

Truth and the Marketplace of Ideas

Christopher T. Wonnell*

For many years, legal scholars accepted without serious question the theory that freedom of speech and the attainment of truth were related. In recent years, however, leading commentators have attacked this fundamental premise of first amendment law. This Article considers the free speech/truth linkage afresh and argues that such a linkage does in fact exist. Defining truth as correspondence with the facts, the Article argues that identifiable "elite" disciplines progress toward truth and that in such disciplines free speech can be shown to accelerate that progress. It examines fields in the natural and social sciences and argues that in areas which exhibit supply and demand functions supportive of the search for truth, the economic analogy of the marketplace successfully predicts the positive contribution of speech. It then argues that freedom of speech, in addition to contributing to truth's discovery, also aids in its dissemination.

I. INTRODUCTION: TRUTH THROUGH FREE TRADE IN IDEAS

Commentators in the area of first amendment jurisprudence have offered a wide variety of justifications for freedom of speech.¹ Free speech is said to play an integral role in the development of one's individual personality,² in the protection of democratic self-government,³ in the

*Associate Professor of Law, University of San Diego. B.A. 1979, Northwestern University; J.D. 1982, University of Michigan. I would like to express my appreciation to the following individuals whose comments on this Article were extremely helpful: Larry Alexander, Eleanor Blais, Don Dripps, Paul Horton, Maimon Schwartzchild, and Paul Wohlmuth.

¹ This Article includes freedom of the press within its definition of "freedom of speech." For a sampling of the literature on the question of whether the two protections are coterminous, see Abrams, *The Press is Different: Reflections on Justice Stewart and the Autonomous Press*, 7 HOFSTRA L. REV. 563, 574 (1979); Lewis, *A Preferred Position for Journalism?*, 7 HOFSTRA L. REV. 595, 599 (1979); Stewart, "Or of the Press", 26 HASTINGS L.J. 631 (1975). The special problems arising from the monopolization of certain segments of the institutional press are discussed *infra* text accompanying notes 34-35, 253-56.

² See, e.g., R. DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977); Baker, *Scope of the*

checking of governmental abuses of power,⁴ and in the enhancement of utility from a diverse reading and listening fare.⁵ Historically, however, one of the most important defenses of freedom of speech has been its alleged role in advancing the pursuit of truth. The argument from truth is often characterized by the metaphor of an open “marketplace of ideas” in which truth supposedly emerges from the competition of true and false ideas for the adherence of an audience.⁶

The argument that freedom of speech assists the pursuit of truth has not lacked powerful rhetoric in its defense, but numerous commentators recently have critically examined the linkage and found it wanting.⁷ This Article concerns solely the factual question of whether or not free speech tends to lead to the discovery of truth. It contends that a linkage between free speech and truth does in fact exist. However, this Article does not attempt to argue that the truth function of speech should be the key element in first amendment jurisprudence, or that truth is a more important value than the other interests allegedly served by free speech or the interests that allegedly justify particular governmental regulations of speech.⁸ Thus, the positive connection asserted here between free speech and truth is emphatically not a comprehensive first amendment theory; it is only a factual assertion whose normative relevance must be left for others to assess.

A. *Support From Early Commentators and Present Law*

It may be questioned whether the argument that free speech and truth are related has been furthered or undermined on balance by the eloquence with which it has been stated. Milton, for example, urged that society should let truth and falsehood grapple, for “who ever knew

First Amendment Freedom of Speech, 25 UCLA L. REV. 964 (1978); Scanlon, *A Theory of Freedom of Expression*, PHIL. & PUB. AFF. 204 (1972).

³ See, e.g., A. MEIKLEJOHN, *POLITICAL FREEDOM* (1960); Brennan, *The Supreme Court and the Meiklejohn Interpretation of the First Amendment*, 79 HARV. L. REV. 1, 79 (1965).

⁴ See, e.g., Blasi, *The Checking Value in First Amendment Theory*, 1977 AM. B. FOUND. RESEARCH J. 521.

⁵ See *id.* at 548-54.

⁶ See, e.g., *New York Times v. Sullivan*, 376 U.S. 254, 269-80 (1964).

⁷ See *infra* notes 19-39 and accompanying text.

⁸ See F. SCHAUER, *FREE SPEECH: A PHILOSOPHICAL ENQUIRY* 23 (1982) (“[T]he argument from truth, if valid, also presupposes that the search for truth is the pre-eminent value in society — when it has, in Rawlsian terms, a lexical priority over all other interests.”). This Article simply takes no position on the question of whether truth has a lexical priority over all or any competing or complementary values.

Truth put to the wors, in a free and open encounter."⁹ Construed literally, this argument obviously will not do; in fact, it is hard to imagine anyone who has not seen the free discussion of ideas lead to the acceptance of patent falsehood at least on some occasions.

The linkage between free speech and truth seemed particularly persuasive to Enlightenment thinkers convinced of the power of human reason. Thomas Jefferson asserted that "if there be any among us who would wish to dissolve this Union or change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it."¹⁰ Although Jefferson's dictum still rings true for many today, it has become harder to embrace such a complete confidence in reason after twentieth century experiences with the atrocities that have accompanied the acceptance of Communist and Nazi visions.

John Stuart Mill offered the classic defense of free speech in his essay *On Liberty*. In essence, Mill's argument was three-fold. First, he suggested that the idea suppressed as false may in fact be true, since to contend otherwise is to assume the infallibility of the individuals who adhere to the dominant opinion. Second, he argued that the suppressed opinion might be at least partially true, since one view rarely contains all of the truth in a given area. Finally, Mill suggested that even if the suppressed idea were completely false, its suppression would tend to result in the true idea's becoming a sterile and unchallenged dogma that would lack the vital force necessary for a living truth.¹¹

The principal problem with Mill's argument is not that it is incorrect but that it is incomplete. Mill presents a persuasive argument — to anyone who does not believe she has already discovered the whole truth — that censorship runs the risk of suppressing true, partially true, or usefully false ideas. As numerous commentators have noted, however, it does not follow that this risk is necessarily greater than the risk that new ideas, if not suppressed, will be both false and believed.¹² Some method of assessing the relative significance of the two risks is neces-

⁹ J. MILTON, *AREOPAGITICA* (J. Suffolk ed. 1968).

¹⁰ T. JEFFERSON, *First Inaugural Address* (1801), in *THE COMPLETE JEFFERSON* 385 (1943).

¹¹ J. MILL, *ON LIBERTY* (D. Spitz ed. 1975).

¹² See, e.g., Ingber, *The Marketplace of Ideas: A Legitimizing Myth*, 1984 *DUKE L.J.*, 1, 7 ("The market model avoids the danger of officially sanctioned truth; it permits, however, the converse danger of the spread of false doctrine by allowing expression of potential falsities."); F. SCHAUER, *supra* note 8, at 26-27 ("History provides too many examples of falsity triumphant over truth to justify the assertion that truth will inevitably prevail.").

sary, but Mill provides no such method.

Perhaps this country's most famous statement of the argument from truth was given in Justice Holmes' dissent in *Abrams v. United States*.¹³ Since "time has upset many fighting faiths" we should learn that "the best test of truth is the power of the thought to get itself accepted in the competition of the market."¹⁴ Again, however, the question is whether today's market outcomes will prove to be more true than yesterday's fighting faiths. It is not clear that Holmes, the consummate skeptic, had such confidence in the progressive character of knowledge.¹⁵

Nevertheless, upon this intellectual edifice the courts do appear to have embraced the idea of a linkage between free speech and truth. Thus, in *Red Lion Broadcasting Co. v. F.C.C.*,¹⁶ the Court stated: "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail."¹⁷ Similar statements appear in numerous Supreme Court cases construing First Amendment guarantees of freedom of speech and press.¹⁸

Ironically, it might be said that until recently the linkage between free speech and truth had become one of Mill's "sterile dogmas" which, because rarely challenged and therefore seemingly in need of no defense, became an unsupported article of faith vulnerable to the first skeptical inquiry into the alleged linkage. All of this has changed with the recent barrage of commentary that either flatly denies or seriously questions any tie between free speech and the pursuit of truth.

