the potential of Pettit’s account to accommodate feminist concerns about the tyranny of freedom of speech, when that freedom threatens women. Freedom of speech may be a negative liberty, but it is not an absolute freedom. Pettit allows, for example, that if the free speech of pornographers sufficiently undermines women’s freedoms, for example through legitimating harassment and sexual violence, that may argue for restricting pornographic speech.¹¹ This is all the more so, given that the republican conception of liberty has implications relevant to the feminist case. When we are considering whether women’s freedoms are undermined by something, it is women’s *resilient* freedoms that matter. We must consider not just whether women in fact suffer the forms of interference that are rape, or harassment, but

¹⁰ Rae Langton, ‘Speech Acts and Unspeakable Acts’, *Philosophy and Public Affairs* 22 (1993), 305-330. I am tempted to describe ‘silenced silences’ this way, but perhaps I should resist: my examples involve tokens where the speaker intends some illocution, but her speech ‘misfires’, but it doesn’t seem accurate to describe Pettit’s silenced silences as ‘misfires’. I leave this for further reflection.

¹¹ Pettit, ‘Enfranchising Silence’, p. 368. Pettit himself points out in this connection the relevance of republican freedom to the pursuit of resilient liberty for women.

whether women are *secure* from that interference: not just whether women are safe, but whether women are resiliently safe. Many women do suffer rape; many, thankfully, happen not to. But how many of the latter are *secure* in that freedom? Republican liberty requires more than non-interference: it requires *resilient* non-interference. So it may well require substantial measures in defending women's freedom from sexual violence, even to the point of restricting the speech of pornographers. This I take to be an important feature of Pettit's proposal, and one that merits further reflection.

There are reasons, then, for finding Pettit's proposal an interesting one. These virtues notwithstanding, I suspect it is mistaken. I shall not, for present purposes, take issue with the claims about the benefits of enfranchised silence—the benefits of silent conversational participation in one's community, silent contribution to consensus, and silent control of others' behaviour through manifestation of attitude (though I confess I see the latter as a more likely force for ill than good). I shall take issue with his argument that freedom of speech enfranchises silence: in particular, with his idea that in conditions of freedom of speech, silence acquires the default force of approval.

2.2. Does negative free speech enfranchise silence?

For Pettit, free speech is a certain negative liberty, a freedom from interference: and his claim is not simply that freedom of speech is necessary for enfranchising silence, but that it is necessary and sufficient for enfranchising silence, provided certain other conditions are in place. He asks us to imagine a small community in which free speech is well and truly established:

no-one is exposed to the danger of interference, because a protective field of law and custom guards against interference, and it is common knowledge in the community that this is so.¹²

Suppose now that in this community someone performs a 'public' act, i.e. an act that is not only of significance to the agent herself:

The freedom of speech enjoyed by those who observe her in that performance means that they may be expected to complain or criticize in the event of believing that the action is not for the best. But the freedom of speech also means that, if

they say nothing, then, absent any obvious alternative reason why they should remain quiet in the face of such a stimulus, they may be presumed by the agent, and by the others involved, not to disapprove of what has been done; they may be presumed, in effect, to approve of the behaviour... [T]he silent observer [communicates] by her silence that she approves; she acquiesces in their recognizing that she acquiesces in this way; and she acquiesces in the fact of that recognition leading them to form the relevant belief.¹³

This enfranchisement of silence depends on the condition of freedom of speech, together with the additional conditions that the stimulus is public, i.e. significant to (and perhaps observable by) others, and that there is no obvious, independent reason why the person should remain silent. But under these conditions—and such conditions ‘are going to be run of the mill in a community where freedom of speech is established’—approval is indeed what silence gets to mean.

In questioning this, I want to consider some silences that are not approval or consent, though they may be taken as such. I want to see what light they shed on Pettit’s connected claims that free speech enfranchises silence, and that free speech is to be understood as a republican freedom. One could perhaps take examples from the literature on sexual violence, where the results of reading silence as default consent are particularly troubling. But I shall allow readers to draw their own conclusions on that subject, and offer instead a down to earth story about some ordinary employment conditions in a fairly enlightened western democracy; for it will do just as well, I think, to illustrate my concerns.

