

SILENCE: FREEDOM OR CRIME?

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SILENCE: FREEDOM OR CRIME?¹

Steven J. Bartlett

In this paper, the author attempts to make explicit certain of the key variables that underlie the wide variety of positions which have been offered in answer to the question posed by the title of the paper. Several positions are reviewed briefly, ranging from Bertrand Russell's to Jasper's to Milton Meyer's to Thoreau's. These are then considered as a group in terms of possible systems of values which traditionally have formed the basis for condemnations or defenses of political and social silence, of marginal commitment, or of individual non-participation or complicity. The author does not hope to settle the issue, but rather to increase our sensitivity to it, and to its complexity.

I have been cultivating the great and forgotten right of the freedom of silence, which it is hard to maintain in this country.

– Ernest Hocking, referring to the United States, in a letter to Bertrand Russell, April 30, 1940.)

The question whether one is morally free to be silent is seldom raised, partly no doubt because advocates of silence are inclined to maintain it. Hence the issues that often are discussed concern, for example, the evils of silent compliance with injustice. These are issues that automatically lend themselves to the purposes of advocates of political involvement, while silence is its own worst champion — mute, when self-consistent, before the historically infrequent yet stinging charge that silence constitutes a crime.

It is neither my purpose here to argue on behalf of silence as a freedom, nor to support the judgment that silence sometimes may be a crime. Instead, I would like to reflect on a view which today is widespread and which has perhaps been unquestioningly accepted, especially by Americans inflamed with democratic zeal, that one should participate in the affairs of society and the state. Examining the basis of this view will not settle the questions it raises, since the question of silence itself, when understood reflectively, does not lend itself to a final answer — though fiat by the state, or personal decisions on the part of authoritative individuals may contribute to the illusion of a final truth discovered and preserved in social or individual commitment.

¹ An earlier version of this paper was presented before the Society for Social and Political Philosophy, Missouri State University, Springfield, Missouri, April 10, 1981. The original essay dates back to a presentation by the author in a conference at the Center for the Study of Democratic Institutions on "Man versus the State," October 14-15, 1969. Acknowledgement is here gratefully made to Robert M. Hutchins and John Wilkinson, who made it possible for the author to spend a year's fellowship at the Center in Santa Barbara, 1969-1970.

The most pervasive and perhaps unquestioningly accepted view that is offered in answer to the question of silence, which I am tempted to call the “making-noise-is-responsible-view,” suggests the following general outlook: First, an event, a situation, an institution, policy, value, or idea is judged by a man or group of men to be evil and to be such as morally to demand action by them to eradicate the evil. Second, the judgment they make is used by them as the basis for morally reproaching others who remain silent in the face of that event, situation, ... , or idea, who do not choose to act to eradicate the perceived evil, and who either may have alternative concerns or may subscribe to silent indifference. From the standpoint of the man or group of men who judge the given event, ... , evil, silence and inaction on the part of others are morally to be indicted, and are at times likely to be called “criminal”.

In practice, it can be dangerous and even disastrous to adhere to a doctrine whose basis is unexamined; and from the standpoint of theory, blind consent of this kind is intellectually reprehensible. Certainly it would be enlightening if we could gain some clarification of the issues basic to the question of silence. The reflections that follow seek to describe some of the variables pertinent to arguments that may be advanced on both sides, relating to the issue of implicit complicity through silence.

The matter, I believe, is complex, important, and difficult: What I hope to offer at this stage is a framework for reflection. To this end, it may be useful to describe certain propositions that lead quickly to disagreement about the moral status of silence. This is what I propose to sketch.

A few preliminary assumptions will make our route more direct, less susceptible to detours, and secondly may perhaps possess a certain persuasive force of their own. In either case, it will be convenient in this brief reflection to make the following assumptions:

A reader wanting from the outset to bring a measure of precision to our question might propose that we carefully list the criteria of assessment that are used in a wide spectrum of cases in which an individual or group of individuals is indicted due to his, or their, silence. However, if we did this, it soon would become evident that exemplifying cases are distributed about a theoretical mean where adherence to a policy of silence is maximally ambiguous, and moral judgments about the act of silence are therefore highly uncertain.