B. *Opposition From Recent Commentators*

One can compile an impressive list of leading constitutional scholars who recently have rejected as false or unproven the central linkage between free speech and truth. Professors Alexander and Horton,¹⁹

¹³ 250 U.S. 616 (1919).

¹⁴ 250 U.S. at 630 (Holmes & Brandeis, JJ., dissenting).

¹⁵ See, e.g., 1 HOLMES-POLLOCK LETTERS 163 (M. Howe ed. 1961) ("I am so skeptical as to our knowledge about the goodness and badness of law that I have no practical criterion except what the crowd wants. Personally I bet that if the crowd knew more it wouldn't want what it does — but that is immaterial.").

¹⁶ 395 U.S. 367 (1969).

¹⁷ *Id.* at 390.

¹⁸ See, e.g. *Board of Educ. v. Pico*, 457 U.S. 853, 866 (1982); *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 295 (1981); *Widmar v. Vincent*, 454 U.S. 263, 267 (1981); *Consolidated Edison Co. v. Public Serv. Comm'n*, 447 U.S. 530, 537 (1980).

¹⁹ Alexander & Horton, *The Impossibility of a Free Speech Principle*, 78 Nw. U.L.

Baker,²⁰ Blasi,²¹ Duval,²² Ingber,²³ Redish,²⁴ and Schauer²⁵ are among those who have taken a skeptical view of the marketplace of ideas thesis.

Indeed, the striking feature of this recent commentary is the absolute character of many of the statements made in rejecting the theory. Thus, Professor Baker argues that "[t]he assumptions on which the classic marketplace of ideas theory rests are almost universally rejected today."²⁶ Professor Ingber adds that "[c]itizens must be capable of making determinations that are both sophisticated and intricately rational if they are to separate truth from falsehood. On the whole, current and historical trends have not vindicated the market model's faith in the rationality of the human mind. . . ."²⁷ Along the same lines, Professor Schauer suggests that "the naivete of the Enlightenment has since been largely discredited by history and by contemporary insights of psychology. People are not nearly so rational as the Enlightenment assumed. And without this assumption the empirical support for the argument from truth evaporates."²⁸

As the above quotations suggest, the common criticism made against the marketplace of ideas theory is its false confidence in the rationality of human beings. However, this has not been the only criticism; other attacks upon the model are potentially even more devastating in that they call into question even the possibility of establishing a linkage between free speech and truth. For example, the very concept of "truth" has been questioned. Professor Ingber makes the particularly provocative statements that "almost no one believes in objective truth today"²⁹ and that "truth and understanding are actually no more than preconditioned choice."³⁰ Professor Baker suggests that the modern sociology of knowledge and psychology of persuasion have shown truth to be relative to the observer, so that the marketplace of ideas might lead to the

REV. 1319, 1349 (1983).

²⁰ Baker, *Scope of the First Amendment Freedom of Speech*, 25 UCLA L. REV. 964, 967-90 (1978).

²¹ Blasi, *supra* note 4, at 549.

²² Duval, *Free Communication of Ideas and the Quest for Truth*, 41 GEO. WASH. L. REV. 161, 188-94 (1972).

²³ Ingber, *supra* note 12.

²⁴ Redish, *The Value of Free Speech*, 130 U. PA. L. REV. 591, 616-19 (1982).

²⁵ F. SCHAUER, *supra* note 8, at 15-34.

²⁶ Baker, *supra* note 20, at 974.

²⁷ Ingber, *supra* note 12, at 7.

²⁸ F. SCHAUER, *supra* note 8, at 26.

²⁹ Ingber, *supra* note 12, at 25.

³⁰ *Id.* at 31.

wrong person's or group's "truth" being accepted.³¹

Other commentators have focused upon the paradoxical character of the marketplace of ideas thesis. Professor Redish argues that the theory is self-contradictory because it starts with the fallibility premise that we cannot know when we have the truth which, if true, would make the search for truth futile.³² Professor Duval argues that the theory is inherently circular, since it posits that existing beliefs will tend to be more accurate than past beliefs, while the theory can be evaluated only by a present observer who presumably accepts the truth of present beliefs.³³

A more modest objection to the marketplace of ideas theory is that the market is insufficiently competitive. Professor Blasi points to the existence of monopolistic imperfections in the idea market such as the prevalence of one-newspaper towns.³⁴ Professor Ingber adds that because the dominant media systematically exclude new perspectives, new ideas do not receive a fair chance to compete against more established ideas for the public's adherence.³⁵ Although this Article devotes a few words to considering this objection, its principal emphasis is upon the more comprehensive objections to the speech/truth thesis.

Many of these commentators take refuge from the apparently pro-censorship implications of their positions by embracing the marketplace-of-ideas theory in a "negative" form. They posit that while free speech has nothing to do with truth, censorship nevertheless does lead to falsehood. Thus Professor Schauer argues that "[j]ust as we are properly skeptical about our own power always to distinguish truth from falsity, so should we be even more skeptical of the power of any governmental authority to do it for us."³⁶ Professor Blasi embraces the similar view that censorship makes the already difficult search for truth even more difficult.³⁷

This "negative" thesis is obviously tempting, but as Professors Alexander and Horton have shown, it cannot suffice without some reason to

³¹ Baker, *supra* note 20, at 975-78.

³² Redish, *supra* note 24, at 617.

³³ Duval, *supra* note 22, at 191 ("The difficulty is that any proof that existing beliefs are more accurate than past beliefs is inherently circular.").

³⁴ Blasi, *supra* note 4, at 549 ("[T]he market in ideas is probably best described as one of monopolistic competition or oligopoly.").

³⁵ Ingber, *supra* note 12, at 39 ("[M]edia managers are unlikely to disseminate frequently those ideas most challenging to the conventional wisdom and the established power structure.").

³⁶ F. SCHAUER, *supra* note 8, at 34.

³⁷ Blasi, *supra* note 4, at 550.

believe free speech is positively valuable.³⁸ If free speech leads us to ramble aimlessly through the winds of doctrine with no power to separate truth from falsity, it is not clear why one should believe censorship will have any effect on truth. Indeed, if the censor is a human being, presumably she will also be unable to distinguish truth from falsity, so that even if she is trying to keep the truth away from the public she simply will not know truth when she sees it.

Of course, one might embrace a modified form of Blasi's "checking value" and say that private utterances that have nothing to do with truth are at least a helpful countervailing power to governmental acts and utterances that also have nothing to do with truth.³⁹ This Article does not challenge the checking value of free speech, and, indeed, there is a great deal to be said for it. In the absence of some version of the marketplace of ideas thesis, however, that checking function must be divorced from a belief that censorship systematically will tend to lead society away from the truth.

This combination of arguments against the marketplace-of-ideas thesis — doubts about human rationality, suggestions that truth itself is not objective, the paradoxical nature of the theory linking speech and truth, and the monopolized character of the idea market — constitutes a formidable objection to any assertion that free speech leads closer to truth than censorship. If such a thesis once had the character of a dogma that could be assumed without argument, that state of affairs is now gone. A methodical restatement of the marketplace of ideas thesis clearly is in order.