Undercover journalist, Polly Toynbee, took a job as a ‘dinner lady’ at a Lambeth primary school, with an image of ‘the sort of job cosy mums did for a bit of extra pin money’, lounging around at the hatch, ‘doling out dollops of food while chatting cheerily’. The reality was a kitchen with no dishwashing machines, and staff who tackled their back-breaking, messy tasks at a punishing speed. ‘Why so hard and fast, non-stop, harder than seemed necessary...with no obvious supervisory whips at our backs?’ The

¹² Pettit, ‘Enfranchising Silence’, p. 370.

¹³ Pettit, ‘Enfranchising Silence’, p. 372.

answer came after the four-minute lunch break, a deluge of new work, as vanloads of unwashed dishes arrived from all the surrounding primary schools, whose kitchens had been closed to save money. Only a maniacal workplace, set by the ferociously determined workers, allowed the tasks of so many kitchens to be done by one. Toynbee reflects on the workers' attitude:

Maggie and Wilma...worked together in perfect harmony, understood one another's every move, mood and gesture, and they were fond of each other. They both said the work was impossible, unbearable, under timed and underpaid...Why did Maggie and Wilma stay? They liked the school, the staff, the head, and one another. More than that, it was as if the very harshness of the work bound them together in a daily challenge to keep going... Work can become a compulsive activity, even when you hate your employer. The familiar if harsh rhythms of sheer physical labour, the perfectionism of keeping that kitchen running clean, tidy, and well-organised, the sheer difficulty of the daily task, seemed in a perverse way to tie them to the place... Besides, the friendship and understanding between them kept them together. These are sentiments on which companies trade relentlessly.¹⁴

Elsewhere in her book Toynbee comments on the uncomplainingness of the job-seekers she encountered,

waiting, waiting, filling forms and waiting again in grim and shabby lobbies all over the city [of London]... unnaturally patient, with no expectation of good treatment and no disappointment or surprise when things turn out badly.¹⁵

Maggie and Wilma don't complain about their conditions; job seekers don't complain about the wasted time and money they spend on the trail of interviews that don't exist. Is their silence approval? Of course it isn't. But then perhaps these are not conditions in which there is freedom of speech, or not, at any rate, the right sort of freedom of speech.

When Pettit describes the conditions in which free speech prevails, he contrasts

¹⁴ Polly Toynbee, *Hard Work: Life in Low Pay Britain* (London: Bloomsbury Publishing, 2003), 100, 109. Toynbee was partly inspired by Barbara Ehrenreich, *Nickel and Dimed: On (Not) Getting By in America* (NY: Metropolitan Books, 2001).

¹⁵ Toynbee, *Hard Work*, p. 97.

the conditions of Maoist China with those of a small, idealized speech community, and with those of real life liberal democracies. There is, he says, ‘a great contrast’ between the situation in China and the ‘imperfect but certainly superior situation in most Western democracies’.¹⁶ The implication is that, here, free speech prevails, that here, unlike China, the conditions of the idealized speech community are realized, if imperfectly. The implication is that in Western democracies silence is more or less enfranchised, as it was not in Maoist China. We can agree with Pettit that there is indeed ‘a great contrast’ between the situation in Maoist China and the situation on our own doorsteps. And it is indeed a difference that has to do with freedom of speech. There, dissidents were clapped in jail. Here they are not, as a rule; here we have laws protecting speech and expression. But we can wonder: while speech is more free here, *is it free enough to enfranchise silence?* And if it is not, *what would it take* to make it so?

Maggie and Wilma will not be jailed if they speak out against their conditions: in this, the law protects their freedom to speak. The next question is whether they will suffer other forms of ‘interference’ if they speak out. Pettit takes interference to be something done intentionally, by an agent who intends to worsen someone’s choice situation.¹⁷ And Maggie and Wilma do risk interference: vulnerable as they are, they risk losing their jobs if they complain. Complaint might be construed as conflicting with the expectations of the job itself—the ‘Always Happy! Never Sad!’ smiley-face posters pinned up around the workplace by their superiors (shades of Maoist propaganda posters there!); and—should they take complaint further afield—the contracts whose small print required workers not to talk to the press. It seems legitimate, surely, to fire someone who is not doing the job they agreed to do.