In other words, ambiguity in judging implicit complicity is reduced to a minimum when extreme deviations from this theoretical middle ground are involved. For example, we would tend to find a low degree of ambiguity (= simplicity in reaching a moral judgment) in the case of a Nazi officer whose responsibility it is to determine how many Jewish people are to be executed each day in the concentration camp he administers. And, similarly, we would very likely encounter a low degree of ambiguity in judging the responsibility of a Sartrean moral agent who casts a stone into the tributary of a river so that its wave-disturbance eventually reinforces the much larger waves that later sink a ship at sea.

One wonders whether criteria of moral judgment could ever be formulated that would be capable satisfactorily of dealing with such a range of diversity of cases. Certainly a list of criteria can be set down, but a test of multiple applications usually can be devised that shows up inadequacies in one or more of the listed conditions.

This fact is often construed to support the claim that questions of value are not to be resolved by means of lists of criteria. Perhaps a list of criteria may eventually be successful. I do not propose, however, to try to develop a particular list adequate for application to individual instances. The first assumption I make here is, then, that it makes sense to suspend the question of the desirability and possibility of moral criteria list-making, without begging the question at issue.

Second, I assume that it is not automatically the duty of any responsible discussion of our topic that we must specify conditions under which it is legitimate to judge individual actions, or forbearances to act, to be criminally reprehensible. Listing these conditions is normally the work of

the courts, and of the moral/spiritual administrators of religion, while the “list” they produce is presumably far from being complete. The discussion that follows does not, then, include reference to conditions that must be satisfied in order for us to apply standards of criminal conduct to individual decisions to maintain silence. Although not frequently discussed by the courts or by theologians, the issue is resolved implicitly to some extent by what they allow to count as “responsible agents” in their deliberations.

So far, I have tried to make explicit what I will assume my discussion is free to forget about, without bringing inquiry to a standstill. More positively, several general methodological assumptions underlie the framework I propose for studying the question of silence.

(i) In a very large number of instances, varying in shades of ambiguity, it is possible to treat a group of objects (events, situations, cases, &c.) that are connected by similarity-relations in such a way as to describe the group in terms of its essential determinants, without which the group as such would be impossible. These “determinants” may be of many kinds, depending upon the nature of the “group” under consideration. The reader will grasp what I have in mind here if he thinks of “determinants” in terms of presuppositions, elementary structures, basic vocabularies, &c., without which an approach, theory, communication, &c., would be impossible.

(ii) I accept here the Cartesian view according to which values are endorsed with justification only when they may be demonstrated and affirmed on the basis of independent, individual inquiry.

(iii) The following “framework-relativity hypothesis” is taken for granted:² A concept, a form of relation, a sign or symbol of formal language, expressions of a natural language, objects taken generally, and identifiable phenomena of whatever type and kind, are essentially relative, respectively, to a given universe of meaning, to particulars related by relations of the form, to a specific formal system, to a context of discourse, to a certain frame of reference, or to a determinable region of identification. For example, many concepts are such that they seem almost to encourage us to use them in ways that ignore or deny their essential relativity to their proper contexts of meaning. An analysis of concepts of this kind shows them to be conceptual misconstructions in which self-undermining forms of reference sabotage the putative meanings of those concepts.³

With these assumptions before us, we now can describe some of the principal variables in arguments for and against silence. In distinguishing between occasions when silence is morally permissible and occasions when silence is criminal, we tend to rely on one or more of the following three views:

² This “framework-relativity hypothesis” and the formal structure of relativistically constituted objects of reference have been treated by the author in detail elsewhere: A demonstration that a misconstruction is entailed as is presupposed in the paper may be found in the author’s *Théorie de la relativité de la constitution phénoménologique* (Dissertation, Université de Paris, 1970; University Microfilms 79-05583); “Phenomenology of the Implicit”, *Dialectica: Revue internationale de la philosophie de la connaissance*, Vol. 29, Nos. 2-3, 1975, pp. 173-188; “Fenomenologia Tego, Co Implikowane”, *Roczniki Filozoficzne*, Vol. XXII, No. 1, 1974, pp. 73-89; “Referential Consistency as a Criterion of Meaning”, *Synthese*, Vol. 52, 1982, pp. 267-282; *Conceptual Therapy: An Introduction to Framework-Relative Epistemology* (St. Louis, Mo.: Studies in Theory and Behavior, Saint Louis University 1983).

³ See the preceding note.

