that the longer papers are less than strictly disciplined in the writing, and their development encumbered by attempts to anticipate both responses and alternative treatments of the issues. Perhaps these thoughts about the style of the edition ought to be regarded as minor considerations of taste. In any event, let the potential reader be in no doubt that this is an eminent edition which contains a very fine and important body of work. Any analytic philosopher can expect to benefit considerably from studying this book.

Department of Philosophy JOHN DIVERS
University of Sheffield
Arts Tower
Western Bank
Sheffield S10 2TN
UK

Free Speech, by Alan Haworth. London: Routledge, 1998. Pp. 263. H/b £60.00, eBook £17.99.

Given the many philosophical issues raised by debates about free speech, it is surprising that there are so few book-length treatments of the subject written by philosophers. Even if the literature were more extensive, Alan Haworth's *Free Speech* would be a welcome addition to it, but, especially under the circumstances, this is a very important contribution indeed.

I have never met Alan Haworth, but I gather he is British, not merely because he teaches at the University of North London (now London Metropolitan University), but primarily because he approaches free speech as a problem for *philosophical* analysis, rather than as an exercise in constitutional interpretation. Most contemporary theorizing about free speech (in English, anyway) is done by American scholars who take the free speech clause of the First Amendment of the US Constitution to be the articulation of a legal right grounded in a fundamental (moral) human right, rather than a piece of positive law which may or may not be based on a moral imperative. Rather like warring countries who all claim to have God on their side, contemporary US legal theorists debating free speech issues such as hate speech or pornography argue that the First Amendment, when interpreted correctly, clearly supports their position. Virtually no theorists question whether the First Amendment is morally justified to begin with. Two rare exceptions are Robin L. West ('Constitutional Scepticism', in Susan J. Brison and Walter Sinnott-Armstrong (eds), *Contemporary Perspectives on Constitutional Interpretation*, Boulder, CO: Westview Press, 1993, pp. 234–58) and Mary E. Becker ('The Politics of Women's Wrongs and the Bill of "Rights": A Bicentennial Perspective', in Geoffrey R. Stone, Richard A. Epstein, and Cass R. Sunstein (eds), *The Bill of Rights in the Modern State,* Chicago: University of Chicago Press, 1992, pp. 453–517).

In contrast, Haworth does not even mention the First Amendment until

two-thirds of the way into the book. *Free Speech* is an excellent illustration of the ways in which the analysis of free speech can be facilitated by being lifted out of the realm of US constitutional interpretation. It is refreshingly undogmatic—a salutary antidote to the free speech fundamentalism of some prominent US legal theorists. It also helps that Haworth writes in a clear, congenial style—with periodic displays of a lively sense of humour.

Most of the book is devoted to an illuminating explication—and compelling reinterpretation—of John Stuart Mill's consequentialist defence of free speech, also known as the argument from truth. In chapter two of *On Liberty*, Mill argues that restrictions on speech would hamper the search for truth. The suppressed speech may, Mill argues, turn out to be true, or to contain some truth, and even if it turns out to be false, its expression is necessary in order for the truth to be challenged and defended by means of good arguments. Not to permit truths to be challenged would be to allow them to assume the status of dead dogmas, held unthinkingly (and thus tenuously).

The argument from truth has been so prevalent and persistent a defence of free speech (since Milton's *Areopagitica*) that, as recently as 1982, Frederick Schauer observed that 'the argument from truth dominates the literature of free speech' (*Free Speech: A Philosophical Enquiry,* Cambridge: Cambridge University Press, 1982, p. 15). Although the argument from autonomy and the argument from democracy have arguably become, in the last two decades, more prevalent in the legal literature, one may still accurately hold, with Schauer, that the argument from truth has been 'throughout modern history the ruling theory in respect of the philosophical underpinnings of the principle of freedom of speech' (Schauer, p. 16). It is also frequently heard in popular debates about free speech.

However, in 'one of the great tragic ironies of intellectual history', Haworth notes, Mill's argument 'is in danger of suffering the very fate it so eloquently warns others against—the fate of degenerating into "dead dogma"' (pp. 1–2). Haworth saves Mill's argument from this fate (at least for now) by giving it the most careful examination and re-evaluation that I, for one, have come across.