Suppose though, that as a matter of contingent fact, Maggie and Wilma would not be fired, if they were to complain. The next question is whether they are *secure* in this liberty: is their freedom a *resilient* one? For their freedom to be resilient, they need robust non-interference. Free speech as a republican negative liberty will perhaps require laws giving them a certain security of employment, without which they would be subject to ongoing risk of interference. This strengthening of employment rights would be a more

¹⁶ Pettit, ‘Enfranchising Silence’, p. 374.

¹⁷ Pettit, *Republicanism*, pp. 52-3.

substantial outcome than one antecedently expects from a negative freedom of speech; but, perhaps, none the worse for that.

Let us, in imagination, give Maggie and Wilma whatever they need for republican freedom of speech: give them whatever they need to speak freely, secure from interference, secure from the penalizing actions of someone who finds their speech unwelcome, and ‘intends to restrict their choice situation’; let us give them whatever they need for genuine freedom of speech, understood as a republican, negative freedom from interference. Our question remains: is their silence then enfranchised? When Maggie and Wilma observe a particular ‘public act’ that impinge on their lives, such as the decision to close the other school kitchens, and when they are silent in the face of that decision, do they get ‘as close as makes no difference’ to the position of ‘meaning or communicating’ by their silence that they approve of what they observe? No. Mind you, it would be unsurprising to find their employers construing that silence as approval, and for reasons very similar to the reasons Pettit discusses: Maggie and Wilma would be free to speak; they would not be penalized for speaking; and there would be no other obvious explanation for their silence. Their silence is not approval all the same.

Maggie and Wilma still have many reasons for silence. One is that it can seem pointless to express disapproval when the current option seems, more or less, the only option. The workers for this company were desperate mothers, trapped in a low wage cycle by responsibilities for their children, low-paid because they were without adequate childcare to allow training time, and without adequate childcare because they were low paid. Wilma lived nearby, and could not manage other hours or travel because of her family responsibilities. Without leverage of alternative options, complaining would have no good consequences, and she knows it. Yet her silence is not her approval. Freedom of speech does not fix this problem—or not, at any rate, free speech construed as a negative liberty, i.e. free speech construed as freedom, even resilient freedom, from non-interference.

2.3. Does positive free speech enfranchise silence?

It is worth asking whether it would help towards the enfranchisement of silence, if we were to understand freedom of speech as something more: if we were to understand free

speech as, let us say, a *positive* liberty. Now, I have to confess a general suspicion of ‘positive liberty’, mostly because it is so hard to pin down. Sometimes positive liberty is the idea of active participation in political life; sometimes it is the idea of Self Mastery; sometimes it is the idea of a freedom enjoyed by your true, Transcendental Self, not your everyday empirical self; sometimes, applied to speech, it is the idea of not only saying words but having your words believed; sometimes it is the idea of not only having freedom from interference, but having the material resources required to exercise that freedom.¹⁸ The only thing these have in common, as far as I can see, is that positive liberty is ‘something more than’ negative liberty, but there seems little agreement about what that ‘something’ might be.

Well, let us pin it down, by fiat if nothing else. Let us take it to be the last idea on the list: positive liberty involves, in addition to freedom to speak without interference, the basic material resources needed to exercise that freedom. If free speech is construed as merely a negative liberty, the jailed dissident lacks it, but the illiterate peasant may have it. If free speech is construed as a positive liberty, you don’t have free speech until you have some minimal resources to exercise it; the dissident and the peasant might both be unfree. Someone who is illiterate is not in a good position to exercise freedom of speech: positive free speech may involve literacy as well as non-interference.¹⁹ Someone who is living in abject poverty is not in a good position to exercise freedom of speech either: positive free speech may involve some basic economic resources. Someone who systematically suffers illocutionary disablement is not in a good position to exercise free speech either: positive free speech may involve protection of the background linguistic condition which Jennifer Hornsby calls *reciprocity*—roughly, the capacity hearers have

¹⁸ At least the first three construals appear in Isaiah Berlin, ‘Two Concepts of Liberty’, in *Four Essays on Liberty* (Oxford University Press, 1968); I think the others appear, together with that of ‘self-mastery’, in Ronald Dworkin, ‘Liberty and Pornography’, *The New York Review of Books* 15, August 1991, 12-15; published as ‘Two Concepts of Liberty’ in *Isaiah Berlin: A Celebration*, edited by Edna and Avishai Margalit (Chicago: University of Chicago Press, 1991), 100-109.