A. Society versus the Individual

Values can be arranged hierarchically so that either the value of the individual or that of the social group in which the individual has membership takes precedence.⁴ Consider the following, sometimes conflicting, points of view:

*“Plainly what one man calls injustice, another calls expropriation; as one man’s liberty is another man’s anarchy.”*⁵

*“An ordered society cannot exist if every man may determine which laws he will obey... that only ‘just’ laws need be obeyed and that every man is free to determine for himself the question of ‘justness’.”*⁶

*“I think we all have moral obligations to obey just laws. On the other hand, I think that we have moral obligations to disobey unjust laws because non-cooperation with evil is just as much a moral obligation as cooperation with good.”*⁷

*“A person may cause evil to others not only by his actions but by his inactions, and in either case he is justly accountable to them for the injury.”*⁸

*“In declaring our conclusions..., we do not merely pronounce judgment on past events. We do more than report the criminal policies and actions of a government. Our function is not that of an historian. We have not studied and deliberated solely in order to preserve the truth about Vietnam for posterity. We must discharge a deeper and harder duty; we speak because silence is complicity, a lie, a crime.”*⁹

*“There exists a solidarity among men as human beings that makes each co-responsible for every wrong and every injustice in the world, especially for crimes committed in his presence or with his knowledge. If I fail to do whatever I can to prevent them, I too am guilty.”*¹⁰

*“One might think of cases of wholly non-political persons who live aloof of all politics, like monks, hermits, scholars, artists — if really non-political, those might possibly be excused from all guilt. Yet they, too, are included among the politically liable, because they, too, live by the order of the state.”*¹¹

*“...passivity knows itself morally guilty for every failure, every neglect to act whenever possible, to shield the imperiled, to relieve wrong, to countervail.... Blindness for the misfortune of others, lack of imagination of the heart, inner indifference toward the witness of evil — that is moral guilt.”*¹²

⁴ Determining the individual’s membership itself constitutes a problem. Which is to be granted priority: the individual’s claim to the right to be free from group-imposed obligations, or the state’s claim to the right to impose such obligations?

⁵ Milton Meyer, “Man versus the State”, conference transcript, Center for the Study of Democratic Institutions, Santa Barbara, California, October 14-15, 1969, p. 40.

⁶ Lewis F. Powell, quoted in Milton Meyer, *ibid.*

⁷ Martin Luther King, quoted in Milton Meyer, *ibid.*

⁸ Milton Meyer, *ibid.*, p. 17.

⁹ Bertrand Russell, *Against the Crime of Silence: Proceedings of the Russell International War Crimes Tribunal* (New York: Simon & Schuster 1968), p. 653.

¹⁰ Karl Jaspers, *The Question of German Guilt* (New York: Capricorn Books 1961; Dial Press 1947), p. 32.

¹¹ Karl Jaspers, *ibid.*, p. 62.

¹² Karl Jaspers, *ibid.*, pp. 69-70.

“*You are guilty’ can have several meanings. It can mean:*

‘You must answer for the acts of the regime you tolerated’ — this involves ... political guilt.

Or: ‘You are guilty of giving your support and cooperation to their regime’ — therein lies ... moral guilt.

Or: ‘You are guilty of standing by inactively when the crimes were committed’ — there, a metaphysical guilt suggests itself.

I hold these three statements to be true — although only the first, concerning political liability, is quite correct and to be made without reservations, while the second and third, on moral and metaphysical guilt, become untrue in legal forms, as uncharitable testimony.”¹³

“The circumscription of liberty in the name of national emergency has a way of outliving the emergency.”¹⁴

“There will never be a really free and enlightened state, until The State comes to recognize the individual as a higher and independent power, from which its power and authority are derived, and treats him accordingly.”¹⁵

“Go placidly amid the noise and haste and remember what peace there may be in silence.”¹⁶

Were individual integrity and social obligation valued equally in a hierarchy of values, the issue of implicit complicity would not arise: The non-participation of a man or group of men in a morally motivated social effort to eradicate an evil would be interpreted differently depending upon whether the evil is thought to affect first the group, or first the individual. If the value of the individual takes precedence over the rights of the group, and if the evil is thought first to affect the group while exerting little relative effect on the individual, the individual will be exempted from indictments against his silence.

However, if the value of the group takes precedence over the rights of the individual, as it normally has in the history of what we seem willingly to accept as civilization, and if an evil is thought first to affect the group while exerting milder degrees of direct influence upon the individual, the moral liability to condemnation of the individual who remains silently indifferent in the face of the social evil is likely to be comparatively great.