II. CONCEPTUALIZING THE PROBLEM

The marketplace of ideas theory predicts two results: First, a society that permits free speech will find itself *nearer* to the truth than an

³⁸ Alexander & Horton, *supra* note 19, at 1345-46 ("In sum, whether or not it distrusts itself, the primary governmental decisionmaker cannot avoid assessing the importance of speech. . . . A negative, distrust-based theory such as Schauer's might stand by itself in a very narrow range of cases, such as those that involve suppression of direct criticisms of government policies and officials. It is clear, however, that we need a positive theory of speech — deontological or consequentialist — if we are to have a Free Speech Principle that is truly both significant and independent.").

³⁹ Blasi, *supra* note 4. It apparently would have to be a modified form of Blasi's argument, however. Blasi's examples of the checking function, such as exposures of governmental abuses of power in Vietnam and Watergate, are cases in which the uncovered conduct, however one may wish to characterize it, *did* occur. *See id.* at 527. If none of the Watergate or Vietnam allegations had been true, a subtler argument than Blasi's would be necessary to explain what value was served by such "checking."

otherwise similar society that proscribes free speech. Second, a society that permits free speech will exhibit more *progress* toward truth over time than an otherwise similar society that proscribes free speech. If one sets out to test these two predictions, however, certain stumbling blocks immediately become apparent. First, what is truth? One must inquire into the precise meaning of the concept of truth; without such a meaning it would be impossible to discuss the ideas of nearness to truth or progress toward truth. The second conceptual difficulty concerns the relationship between positive and normative analysis: should free speech lead to the Good as well as the positively true, and can the two in fact be separated? Third, one must consider the paradox of evaluating the truth of a theory that purports to test for precisely the variable of truth.

A. Definition of Truth

“Truth” is correspondence with the facts. As Aristotle described this correspondence theory, “to say of what is that it is not, or of what is not that it is, is false, while to say of what is that it is, and of what is not that it is not, is true.”⁴⁰ Rigorous modern statements of the correspondence theory of truth have been given by Professors Tarski,⁴¹ Popper,⁴² and Williams.⁴³

The correspondence theory of truth is sometimes said to have two major rivals — the coherence theory and the pragmatic theory of truth. The coherence theory asserts that truth consists of coherence among one’s judgments, or whether the individual judgments “hang together” in a system.⁴⁴ For example, the truth of a statement “the sum of the

⁴⁰ ARISTOTLE, *METAPHYSICS* 1011 (W. Ross ed. 1924).

⁴¹ A. TARSKI, *LOGIC, SEMANTICS, METAMATHEMATICS* 153 (1956).

⁴² K. POPPER, *OBJECTIVE KNOWLEDGE: AN EVOLUTIONARY APPROACH* 44-46, 310-18 (1972).

⁴³ C. WILLIAMS, *WHAT IS TRUTH?* 74-96 (1976).

⁴⁴ See, e.g., H. JOACHIM, *THE NATURE OF TRUTH* 64-121 (1906). Joachim criticizes the idea of “propositions” that can be regarded as true or false without regard to any concrete mind’s actual behavior. *Id.* at 31-63. From Joachim’s Hegelian perspective, the individual judgments of human minds, which minds at any one point in time are partial manifestations of the Ideal Mind, are instilled with whatever meaning they contain by an overall system of judgments (such as a scientific or mathematical system) that constitutes the “apperceptive character” of the mind. *Id.* at 93. For example, in any concrete human mind the judgment “Caesar crossed the Rubicon in 49 B.C.” is pregnant with historical meaning, and the *degree* of truth contained in the judgment therefore must depend upon the coherence of the entire meaning system. *Id.* at 107. Joachim ultimately finds even the coherence theory inadequate to account for the Truth (*i.e.*, the whole Truth), but he regards it as an improvement upon the correspondence

angles of every triangle equals two right angles" depends upon the coherence of the statement with an overall system of statements such as the system of Euclidean geometry.⁴⁵ According to the pragmatic theory, truth consists of the concrete experiences that are made different by some fact, so that true ideas consist of the useful changes in our mental states that the verification of some concrete reality generates.⁴⁶ The pragmatic theory thus insists that truth is not the mere copying of reality, but consists of the "cash value" to some human purpose or conception that bringing ourselves within the neighborhood of reality has for us.⁴⁷

Professor Schauer has attempted to avoid this definitional issue with the following argument:

I wish to disencumber the argument from truth of most of the epistemological baggage carried by the concept of truth. . . . The lack of certainty does not, as some have mistakenly argued, mean that no uncertain belief is preferable to any other. Even if we can never achieve 100 per cent certainty, we can still prefer 99 per cent assurance to 55 per cent assurance, which in turn is better than 6 per cent assurance. . . . It should now be clear that the notion of truth in the argument from truth is not dependent on any one theory of truth, and can be said to cut across any plausible theory of truth. Under any theory of truth some propositions are true and others false, or at least some propositions are more likely true than others. As long as this is the case, then we have something to aim for, regardless of whether the standard for determining truth is correspondence, coher-

theory which postulates that individual propositions such as "Caesar crossed the Rubicon in 49 B.C." can be wholly true without regard to an overall meaning system. *Id.* at 178-79.

⁴⁵ *Id.* at 98. For an excellent critical discussion of the coherence theory, see White, *The Coherence Theory of Truth*, 2 ENCY. PHIL. 130 (1967). White persuasively argues that coherence among judgments cannot be the criterion of truth regarding things in the world. White agrees that the *criterion* of the truth of *a priori* statements such as those of Euclidean geometry is indeed the coherence of individual statements into a system; however, even in the case of *a priori* statements, the *meaning* of truth remains correspondence with the facts, in this case *a priori* facts. For example, the statement "the sum of the angles of every triangle equals two right angles" may be true only within a system of Euclidean geometry; however, the truth of the statement still consists of a correspondence between the statement and the *fact* that, within Euclidean geometry, the two sums *are* equal.

⁴⁶ See W. JAMES, *THE MEANING OF TRUTH* 235 (1906) ("The relation to its object that makes an idea true in any given instance, is, we [pragmatists] say, embodied in intermediate details of reality which lead towards the object, which vary in every instance, and which in every instance can be concretely traced. The chain of workings which an opinion sets up is the opinion's truth, falsehood, or irrelevancy, as the case may be.") (emphasis in original).

⁴⁷ *Id.* at v-vi, 78-79.

ence, pragmatism, or whatever.⁴⁸

Professor Schauer is surely correct in his response to the radical skeptic who insists that nothing, or almost nothing, can ever actually be known. The problem with Schauer's analysis is that it wrongly equates the meaning of truth issue with the epistemological question of how certain we can be that our judgments are true.⁴⁹ Correspondence with the facts consists of a relationship between a proposition and reality that is independent of anyone's knowing that relationship to exist in a given case. It is thus fully possible for the astrologer's wild guess to be true and the scientist's carefully constructed theory to be false.⁵⁰

The coherence and pragmatic theories of truth may contribute important epistemological insights that bear upon the question of whether free speech can ever lead us to propositions that correspond with the facts. For example, our senses never observe reality "naked" but always classify and screen it in particular ways,⁵¹ thus presenting a "theory" of reality that we may choose to reject because it fails to cohere with our other theories.⁵² Moreover, it may be impossible or undesirable to strive to copy any reality in all its complexity, and we may prefer for many practical goals a dogmatic theoretical stance that deliberately excludes certain facets of reality in order to sharpen our focus upon other fac-

⁴⁸ F. SCHAUER, *supra* note 8, at 17-18.