Haworth takes the title of chapter two of *On Liberty*—'Of the Liberty of Thought and Discussion'—seriously, noting that Mill did *not* entitle the chapter 'Of the Liberty of Speech'. He then points out that 'an act of speaking or writing … requires a context if it is to count as an exercise of the liberty of thought and discussion also' (p. 26). Haworth considers this context to be, for Mill, that of the seminar room and he holds that 'Mill's argument for the liberty of thought and discussion, construed as a defence of free speech, is the more convincing the more a situation to which it is applied resembles the model' (p. 53).

One objection to Mill's defence of free speech is that it can be shown to be at odds with the principle of utility from which it is supposedly derived (if, as is plausibly the case, unrestricted speech can, at least in some cases, lead to decreased overall utility). Haworth does not raise this objection; rather, he is

more concerned with whether Mill's defence of free speech is vulnerable to the objections philosophers such as Bernard Williams have raised against utilitarianism. After considering a number of these objections, Haworth claims that Mill's 'thought and discussion' argument stands alone; that is, it does not require the assumption that the principle of utility is the ultimate moral principle. 'To succeed, it only needs to persuade you that the exercise of the liberty really has the consequences Mill claims for it and you don't have to be persuaded that nothing else counts' (pp. 61–2). So, the crucial question is this: 'Is Mill right to think that where the exercise of the liberty of thought and discussion is increased, there is (or is, at least, likely to be) a corresponding increase in the number of propositions which become known to be true?' (p. 62). (I suppose one could quibble over whether or not this is *the* causal claim by Mill, but it is plausible to suppose that it is, at any rate, one of them.) The answer, according to Haworth, depends on the context of 'the exercise of the liberty of thought and discussion'. Haworth argues that whereas it is false that '[a]n increase in the rate of performance of acts of expression causes an increase in the supply of truth' (p. 63), it is true that '[a]n increase in the rate of participation in seminar group-type activities causes an increase in the supply of truth' (p. 66).

But, as Haworth points out, this reformulation of the argument from truth limits the applicability of Mill's defence, since many situations, for example, a neo-Nazi march, bear little resemblance to a seminar room. I happen to agree with Haworth that Mill's defence of free speech does not explain why neo-Nazi marches should be protected. However, if Mill's argument from truth defends only speech in 'seminar group-type activities', it seems it would not justify protection for books, films, political demonstrations, concerts, political broadsides—indeed most speech that free speech advocates are concerned to protect.

Furthermore, not all increased participation in seminar group-type activities *does* cause an increase in the supply of truth. Suppose the increased participation is due to the influx of neo-Nazis who (even if they manage to behave themselves and follow the rules of the seminar room) get the discussion bogged down in an endlessly unproductive debate about white racial superiority. Perhaps Haworth, like Mill, considers all people capable of, and interested in, rational debate, but many people are not primarily motivated to speak by the desire to increase the supply of truth—or even by the desire to express propositions of any sort. Their primary motivation may be to harass and intimidate, which can occur in the seminar room as well as on the streets.

That Haworth neglects (here, though not elsewhere: see, for example, p. 210) these other motivations for—and functions of—speech is apparent in his construal of those speech acts covered by 'a genuine defence of free speech' as those whose 'main function is to communicate a proposition, or set of propositions, to others' (p. 10). (This view of speech acts is reiterated on pp. 144 and 152.) My (by no means novel) point is that we do lots of things

with words, inside and outside of seminar rooms, other than communicate propositions. Why does Haworth give such a restrictive definition of speech acts? It could be because he is concerned mainly with the argument from truth and he considers only those speech acts with truth values to be relevant to that argument. But couldn't speech acts without truth values—such as exclamations—still contribute to the search for truth—even on the seminar room model? Think of someone at the seminar table who has a revelation and says 'Aha!' This could have the effect of getting everyone to pay special attention to what he says next, shifting the discussion in a new direction. In any case, it doesn't make sense to restrict speech acts in this way when analysing other defences of free speech, for example, the contractualist defence, which Haworth discusses in the latter part of the book.