But where the value of the individual and that of the group are accorded the same level in a hierarchy of values, the responsibility of the individual to himself neither exceeds nor is less than that of the individual to his social group. The question of implicit complicity when placed in these terms has built into it enough moral uncertainty, ambiguity, or indeterminacy that clear-cut judgments about the question cannot be made. In this context, the issue of silence does not arise — at least, not out of ambiguity.

B. The Priority of Social Order

A second, related hierarchy of values may be entangled with the first. This hierarchy determines the extent to which an individual’s adherence to values under A. is — practically or theoretically — associated with values that facilitate or obstruct the establishment and/or preservation of a particular form of social and political organization. These related values can be ranked so that *either* values encouraging the ordered operation of society are given precedence over alternatives tending

¹³ Karl Jaspers, *ibid.*, pp. 49-50.

¹⁴ Milton Meyer, *ibid.*, p. 134.

¹⁵ Henry David Thoreau, quoted in Milton Meyer, *ibid.*, p. 95.

¹⁶ Anonymous, c. 1692, from Old Saint Paul’s Church, Baltimore.

to facilitate disorder, *or* sets of values potentially disruptive to society's are not ruled out *ab initio*, or one or more sets of alternative values are given priority in the hierarchy without regard for the degree to which they may contribute to society's ordered operation. Judgments as to the extent of implicit complicity involved in an individual's decision to be silent in the face of social evil will depend (i) upon which values are given priority in each hierarchy A. and B., and (ii) upon the claimed connections between particular values in the two hierarchies.

C. The Contextual Relativity of Moral Judgments

Judgments concerning the question of silence may appeal to an absolute or to a relative system of values. It is characteristic of an outright moral condemnation of an individual's silence to see a certain event, situation, institution, policy, &c., as evil in and of itself and therefore as demanding morally motivated action to eliminate or reduce it: The perceived evil is characterized as unambiguously undesirable, either in relation to a certain form of social organization, or unrestrictedly.

A less absolute valuation may be found in the view that construes a particular event, situation, &c., as evil and as demanding morally motivated action only relative to an interpreted set of hierarchies A. and B., and relative to an individual person or group of persons *who accept that interpretation*.

A distinction has to be made, then, between the absolute and the relative character that a theory of value or axiology may possess. It is important to realize that an absolutist axiology is conceptually crippled because it entails a misconstruction of the kind already mentioned.¹⁷ Therefore rejecting the absolutist view, only the relational or framework-relative view is worth considering.

From the standpoint of an axiology with value hierarchies under a definite interpretation, the question of silence can only be resolved, from the standpoint of the framework I have described, in relation to particular values which are demonstrated and affirmed through independent, individual inquiry.¹⁸ From this point of view, an indictment leveled against silence will make sense only if the relevant value hierarchies of both accuser and accused share the *same interpretation*, and if both accuser and accused may arrive at compatible results through informal moral discourse, or by means of systematic axiological demonstration, if such means are available. When the psychology of the accused is relatively "normal", a condemnation of his silence by the accuser will merely be a public expression of a corresponding self-indictment on the part of the silent accused.

In short, judgments against silence are, in this view, justifiable only in those cases where advocates of silence would indict themselves for what they themselves consider to be their implicit compliance with a morally objectionable situation. It is interesting to see that, in such a view, moral indictments by others fundamentally can only make sense if self-indictments occur concomitantly. And at this point, the morality of silence becomes coextensive with the range of individual human conscience.



I have outlined one model that attempts to place the question of silence in a rational framework and to relate it to factors basic to the choice to reject or to affirm silence.

The views and judgments of value that underlie our moral persuasions with respect to silence are usually glossed over in our frequently unquestioning and foregone decisions to reproach or

¹⁷ See references listed in note 2 for a fuller treatment of this claim.

¹⁸ See (ii) earlier in the text.

condemn those with whom we do not see eye-to-eye on the issue of morally motivated actions against relative social evils.

The question of silence ought, I believe, to be appreciated with a sensitivity to the complexity of its character, and with a resolve to hesitate in the face of easy judgments and solutions based on them. The status of silence in morality has too long itself remained silent, and has given way to varying degrees of quick appraisal, as a review of the opinions contrasted earlier (pp. 103-104) should indicate. A defense on behalf of silence is difficult to find, in large measure because of ready pronouncements and an absence of serious discussion.

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