⁴⁹ See K. POPPER, *CONJECTURES AND REFUTATIONS* 224-25 (2d ed. 1965) ("[T]he three rivals of the correspondence theory of truth — the coherence theory which mistakes consistency for truth, the evidence theory which mistakes 'known to be true' for 'true,' and the pragmatic or instrumentalist theory which mistakes usefulness for truth — these are all subjective (or 'epistemic') theories of truth, in contradistinction to Tarski's objective (or 'metalogical') theory.").

⁵⁰ See *id.* at 225 ("The objective theory of truth . . . allows us to make assertions such as the following: A theory may be true even though nobody believes it, and even though we have no reason for accepting it, or for believing that it is true; and another theory may be false, although we have comparatively good reasons for accepting it.").

In this regard it is amusing to compare Professor Ingber's statement that "almost no one believes in objective truth today" see *supra* text accompanying note 29, with Karl Popper's position that "thanks to Tarski's work the idea of the objective or absolute truth — that is truth as correspondence with the facts — appears to be accepted today with confidence by all who understand it." K. POPPER, *supra* note 49, at 224.

⁵¹ See F. HAYEK, *THE SENSORY ORDER* (1952).

⁵² Despite his emphasis upon the refutation of theories by observations, Karl Popper himself has stressed this point. "There is no pure appearance or pure observation: what Berkeley had in mind when he spoke of these things was always the result of interpretation, and it had therefore a theoretical or hypothetical admixture. New theories, moreover, may lead to re-interpretation of old appearances, and in this way change the world of appearances." K. POPPER, *supra* note 49, at 174.

ets.⁵³ The correspondence theory of truth simply does not compete with these theories at the epistemological level; it makes no claim that individuals can obtain infallible direct access to “the facts”. The correspondence theory is a theory of truth’s meaning; it tells us what it would be like for a proposition to be true and leaves entirely open the question of how certain one can be that a given proposition is in fact true.

In Schauer’s terminology, an individual who seeks the truth may be inherently unable to transcend the “99 per cent assurance” that comes from the coherence of diverse sensory stimuli and mental categories, but it is still a “99 per cent assurance” of some relationship that the individual mentally posits to exist independently of her subjective belief in the proposition. No doubt it is frustrating to realize that the hypothesis of objective correspondence may remain underjustified, given the fallible character of a mental apparatus that has grown through biological and social evolution.⁵⁴ But even to speak of “fallibility” is to employ the language of correspondence, and the seeker of truth may benefit by understanding, perhaps through a study of those evolutionary processes, the circumstances under which our mental apparatus is likely to be particularly trustworthy.⁵⁵ Of course, because that study must also employ our fallible mental tool kit, doubts about ultimate correspondence cannot disappear completely.

The problem arises when the pragmatic and coherence theories are employed not for their epistemological insights, but as competing definitions or meanings of what truth *is*. A culture that strives to discover truth-as-correspondence may regard propositions that appear to contradict all the evidence of our senses as useless or incoherent, but a culture that loses the ideal of correspondence altogether may not. Some internally coherent or pragmatic belief systems may be as close to the things-in-themselves as human minds can get, and it is important that

⁵³ Indeed, there may be no other way to learn anything than by assuming the truth of certain theories for purposes of the inquiry — theories that one may know contain a large number of anomalies and are probably not true. As Don Lavoie has stressed, “we see the world from within our theories and hence we can *either* study a theory itself, for which we have to rely on some other meta-theory, *or* we can trust it and put it to use studying the world. We cannot do both at the same time.” D. LAVOIE, NATIONAL ECONOMIC PLANNING: WHAT IS LEFT? 261 (1985) (emphasis in original).

⁵⁴ See P. SKAGESTAD, *Hypothetical Realism*, in SCIENTIFIC INQUIRY AND THE SOCIAL SCIENCES 77, 82 (1981) (“The hypothesis of correspondence, if true, is always underdetermined by the evidence of coherence; but *all* hypotheses are similarly underdetermined by the available evidence for them.”) (emphasis in original).

⁵⁵ See D. CAMPBELL, DESCRIPTIVE EPISTEMOLOGY: PSYCHOLOGICAL, SOCIOLOGICAL AND EVOLUTIONARY 20 (William James Lectures, Harvard University) (1977).

in opposing these theories of truth one does not relapse into a naive epistemological position.⁵⁶ Nevertheless, the theories must be opposed, since other belief systems that are just as coherent internally and that people who no longer cared about correspondence might consider pragmatic easily could lose all contact with reality. And even if this were not so — if visions out of touch with reality could not possibly be considered coherent or useful — the “truth” of the visions nevertheless would inhere in the resulting closeness with reality rather than the coincidental feature that the vision was also internally coherent or useful.

Surely the ordinary meaning of the word “truth” is such that the statement “releasing these bombs would destroy all life on earth” is true if in fact releasing the bombs would have that effect.⁵⁷ The risk of allowing the coherence theory or pragmatic theory to appropriate this word from its ordinary use is that it may leave no powerful word to stand for the idea of correspondence with the facts. This would be extremely unfortunate, since it is clear that many internally coherent visions and many illusions that particular people have found useful to their goals have proven tragically wrong when confronted with reality.⁵⁸ Using the word “true” to mean correspondence with the facts

⁵⁶ See *id.* Campbell indicates his willingness “to accept the correspondence meaning of truth and goal of science, and to acknowledge coherence as the major but still fallible symptom of truth.”

⁵⁷ Of course, one may have doubts about the meaning of the words “releasing,” “bomb,” or “earth,” and the language system as a whole may need to be consulted to determine what proposition a given sentence is asserting. But no amount of spinning around the circular system of a dictionary, even an ideally coherent dictionary, can tell us whether the statement is true. Nor is it helpful to say that all human words classify and distort reality, so that the word “bomb” probably stands for human perceptions of many different physical things that other people may believe have little if anything in common other than a common word. The relationship between human language and meaning is a fascinating and important one, but it is simply no substitute for a correspondence inquiry — a bomb’s proclivity to destroy all life on earth (or lack of such proclivity) will not await our subtle reasoning about the meaning of the words “bomb” and “earth.”

⁵⁸ Thomas Sowell’s work on the Marxist and Civil Rights Visions is particularly instructive in this regard. See T. SOWELL, *CIVIL RIGHTS: RHETORIC OR REALITY?* 139-40 (1984) [hereafter *CIVIL RIGHTS*].

Intellectual and institutional inertia persists in calling racial and ethnic political issues “civil rights” issues and often designing strategy, policies, and rhetoric as if they were. . . . But the mindset and agenda of the past are no longer working. . . . No individual (or group) is going to capture all of reality in his vision. If the only reaction to other visions — or uncomfortable evidence — is blind mudslinging, then the limitations that are common to all human beings become, for them, ideological prisons.

conveniently enables statements that holistic visions and useful myths may be internally coherent and even beautiful but also *untrue*.⁵⁹

There is an additional reason, in the context of this Article's subject matter, to insist upon a correspondence theory of truth. As noted above, Professor Schauer argues that the case for free speech and the marketplace of ideas is unaffected by one's definition of truth.⁶⁰ But this is not at all clear. If truth *means* coherence, a comprehensive program of thought control by a closed totalitarian society along the lines of that described in *Nineteen Eighty-Four*⁶¹ might be the most efficient means of promoting truth. Such an apparatus of state machinery might be able to instill in the citizenry an elaborate set of theories that effectively "explains away" any inconvenient facts. If so, a government with total control over all minds might succeed in generating a picture of the world that each person could embrace readily as bringing her individual subjective judgments, and those of all her peers, into a comforting state of internal coherence. Similarly, the pragmatic theory of truth leaves open the possibility that a sufficiently powerful state might be able to structure our feelings and incentives in such a way that seeing the official vision became the only way of viewing the world that seemed to have any "cash value" for us.