One of the many original aspects of Haworth's reinterpretation of Mill's argument from truth is his claim that Mill is not defending a free market in ideas. Mill is typically thought to hold that the truth will win out in an open competition in the marketplace of ideas, a view famously expressed by Justice Oliver Wendell Holmes in his dissent in *Abrams v. United States* (1919): '[W]hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market.' (This reading of Holmes into Mill may be one way in which free speech theory has been distorted by being viewed through the lens of US constitutional interpretation.) Mill, however, does not use the free market metaphor, and, on the contrary, as Haworth notes, considers ideas to be most unlike objects that may be possessed, as evidenced in his claim that '[w]ere an opinion a personal possession of no value except to the owner, if to be obstructed in the enjoyment of it were simply a private injury, it would make some difference whether the injury was inflicted only on a few persons or on many. But the peculiar evil of silencing the expression of an opinion is that it is robbing the human race …' (p. 78). Haworth argues that giving an opinion is not like giving someone a dollar, or a kidney—an opinion is not a possession of that sort—and that the wrong suffered by someone who is prevented from expressing an opinion is unlike that suffered by someone who has been robbed. I would add that a further problem with the marketplace of ideas model is that it presupposes that one can always choose to accept or reject an idea. But some ideas are contagious, insinuating themselves into our thoughts without—or even against—our will.

Another original feature of Haworth's treatment of the argument from truth is his critique of Mill's claim that *all* silencing of discussion is to be condemned because it is based on an unwarranted assumption of infallibility—a claim often uncritically accepted as true by commentators on Mill. As Haworth argues, the view 'that everything is open to question' is true 'only if some form of scepticism is true. If scepticism is false, then there are truths of which one

can be absolutely certain—"There is a table", "there is a chair"—and on which your judgement is infallible' (p. 48). So, for example, to those who argue that Holocaust denial literature should not be suppressed because to do so assumes infallibility, he replies that the only reason for doubting that the Holocaust occurred is that 'it could be that *absolutely nothing whatsoever has ever taken place*' (p. 48), and this is not a reason most of us (even us philosophers) are likely to accept.

An additional virtue of Haworth's analysis of Mill's defence of free speech is his scrupulous and insightful comparison of Mill's argument with Milton's. As Haworth rightly notes, the theological world view in which Milton formulated his argument was no longer viable by Mill's, let alone our, time. Faith in the ultimate victory of truth over falsehood was, for Milton, one part of a larger teleological picture in which God's benevolence ensured, in the long run, and in spite of our all-too-human blunderings, that goodness and truth would prevail. If one accepts this metaphysical assumption, there is some basis for the faith that truth will, in the end, win out over falsehood. (Given Milton's teleological account, however, it is not clear why human censorship could not be compensated for by an omnipotent deity. If it is God who ensures that the truth will win out in the end, presumably He could carry out that feat in spite of some censorious meddling by mere mortals.) But, without Milton's theological world view, and absent any further argument, Mill's faith that truth will overcome falsehood in the end is unfounded.

The last third of Haworth's book begins with the First Amendment and focuses on contractualist defences of free speech, since Haworth views the founding fathers meeting to draw up the Constitution (and subsequently the Bill of Rights) as carrying through 'a procedure for the selection of normative principles which in some ways resembled that adopted by hypothetical individuals in social contract theory' (p. 149). He argues that what he calls Nozick's 'literal' contractualism fails to provide a defence of free speech because it considers rights to be things people 'have'—like bodily organs or personal possessions, which, on Haworth's construal of Nozick, 'entails that even Robinson Crusoe, alone on his island, has fundamental rights' (p. 171), whereas the right to free speech is something that can be had only in a social context. (So Robinson Crusoe cannot have a right to free speech.) Haworth labels Rawls's account a 'conventionalist' contractualist one (since the original position is a kind of hypothetical convention) and argues that, although it initially appears promising, it also fails to yield a defence of free speech 'because it requires making too many *ad hoc* presuppositions' (p. 174).

It might be viewed as a shortcoming of a book entitled *Free Speech* that it focuses primarily on only two main defences of free speech—the argument from truth (labelled, by Haworth, the 'classic defence') and the contractualist defence—especially given that they are not the arguably most prevalent ones, namely the argument from autonomy and the argument from democracy. But this would be uncharitable. Haworth does address the argument from democ-

racy in his discussion of Rawls's linking of the right to free speech with the rights to vote, to assemble, and to be eligible for public office (pp. 177–85). More could be said, though, about the deep roots of Rawls's theory in a Kantian account of autonomy. As Rawls writes, '[t]he original position may be viewed … as a procedural interpretation of Kant's conception of autonomy and the categorical imperative within the framework of an empirical theory' (*A Theory of Justice: Revised Edition*, Cambridge, MA: Harvard University Press, 1971/1999, p. 226).