¹⁹ On this way of thinking, it is hypocritical for the United States to refuse its United Nations dues, protesting that the UN helps nations that have insufficient respect for free speech; when that refusal effectively steals funds from UN literacy programs, thereby perpetuating, on a grander scale, the silence of illiteracy.

to recognize the communicative illocutions that speakers intend, without which, arguably, one cannot really speak.²⁰

Pretty clearly, free speech as a positive liberty is an improvement on free speech as a negative liberty, even republican style, at least when it comes to improving things for enfranchisement. An illiterate peasant who does not complain of his situation, however robustly free from interference his complaining, does not thereby manifest his approval; but his silence is somewhat more likely to be approval if he has not only the freedom from interference, but also the resources, to speak. Suppose Wilma and Maggie were not only protected from interference (being fired if they complain), but also had more in the way of the material resources to exercise their speech meaningfully. If they had all this, and still they did not complain, their silence too is somewhat more likely to be approval. I shall not, here, take a stand on whether freedom of speech can be plausibly extended as a positive liberty; but if we are interested in what it would take to enfranchise silence, it is worth thinking about whether free speech as a positive liberty is more likely to do the job.

3.1. The expression of attitude: still voluntary and costly

Free speech as positive liberty is an improvement on free speech as negative liberty, if we are after the enfranchisement of silence: an improvement, I have said, but still, I fear, insufficient. It will never, I think, be legitimate to take a shortcut to consensus by assuming that silence is consent, however desirable that would be.

Expressing disapproval is sometimes costly: and the costs are not removed merely when interference is removed, and basic resources supplied. Given that expression of attitude is voluntary (as Pettit agrees), when costs of expression are high, there will be times when speakers choose not to voice their disapproval, even when allowed resources to speak, and when protected from interference. Think of all the little reasons for not complaining, reasons that have nothing to do with fear of punishment, or not having the

²⁰ Whether illocutionary disablement represents a negative or a positive liberty violation is open to debate; I myself elsewhere describe it in negative liberty terms, since I think it results from interference, at least in the relevant examples of silenced protest and refusal; Hornsby on the other hand describes it in positive liberty terms. See Langton, 'Speech Acts and Unspeakable Acts'; 'Pornography: a Liberal's Unfinished Business', *Canadian Journal of Law and Jurisprudence*, Special Issue on Legal Theory (1999), ed. Wilfrid Waluchow, 109-133; Jennifer Hornsby and Langton, 'Free Speech and Illocution', *Journal of Legal Theory* 4 (1998), 21-37.

resources to complain. Maggie and Wilma do not complain, partly because they take pride in their ability to do well a nigh-impossible job. And they do not complain, because there is something good about their situation, something they themselves have created: a partnership where they work in harmony, instinctive understanding, and deep affection. In conditions of perfect freedom, can we be sure they would take their complaint to their employer? I have my doubts.

Whatever one supposes about this example, it is clear that pride and affection can often be incentives for masking one's disapproval, whether in congenial or oppressive circumstances. Pride can stop you complaining, when you don't want to reveal that something has got under your skin. Affection can stop you complaining, when you think complaint would hurt the one you like or love. It might be queried whether these are relevant; after all, they are rather personal aspects of one's speech situation, rather different to the observation of 'public acts' that interests Pettit. Well, I want to say that such motives are indeed relevant, and place another reminder, should reminder be needed, about how the personal can be political. Over the centuries when women did not, much, complain of their subordination, one suspects that fear of jail was an insignificant silencer of disapproval, compared to the motives of affection for spouse and children, together with the invisibility of alternative arrangements. Yet the upshot is in certain respects parallel to the situation Pettit decries in China: the subordination of an entire class of people, whose silence was interpreted as approval, and therefore vindication, of subordination.

Pettit wants a situation in which there is 'free play' for manifestation of attitude, through enfranchised silence, without which the 'intangible hand' is unable to do its good work of regulating social behaviour; and he thinks that freedom of speech, republican style, will provide it. I have suggested it will not, neither as negative liberty, nor as positive: while free speech removes some costs to speech, it by no means removes them all. There will remain complex and non-obvious incentives for masking one's disapproval. Free speech makes the play of attitude more free, perhaps, than it would otherwise be; but not free enough to let silence count as approval.