In short, this Article argues that a linkage exists between free speech and truth defined as correspondence with the facts. It makes no contention that free speech leads to truth defined as coherence or pragmatism.

B. A Partial Exclusion of Normative Analysis

One of the curious assumptions that has often been made in the analysis of the "marketplace of ideas" is that free speech must lead either to both the true and the Good, or to neither of these.⁶² John Stuart Mill,

See also T. SOWELL, *MARXISM* 218 (1985) ("The Marxian vision took the overwhelming complexity of the real world and made the parts fall into place, in a way that was intellectually exhilarating and conferred such sense of moral superiority that opponents could be simply labelled and dismissed as moral lepers or blind reactionaries.") [hereafter *MARXISM*].

⁵⁹ Although the contrary position has been maintained (*see* H. JOACHIM, *supra* note 44, at 169), there is no reason to imagine that only one coherent system of beliefs exists. *See* White, *supra* note 45, at 131.

⁶⁰ *See supra* note 48 and accompanying text.

⁶¹ G. ORWELL, *NINETEEN EIGHTY-FOUR* (1949). Individuals in Orwell's conception could learn to regard statements such as "we have always been at war with Eastasia" as true without regard to their correspondence with any fact in the world.

⁶² *See, e.g.*, F. SCHAUER, *supra* note 8, at 19 ("The argument from truth can thus sensibly be interpreted to make analogous claims about moral or other prescriptive

in his essay *On Liberty*, for example, often used examples of suppression of *ethical* doctrines as inhibiting the pursuit of "truth."⁶³

This tendency to equate the two problems of the true and the Good is problematic. One might imagine, for example, that discussion could lead both the bourgeois and proletarian classes to embrace the general theory of relativity and that such a theory is in fact a close approximation to the truth. Would it follow from this that the same two classes could, after free discussion, agree on a theory of distributive justice, or that if such a compact were possible, the agreement reached would in fact be the Good?

Professors Jurgen Habermas⁶⁴ and Roberto Unger⁶⁵ appear to argue that free speech will lead to the Good if society removes the hierarchies that hinder the achievement of such a consensus.⁶⁶ Without such hierarchies, claims of the Good could be intersubjectively validated through communication, and in fact such communal unity would afford people an opportunity to encounter the Hegelian spirit of the age as it par-

statements as it does about factual statements."). This Article does not argue that free speech will *not* lead to the Good, or even that the speech/Good linkage *must* be established in a manner different from the speech/truth linkage. Rather, this Article simply leaves those questions open.

⁶³ See J. MILL, *supra* note 11.

⁶⁴ Habermas seeks to develop a "science" of "universal pragmatics" that will reconstruct "the universal validity basis of speech." J. HABERMAS, COMMUNICATION AND THE EVOLUTION OF SOCIETY 5 (1979). According to Habermas, certain norms can be scientifically established to be illegitimate once the narrow conception of science as concerned only with means/end purposive/rational factual linkages is abandoned. Norms that are recognized in fact may only "express generalizable or compromisable interests" in which case their validity can be accepted "only so long as those affected can be prevented by inconspicuous restrictions on communication from discursively examining the normative validity claim." *Id.* at 119. Even if the employer and the worker presently agree on values, for example, that agreement may be a product of the worker's unconscious reaction to the restricted social space which she is given to express, accept, and reject views. Agreements on values can thus become more valid by making the speech situation more ideal, especially by removing obstacles to the free and equal status of communicators.

⁶⁵ See R. UNGER, KNOWLEDGE AND POLITICS (1975). For Unger, the Good consists of compliance with the nature of human beings as a species. Moreover, "both human nature and our understanding of it can progress through a spiral of increasing community and diminishing domination." *Id.* at 239.

⁶⁶ See J. HABERMAS, KNOWLEDGE AND HUMAN INTERESTS 314 (2d ed. 1978) ("However, only in an emancipated society, whose members' autonomy and responsibility had been realized, would communication have developed into the non-authoritarian and universally practiced dialogue from which both our model of reciprocally constituted ego identity and our idea of true consensus are always implicitly derived.").

tially manifests itself in each communicative experience.⁶⁷

It should go without saying that this interesting vision provides far too speculative a basis for embarking upon a policy of deconstructing Western civilization. To begin with, economic theory suggests that many "hierarchies" such as differential rewards⁶⁸ and organized firms⁶⁹ perform a vital function in maintaining the economic position of the populace. The economic chaos that would follow any radical attempt substantially to destroy such "hierarchies" would be both cruel in itself and likely to inspire a demand for much more severe hierarchies to restore prosperity.⁷⁰ Moreover, it must remain doubtful whether free speech would lead to agreement about the Good even in some mythical "hierarchy-free" society, especially in light of experience with the substantial value disagreements among members of the same college faculty or social class.⁷¹

There is still another reason why the claim that free speech leads to the Good should be divorced from the argument from truth. The argu-

⁶⁷ See R. UNGER, *supra* note 65, at 230 ("The different modes of being of the self are represented in the historical types of social order and social consciousness. Moreover, the ability of the self to achieve the ideal inherent in its being depends on the capacity of particular societies and of the species as a whole to satisfy the political requirements of the ideal. . . . [Human beings] long for that ideal mode of being whose lack makes them restless and distraught.").

⁶⁸ The tragedy of the Left is its blindness to the fact that most human life and well-being owes its continued existence to a market pricing system that conveys information and creates incentives to act on that information. Hierarchy is not desirable in itself; it is merely the necessary consequence of any pricing system that performs its informational and incentive functions. See M. FRIEDMAN, *FREE TO CHOOSE* 1-13 (1980); D. LAVOIE, *RIVALRY AND CENTRAL PLANNING* (1985).

⁶⁹ See Coase, *The Nature of the Firm*, 4 *ECONOMICA* 386-407 (1937).

⁷⁰ MARXISM, *supra* note 58, at 220:

The disjuncture between vision and experience was nowhere better illustrated than in the traumatic post-revolutionary experience of Lenin, as he applied the Marxist vision and watched a whole nation sink into economic chaos and starvation by the millions. The Leninist-Stalinist modifications — or 'betrayals' — of Marxism have mitigated the severity of the Soviet Union's economic problems, but at the cost of turning a humanitarian creed into a ruthless mode of power accumulation.

See also W. MORRIS, JR., *THE WEIMAR REPUBLIC AND NAZI GERMANY* 155 (1982) ("As Germany sank deeper into depression, many turned to extremist movements that promised to end the crisis by radical action. One such group was Hitler's National Socialist party.").

⁷¹ Indeed, it is likely that attempts to impose a thicker consensus upon society about matters of social or distributive justice would generate such intense hostilities that they would destroy any value consensus that might exist on thinner values of civility. See F. HAYEK, *THE ROAD TO SERFDOM* 134-52 (1944).

ment from truth lacks many of the concerns of pluralism and liberty of conscience that theories of the Good may consider important. The conception of the marketplace of ideas has great respect for permitting differences of opinion about matters of truth but only as a *means* of seeking to discover an objectively true opinion that corresponds to the facts.⁷²

This Article is hardly the place to decide whether the Good is also something unitary and objective that all people should aspire to find.⁷³ If pluralism of values and tastes as well as liberty of conscience are important as *ends*, however, it is probably undesirable to encumber the case for free speech on matters of value with contentions derived from the argument from truth. The paradox of the argument from truth is that a regime of tolerance is established in the hope that an ethic of *intolerance* toward factual error will evolve spontaneously.⁷⁴ In the case of ethical doctrines, one should not foreclose the possibility that the case for free speech can be made more directly, that is, that the Good is not objective or that the objective Good includes the tolerance of diverse and freely chosen values.