In analysing the views of contemporary liberal theorists such as Rawls, Haworth considers the 'negative liberty' argument for the liberal view of free speech, but not the 'positive liberty' one based on Kantian autonomy. This may be, at least in part, because he (rightly) considers the term 'autonomy' to be 'too much of a philosopher's term of art' (p. 247). In the last few pages of the book, however, he does mention autonomy, if a bit reluctantly, and even goes so far as to suggest that Scanlon's autonomy-based defence of free speech, while problematic, 'has potential' (p. 220). His reasons for thinking this, though, are obscure, especially since he says that his own view of autonomy resembles Harry Frankfurt's (p. 223) and, as I have argued, one could be, not merely censored, but bound, gagged, and thrown into a dungeon and still be autonomous on Frankfurt's account ('The Autonomy Defence of Free Speech', *Ethics*, 108, 1998, pp. 312–39).

What comes across at the end of Haworth's book is his ambivalence about the very idea of a free speech principle, an ambivalence that I consider to be well-founded. For if it is conceded that speech causes serious, unavoidable harms, why should it be protected? There is, as a matter of contingent historical fact, a right to free speech embedded in the US Constitution. It may well be, however, that there is no sound philosophical basis for giving such a right priority when it comes into conflict with other rights, such as the right to equality (or the right to be free from discrimination, harassment or intimidation). My view is not that there is *no* right to free speech, but rather that there is no *special* right distinct from a general right to liberty. Free speech is *not* a special right in the sense that there is something special about speech itself, as opposed to all other human conduct, that requires us to grant it favoured status. Rather, it just so happens that, of all the rights considered to fall under the rubric of a general right to liberty, the right to free speech has been (and continues to be) more vulnerable to governmental invasions than the others—though perhaps not *all* the others: the right to freedom of religion certainly falls into this category as well. It is not a coincidence that both free speech and freedom of religion are protected by the First Amendment, since both had historically been threatened by governments. It does not follow, though, that speech is 'special' any more than it follows that religion is more 'special' than other human pursuits, such as scientific, literary, and artistic ones—or that religious affiliations and practices are more central to human flourishing than, say, sexual affiliations and practices.

In the last paragraph of *Free Speech*, Haworth acknowledges that circumstances (especially power relationships) have changed considerably since Mill's time, and he wonders 'how long it will be before "the free speech issue" … becomes anachronism …' (p. 223). My own view is that such a development is long overdue and my hope is that Haworth's excellent book will hasten its arrival.

Philosophy Department
Dartmouth College
Hanover, NH 03755
USA

SUSAN J. BRISON

Categorical Principles of Law: A Counterpoint to Modernity, by Otfried Höffe, trans. Mark Migotti. University Park, PA: Pennsylvania State University Press, 2002. Pp. xxx + 311. H/b $75.00, P/b $26.50.

Höffe's impressive, wide-ranging book offers an extended argument for the indispensability of categorical moral principles, à la Kant, in both the theory and practice of law. Höffe claims that we need to reaffirm such principles and to shore up their intellectual respectability, given the current excessive sway of 'empirical-pragmatic' approaches. This claim holds the book's thirteen chapters, many of which began life as journal articles, together.

We should be interested in Höffe's views. Less known in Anglo-American circles, he has been a leading moral and political theorist in Germany for many years, where he directs the Tübingen Research Centre for Political Philosophy. His confidence with a range of literatures, from historical philosophical texts to German social theory to Kant scholarship, make his assessment of a renewed need for categorical principles particularly worthwhile.

The book has three parts. The chapters in the first part present the core thesis, showing the necessity of categorical principles as 'counterpoints' to empiricizing projects. Höffe begins with what he sees as the Scylla and Charybdis of 'empirical-pragmatic' modern social theory: negative critique, associated by Höffe with the Frankfurt School (particularly Adorno), which limits itself to pointing out existing societal contradictions, and positive critique, associated by Höffe with Odo Marquard (*Farewell to Matters of Principle: Philosophical Studies*, trans. R. M. Wallace, Oxford: Oxford University Press, 1989; *In Defense of the Accidental: Philosophical Studies*, trans. R. M. Wallace, Oxford: Oxford University Press, 1991), which merely affirms the existing order. By rejecting categorical principles that transcend the 'immanent' or 'given', both deprive themselves of needed critical leverage. Höffe turns to defending categorical moral principles against sociologists, such as Niklas Luhmann (*Paradigm Lost: Über die ethische Reflexion der Moral*, Stuttgart: Suhrkamp Verlag, 1988), who declare morality dead in modern societies, and legal positivists, who find morality superfluous to an accurate understanding of law. The remaining