3.2. The possession of attitude: likewise voluntary and costly

Recall the features which, in Pettit's opinion, enable attitude to regulate behaviour, in the right conditions. Attitudes of approval and disapproval are, he thinks, formed involuntarily; and forming them costs the agent nothing. Expressions of the attitude, on the other hand, are voluntary, and may cost something. If expressing disapproval costs the dissident his freedom, he can voluntarily inhibit what he would otherwise express. That was the point of Pettit's argument: if we remove the costs of expression, by protecting speech, we remove the incentive to voluntarily inhibiting expression; so attitude will helpfully manifest itself. The presence of other costs undermines the force of the argument, as I just tried to show; but it may have further implications too, reaching beyond expression to the attitudes themselves. Consider that what goes for constraints on expression of attitude might go for attitude too. *Expressing* a disapproving attitude can of course be costly: but merely *possessing* a disapproving attitude can be costly too. There is room for doubt about Pettit's assumption that attitude is an involuntary and cost-free matter.

Disapproval is sometimes costly. In many circumstances, including oppressive circumstances, there are costs, not just in expressing, but in *having* the disapproving attitude. There are costs involved in having to hide what one thinks. Hugging one's disapproval all to one's self is a miserable business: there is misery in the disapproval, and misery in the hiding too. In relationships of one-sided dependence, disapproval by the dependant is an on-going liability, presenting an ongoing risk of accidental disclosure, and consequent danger to one's happiness or security. Feeling disapproval would be a liability for the Chinese dissidents; and for dependants in oppressive personal relationships; and for the kitchen workers. Disapproval of their working conditions would be a cost to Wilma and Maggie, wasting time and energy, and undermining all the modest joys they have managed to create. Even in non-oppressive contexts, disapproval has its costs: disapproval hurts the disapprover as well as the disapproved. Disapproval of someone you like or love can be uncomfortable, even when unmanifested; it can undermine friendships and undermine otherwise happy marriages. Contrary to Pettit's assumption, disapproval is not cost-free.

Because disapproval sometimes has costs to the disapprover, as well as the disapproved, it would be useful for the disapprover to be able to control it. And we *can*

control our disapproval. Disapproval is voluntary, at least to some extent. To be sure, we cannot always decide, just like that, not to disapprove; but we can take measures to make ourselves less disapproving. A sour-puss can learn to lighten up. Someone with an over-ready disposition to disapprove can change it—learn to look for the silver linings instead of clouds, look for the half-full glass instead of the half-empty, look for the good in people as well as the bad.²¹ And just as an over-ready disposition to disapprove can be altered, so too can an *accurate* disposition to disapprove, when such change would be useful. The dissident in China can not only mask disapproval, but stifle it, through habits of selective attention to the good, inattention to the bad. The same familiar mechanisms enable Maggie and Wilma not only to *show* less disapproval, but to *feel* less disapproval than their situation warrants. When disapproval is uncomfortable, or threatens something we value, we can squash it or minimize it: spouses stifle their irritation at the other's idea of what 'fair share' of the housework means; friends think better of each other than they deserve; children try to squash their disapproval of broccoli; parents try to squash their disapproval of their children's disapproval.²² Making the best of one's situation is a talent one can cultivate, an admirable talent in many ways, even it occasionally allows ill-doing to escape the disapproval it deserves.

The expression of disapproval is voluntary and sometimes costly, as Pettit assumes; disapproval itself is likewise voluntary and sometimes costly, contrary to what Pettit assumes. If this is so, we are further still from the conditions in which freedom of speech enfranchises silence, if by that is meant a situation that permits a default interpretation of silence as approval. Recall, we were far enough beforehand: conditions of free speech are not enough to guarantee expression of disapproval, when disapproval is felt, because other costs may yet motivate its masking .

Now there is still greater distance: for these other costs—threats to security, to friendship, or to happiness—present reasons not only for masking disapproval, but for

²¹ See for example Martin Seligman, *Learned Optimism* (NY, NY: Knopf, 1990) on cognitive therapy's methods of training people out of habits of negative evaluation (whether of their own actions, or the actions of others).