In at least two respects, however, it is not possible to divorce ethical concerns from a consideration of the linkage between free speech and truth. Speaking is a form of human action, and all human action is motivated by some consideration of value.⁷⁵ Unless one is conscious of the values speakers and listeners are seeking to achieve, it will be impossible to determine as a factual matter whether their actions will tend to lead them toward or further away from the truth. In particular, it cannot simply be assumed that speakers are *motivated* by a desire to find and convey the objective truth, since numerous other values and interests may be involved in any speech act.

Second, ethical considerations are inevitably involved in the question of *which* truths are worth discovering.⁷⁶ The case for free speech would

⁷² See M. ADLER, *SIX GREAT IDEAS* 58-59 (1981).

⁷³ On the question of the "truth" of values, see T. PERRY, *MORAL REASONING AND TRUTH* (1976).

⁷⁴ See D. LAVOIE, *supra* note 53, at 264 n.2 ("Thus it must be seen as an *essential* function of the scientific community to apply a kind of internal censorship over its own institutions.") (emphasis in original).

⁷⁵ See L. VON MISES, *HUMAN ACTION* 13-15 (3d ed. 1966).

⁷⁶ See R. FRIEDRICHS, *A SOCIOLOGY OF SOCIOLOGY* 138-39 (1970). As Polanyi has noted, "if we decided to examine the universe objectively in the sense of paying equal attention to portions of equal mass, this would result in a lifelong preoccupation with interstellar dust, relieved only at brief intervals by a survey of incandescent masses of hydrogen — not in a thousand million lifetimes would the turn come to give man even

be very weak if it were based solely upon the fact that speech leads to correct answers to irrelevant questions such as the number of grains of sand on the beach. Setting aside such strained examples, however, it is dangerous to denigrate true statements on the ground that they fail to convey the whole Truth.⁷⁷ The Soviet censorship regime, for example, has been grounded largely upon the conception of a more complete Truth that transcends the minor truths that speakers have sought to convey.⁷⁸

a second's notice. . . . Our vision of reality . . . must suggest to us the kind of questions that it should be reasonable and interesting to explore." M. POLANYI, *PERSONAL KNOWLEDGE: TOWARD A POST-CRITICAL PHILOSOPHY* 3, 134 (1958).

⁷⁷ The coherence theory of truth would suggest that individual statements cannot be "wholly true" without considering their significance as a part of the larger picture. As Professor White has persuasively shown, this view derives its plausibility from an ambiguity in the phrase "wholly true"; *i.e.*, a wholly true statement as one that contains no falsity or a statement that excludes other true statements. *See White, supra* note 45. Professors Alexander and Horton discuss this problem, stating: "There is no *single thing* called 'Truth' that we can approach obtaining, either absolutely or in varying degrees. To ask whether a regulation promotes or impedes Truth is to ask a question that is essentially meaningless, like asking how many individual things there are in the universe. . . . Instead of posing the question in a way that invokes Truth, we may pose a specific truthseeking question: whether a regulation promotes or impedes a specific truth." Alexander & Horton, *supra* note 19, at 1349 (emphasis in original).

⁷⁸ See, for example, this account by the Soviet dissident Roy Medvedev:

Everyone, of course, pays lip service to the need for truth in describing reality. . . . [T]hen why has preliminary censorship grown so much stricter in recent years? Well, reply some of the critics, reviewers, and censors, we need the truth. But what is truth and *what kind* of truth do we need? Sometimes much of a writer's work is true, but it is not that "larger truth" of our life and our history which is needed by the Soviet people. It appears that truth has two dimensions: there is the "smaller truth" and the "larger truth," "truth of the isolated fact" and "truth of the age as a whole," "truth of the individual event" and "truth of the overall phenomenon," truth that is only "apparent" and truth that is "real," etc. Furthermore, it turns out that it is not the readers who are qualified to distinguish between the two types of the truth (one "necessary," the other not), but only the censor or officials in the ideological *apparat* of the Central Committee.

Reality is of course infinitely complex and can be seen from many different angles. But, ironically, theories about the duality of truth are at present used primarily as a means to justify banishing any faithful picture of life from our literature, cinema, and theater, in order to defend a one-sided and essentially false depiction of reality. . . . What is really meant by larger "truth" or "truth of the age as a whole?" More often than not it is a synonym for the happy life, for the general prosperity desired by all, while "lesser truth" means the depiction of any shortcomings, difficulties, or hardships. . . . The important thing for dogmatic critics is that by

In any event, the problem of discovering insignificant truths that fail to display the whole Truth is not the central concern of the recent commentary challenging the marketplace of ideas concept. Indeed, the idea that one person such as a censor could have a privileged insight into the whole Truth so infallible that she could know when even *true* statements conflicted with it is simply preposterous. We may or may not be able to discover the whole Truth, but we obviously have no hope of discovering it unless we get true answers to discrete questions such as how many people died in Stalin's concentration camps and why. *If* free speech can lead to truth about the many important questions that speakers and writers have asked over the years, those answers will do more toward building an accurate picture of the whole Truth than any vision of Truth that hides from truths.

C. *Testing the Speech/Truth Hypothesis*

It was argued above that the speech/truth hypothesis suggests two subordinate hypotheses,⁷⁹ both of which can be restated in the negative form of conditions that would tend to *falsify* them and hence the speech/truth hypothesis. Thus, the free speech/truth hypothesis may be considered falsified if (1) societies that prohibit free speech are as close to the truth as otherwise similar societies that permit it or (2) societies that prohibit free speech exhibit at least as much tendency to progress toward truth over time as otherwise similar societies that permit free speech.

Professor Duval has offered the following challenge to any endeavor to link free speech and truth:

[I]t seems questionable that a determination that free discussion will lead to greater knowledge is theoretically possible. To determine the relative degree of error at different points in time requires a knowledge of what is true, or at least knowledge that current beliefs are more accurate than those held during the period under evaluation. Yet this flies in the face of the fundamental premise of the market place theory itself — that experience has taught that no matter how firmly any proposition is believed to

thus dividing truth into "larger" and "smaller," they are able to subsume under the second category events and aspects of our life which are in fact of enormous importance. In recent years, for instance, many of the crimes and outrages of the Stalin period have all too frequently been written off as "lesser truth." How can anyone possibly argue that show trials and terror, torture and concentration camps had less impact on the life of our country than all the achievements in industry and education?

R. MEDVEDEV, ON SOCIALIST DEMOCRACY 195-96 (1975).

⁷⁹ See *supra* the introductory paragraph to section II of the text.

be true, there is a substantial possibility that it is untrue. This is not to suggest that there is no evidence in support of existing beliefs, but only that more convincing evidence to the contrary may subsequently develop. The difficulty is that any proof that existing beliefs are more accurate than past beliefs is inherently circular. The determination that existing beliefs are more accurate supposes that the observer can compare both the past and present belief with "the facts" — i.e., is omniscient — or, if not this, at least that he has available some better standard than the beliefs which represent the consensus of the society of which he is a member. Yet the beliefs of any individual or group in society are largely the product of that society and are neither a more independent nor a better standard for judging the correctness of the beliefs of that society than those beliefs which represent the consensus. Consequently, not progress toward truth but only progress toward the beliefs of the observer can be measured.⁸⁰

Duval continues the argument by noting that it is just as impossible to compare two societies' relative success in discovering the truth at any point in time as it is to compare the progress of a given society over time:

The comparison [of two societies] can afford some basis for the belief that free expression is or is not more efficacious in leading to the discovery of truth only if both societies agree on the accuracy of the predictions and on the relative importance of the errors. If the societies disagree on the extent to which their respective theories have been confirmed, there is no independent superior standard to resolve the disagreement. Thus, while it may be an overstatement to assert that there is nothing which could, even in theory, count as evidence for (or against) the view that free expression is the best test of truth, the likelihood of any probative evidence being adduced is, to say the least, remote.⁸¹

Duval's skeptical challenge suggests an important feature that a free speech/truth theory must exhibit, which might be called (although not without risk of misunderstanding) an elitist characteristic.⁸² The "consensus" view in a given society, measured by public opinion polls or the like, might be that astrology is as valid a discipline as astronomy,⁸³ or

⁸⁰ Duval, *supra* note 22, at 191-92.

⁸¹ *Id.* at 193.

⁸² See F. HAYEK, *THE CONSTITUTION OF LIBERTY* 402-03 (1960) ("Though [the classical liberal] is fully aware of the important role that cultural and intellectual elites have played in the evolution of civilization, he also believes that these elites have to prove themselves by their capacity to maintain their position under the same rules that apply to others.").

⁸³ The pages of *The Skeptical Inquirer* present a fascinating study into the widespread beliefs among the people, reinforced by the media, in paranormal phenomena, and the lack of scientifically acceptable evidence for such beliefs. Such widespread acceptance of the paranormal might be regarded as strong evidence against the thesis that free speech leads to the truth. However, as noted later, the case for the speech/truth

that macroeconomics is as valid a discipline as microeconomics.⁸⁴ It should not be inferred from this "consensus," however, that it is *impossible* to study the arguments offered in the field and the evidence given in support of those arguments and conclude that in some fields the "consensus" view is probably close to the truth while in other fields it is seriously false or so poorly supported that its truth would be a matter of sheer coincidence.

The "elitism" that must be assumed in any statement of the free speech/truth hypothesis is, nevertheless, of a peculiar kind. The thesis offered here is emphatically *not* that whenever the views of a class of people with the officially defined credentials of "experts" differ from the views of the masses, the "experts" are probably right and the "masses" probably wrong.⁸⁵ If this were the thesis, there might be a case for free speech only for those officially designated experts; indeed, Professor Schauer comes fairly close to embracing such a view of the free speech/truth issue.⁸⁶

Instead, the thesis is as follows: It is possible to view critically not only the past but also the present climate of opinion, and to conclude that some segments of that opinion are the product of "elite" disciplines or cultures while others are not. "Elite" disciplines are not necessarily fields that have discovered the truth; rather, they are cultures in which one can assert that a tendency exists for opinion within the culture to progress toward truth over time.⁸⁷

Furthermore, this Article contends that one may define the "elite" cultures or disciplines in a manner that is independent of the extent of free speech in a society. In other words, the standards that give one confidence that the changes occurring over time in some disciplines constitute progress toward truth are standards other than the simple ac-

linkage does *not* depend upon all truth's being simultaneously accepted by the same minds. *See infra* notes 84-86 and accompanying text.

⁸⁴ *See* D. LAVOIE, *supra* note 53, at 104 ("Armed only with these aggregative [macroeconomic] models of the economy, it is hardly surprising that government policy has been completely impotent in the face of the severe and worsening problems of the contemporary world.").

⁸⁵ *See infra* notes 239-41 and accompanying text.

⁸⁶ F. SCHAUER, *supra* note 8, at 26 ("In systems of scientific and academic discourse, the argument from truth has substantial validity. Those who occupy positions in these fields may not always think rationally, but we are at least willing to say they should, and are inclined to try to replace those who do not think rationally with those who will. It is one thing to say that truth is likely to prevail in a select group of individuals trained to think rationally and chosen for that ability. It is quite another to say that the same process works for the public at large.").

⁸⁷ *See infra* notes 183-238 and accompanying text.

ceptance of the newer ideas after free discussion. For that reason, it is possible to make non-circular factual judgments about the effects that adding free speech to or subtracting free speech from an elite discipline would have upon that discipline's rate of progress toward discovering the truth.⁸⁸

In short, this Article contends that elite disciplines do progress toward truth, and that *in such disciplines* free speech tends to accelerate that progress. Furthermore, it is contended that such truths, once discovered, will in a free speech society tend over the long run to spread beyond the narrow group of people who formed the culture that was responsible for their discovery.⁸⁹ No professional group is assumed to have privileged access to all truths; rather, every individual in society is a member of an "elite" culture regarding at least some factual judgments. Indeed, free speech will *not* lead to all truths' being known by any one person or class, but to their being diffused over a population of individuals and groups who constitute "elites" on innumerable particular issues of fact.

In a society like ours that respects democratic values, any elitist arguments are justifiably regarded with suspicion. Indeed, such arguments may seem particularly perverse in the speech area, since free speech is often defended as enabling the masses to govern themselves rather than be led by the nose by some self-appointed elite.⁹⁰ Nevertheless, one who rejects elitism in this context confronts Duval's argument that one cannot aspire to know the truth of the opinion accepted in a given society or pass judgment upon the relative truth of the opinion in open and closed societies.⁹¹ Before accepting such a defeatist suggestion, it is again helpful to consider at some length the views of the Soviet dissident Roy Medvedev:

[Soviet] people are ill-informed on the simplest level about things going on in their own country and are even more ignorant about events in the world at large. The overwhelming majority of Soviet citizens have no available means of finding things out; besides being a source of irritation and discontent, this also results in an extremely distorted view of the world. Such staggering ignorance is typical not only of "ordinary" Soviet citizens but also of most persons engaged in science or the arts and has a highly adverse effect on their work.

Our newspapers and journals provide a pale reflection, a tendentious glimpse, of world events, neglecting all the shades and hues, the extraordi-

⁸⁸ See *infra* notes 205-16, 231-38 and accompanying text.

⁸⁹ See *infra* notes 242-50 and accompanying text.

⁹⁰ See A. MEIKLEJOHN, *supra* note 3.

⁹¹ See *supra* note 81 and accompanying text.

nary complexity of what is going on. We are informed almost immediately about drought in Australia or Brazil but very rarely about drought or harvest failure at home even long after the fact. We know the amount of wheat purchased abroad by India or Pakistan but have no idea how much wheat and other agricultural products the Soviet Union buys from almost all the countries of the globe. We are told how many billions of dollars the United States spends on military aid to Israel, but the figures for Soviet expenditure on military and economic aid to Egypt or other foreign states are not revealed. . . .

We are told about the growth of crime in the United States and how many murders and robberies take place annually in Washington and New York. But crime statistics for the USSR continue to be kept secret, and we do not even know how many serious offenses are committed each year in Moscow or Leningrad. We hear soon enough about mine disasters in Japan but were given no details about the catastrophe at the Minsk radio factory. . . . There are reports of strikes in Italy, but nothing about the serious labor unrest in certain large cities and industrial centers at home. What were the workers' grievances and were their demands met? We do not know. We read about the attitude toward the American army in Okinawa but are not told how ordinary Czechs feel about the Soviet troops stationed in their country.