²² For a study of the domestic-work-related attitudes of new parents (of varying ideologies), and some apparent correlations between marital success and the stifling of disapproval (especially, but not only, by exhausted wives) see Jay Belsky and John Kelly, *The Transition to Parenthood: How a First Child Changes a Marriage* (London: Ebury Press, 1994), 139-52.

stifling it, so that people who might otherwise disapprove do not. Can their silence, in such circumstances, be read as approval? No. Employees, friends, spouses, who have taught themselves to make the best of things, and not to waste their energies on useless inward complainings—these are not best read as approving their situation either, particularly if we are after the sort of approval that is ground for consensus.

4. Conclusion

Freedom of speech does not, I think, enfranchise silence. It is not true that, in conditions of free speech, ‘the silent observer gets as close as making no difference to the position of meaning or communicating by her silence that she approves of what she observes’. Life is too complicated, I suspect, for there to be any general condition under which silence would count as approval, notwithstanding the potential benefits to citizenship that such enfranchisement might bring. To be sure, silence can be made to count as approval for various purposes, whether for parliamentary debate, or for opt-out arrangements regarding privacy, union membership, organ donation and the like. But we should not hope for a uniform pattern under which silence appropriately counts as approval or consent: and by ‘should not hope’ I mean we should neither expect it, nor value it.

Free speech as a negative liberty is not sufficient to enfranchise silence, not even free speech as a *republican* negative liberty—distinctive and promising as that notion is. Free speech as a positive liberty does somewhat better, I think; it presents a possibility worth exploring, if (the above scepticism notwithstanding) a general condition for the enfranchisement of silence still seems a goal worth pursuing. However, even positive freedom of speech is insufficient to the task, I have suggested. Since expression of disapproval could still have costs, there could be reasons for choosing to mask one’s disapproval. And since disapproval itself could still have costs, there could be reasons for choosing to stifle one’s disapproval. Free speech is compatible with silence that is masked disapproval, and with silence that is stifled disapproval—neither of which are appropriately interpreted as approval. So free speech does not enfranchise silence.

There is one last thing to say. Recall that, in the example which Pettit took as his inspiration, the Chinese authorities wrongly interpreted the silence of the masses as approval, a ‘dreamy adulation’ of Chairman Mao. Observe that their interpretation

assumed the enfranchisement of silence. The assumption was based on a self-serving delusion that the conditions for such enfranchisement were satisfied.

The example shows the dangers of assuming too much. Silence here is doubly disenfranchised, since there is an *incapacity* and also a *twisting*: silence is incapable of being approval; and it is twisted into, interpreted as, approval. Silence is incapable of being approval, given the absence of free speech; and yet it is made to count as approval, not as a blank. To have one's words twisted into their opposite can be worse, perhaps, than to say nothing: likewise to have one's silent disapproval twisted into approval can be worse, perhaps, than to have one's silence a neutral blank. Whether or not it is something worse, it is certainly something extra. Pettit's main interest is in the former silencing of silence: the incapacity of a silence to be genuine approval. I am equally interested in the latter silencing of silence: the way a silence can get twisted. The source of the former disenfranchisement, the incapacity, is (in Pettit's view) the *absence of free speech*; and that has been our chief topic here. The source of the second disenfranchisement, the twisting, is the very *assumption of enfranchisement*. The authorities assumed, wrongly, that the conditions for enfranchisement were met: that is why they took silence as approval. This illustrates the dangers of assuming too readily that the conditions for enfranchisement are present.

The same moral, albeit in a lighter tone, applies to Pettit's own argument. There are dangers in an assumption that western liberal democracies bring the conditions under which silence is genuine approval. Silence might not be approval, even in conditions of resilient freedom of speech; and it would be disastrous if it were twisted into approval when it is not. There are, sadly, no shortcuts to consensus. If you want to know what people think, there is probably no substitute for asking; and even then, in the most open of circumstances, you still might not find out. Silence is not, other things equal, consent. Pettit's example supplies, in the end, a double warning: if enfranchised silence has its enemies, they include not only the absence of free speech, but the presence of a too sanguine assumption that silence is already enfranchised.