We are regularly informed about the rise in prices and inflation in Belgium and England, but are not given the relevant statistics on price increases in the USSR or the rising cost of living during the last five or ten years. They tell us about the destruction of surplus fruit and vegetables in Italy and France but not about the way fruit and vegetables rot in the USSR because of inefficient transport.

Any citizen of a capitalist country has full access to an enormous amount of statistical data of a kind kept secret in the Soviet Union — information mainly related to shortcomings, problems, and mistakes. But concealment makes it impossible to mobilize the help of millions of people to overcome our failings.⁹³

Is it really sensible to adopt such an extreme relativistic view of "truth" or of our ability as individuals to ascertain "truth" that inter-societal truth comparisons such as Medvedev's must be rejected before they begin? It is quite clear that the data available in the United States are far from signifying "the truth" about such facts as crime rates, arms sales, price increases, strikes, mine disasters, agricultural surpluses, army morale, and famines.⁹³ Moreover, the most important

⁹³ R. MEDVEDEV, *supra* note 78, at 202-03. It would be easy to consider Medvedev's argument within the context of a negative distrust-of-government theory rather than a positive argument for speech. However, if the information available in the West bore no relationship to the truth, it is not clear what public interest would be served by a recitation of mythical "problems" that constitute mere words with no referent in reality.

⁹³ On the manipulation of governmental statistics to further the mission orientation

truth is probably not the accurate recitation of problems, but the accurate diagnosis of their causes and cures.⁹⁴ This Article argues that it nevertheless is legitimate to assume an "elite" stance that is critical of the received opinion in both the United States and the Soviet Union, and to conclude that the informational diet being fed the Soviet citizens leaves them much farther from the truth than the admittedly imperfect information circulating in the United States. Furthermore, the fact that most people in the Soviet Union, or at least in its Communist Party, might disagree with this assessment is irrelevant, since the grounds for the "elite" assessment are independent of the extent to which particular ideas have obtained widespread acceptance.

III. THE MARKETPLACE OF IDEAS: AN ECONOMIC ANALYSIS

A. *The Market for Goods and the Market for Ideas*

The concept of a "marketplace of ideas" suggests the possibility of drawing parallels between the effects of "free trade in ideas"⁹⁵ and the effects of an open marketplace for goods and services. Indeed, much of the commentary on the free speech/truth linkage has concerned the possible similarities between the problems in these two marketplaces.⁹⁶

Commentators have often attempted to make use of an apparent incongruity in the "liberal" view about these markets — namely, that the uncensored free market in speech leads to the truth while the marketplace of goods is defective and needs government regulation. Chicago school economists Aaron Director⁹⁷ and Ronald Coase⁹⁸ have argued for the free market in goods on the ground that "liberals" cannot make a valid distinction between the open market of ideas they treasure and

of agencies, see Chemerinsky, Loewinsohn & Zarefsky, *Government Statistics: The Case for Independent Regulation*, 59 TEX. L. REV. 1223 (1981).

⁹⁴ On the other hand, as Medvedev notes, it is hard to think about causes and cures of problems one is never told about in the first place. See *supra* note 92 and accompanying text.

⁹⁵ On the analogy between free trade in ideas and in goods, see Wonnell, *Economic Due Process and the Preservation of Competition*, 11 HASTINGS CON. L.Q. 91, 120-23 (1983).

⁹⁶ See, e.g., Ingber, *supra* note 12, at 16 ("Although laissez-faire economic theory has diminished in stature, it is curious that those who applaud its demise seem committed to retaining the symbols of a laissez-faire communicative market.").

⁹⁷ See Director, *The Parity of the Economic Market Place*, 7 J.L. & ECON. 1 (1964).

⁹⁸ See Coase, *The Market for Goods and the Market for Ideas*, 64 AM. ECON. REV. 384 (1974).

the open market of goods they dislike.⁹⁹ More recently, legal commentary on the left from Professors Baker¹⁰⁰ and Ingber¹⁰¹ has also attempted to exploit the incongruity in "liberal" beliefs, arguing that since the market obviously does not work well in the goods area there is no reason to believe free trade in ideas will lead to truth.¹⁰²

This Article begins with yet a third perspective on the relationship between these two marketplaces. Microeconomic theory and the empirical research undertaken in evaluating that theory have strongly supported the view that competition in the goods area really does tend to produce the "better mousetrap."¹⁰³ Of course, many disputes still remain about whether various forms of government regulation might improve upon the results of the competitive market, but few economists today believe that we could have more, better, and cheaper goods by superseding free competition entirely and centrally planning most or all production.¹⁰⁴ The important question of whether more consumer goods would contribute to the ultimate Good, like the equally important question of the relationship between truth and that ultimate Good, must remain outside the scope of this Article's positive analysis.

The question posed here is therefore whether free competition, which *does* tend to lead to the production of better mousetraps, will also tend to lead to the production of truer ideas. Ironically, while the "marketplace of ideas" thesis was becoming a stale dogma by virtue of being

⁹⁹ See *id.* at 389 (consumer ignorance is as great in the idea market as in the goods market).

¹⁰⁰ Baker, *supra* note 20, at 964-68.

¹⁰¹ Ingber, *supra* note 12, at 16-17.

¹⁰² See, e.g., Baker, *supra* note 20, at 965 n.5 ("Most advocates of the market failure model of the first amendment would probably also advocate considerable government regulation of the economy. . . . In contrast, 'conservatives' advocating decreases in government regulation recommend that the 'liberals' should have the same faith in economic markets as they do in the unregulated market place of ideas.").

¹⁰³ This may in fact be an overstatement, since a centrally planned society that was determined to prove it could produce a better mousetrap might outperform a system in which mousetrap manufacturers must compete for resources with others. Similarly, a centrally planned society might discover some truth — such as the best possible chess opening — by devoting enormous amounts of resources to it. On the importance of competition for producing desirable goods over the whole spectrum, see Thomas Sowell's brilliant chapter "Trends in Economics" in *KNOWLEDGE AND DECISIONS* 167-228 (1980).

¹⁰⁴ See D. LAVOIE, *supra* note 53, at 3 ("Nowadays nearly all advocates of planning, including many who call themselves Marxists, explicitly accept the need for retaining market institutions in their schemes for setting up national economic planning agencies.").

essentially unchallenged for many years,¹⁰⁵ a powerful case for the much-criticized free market as a system of “delivering the goods” was being constructed.¹⁰⁶ Now that the marketplace of ideas concept has been seriously questioned, it may be that this work in analyzing the free market in goods can be given cross-application to reinvigorate the speech/truth linkage.

However, several serious obstacles to such a cross-application must be confronted. The free market in goods tends to lead to the production of any good that consumers demand which can be supplied at a cost that makes such production profitable.¹⁰⁷ “Costs” in turn are the values that must be foregone in order to produce a particular good.¹⁰⁸ Under certain technological and other circumstances, costs may be so substantial that no goods of a particular type will be produced.

Accordingly, two questions arise in evaluating the marketplace of ideas. First, is there a demand for truth? If people would prefer to hear pleasant falsehoods rather than truths, the market will respond to that taste just as it responds to the taste for tail fins on automobiles.¹⁰⁹ Second, assuming a demand for truth, how difficult is it to locate and produce that truth? This question involves not only the time and money that it takes to research and publish some finding, but also the “technological” fact that truth is very difficult to sift from falsehood even if one is trying to supply one rather than the other. This society devotes billions of dollars to enable scholars and others to overcome many of the financial and time constraints upon the search for truth,¹¹⁰ but money cannot eliminate the technological fact that it is very hard to discover what is true on any important question. Accordingly, that technological barrier requires particularly careful analysis in evaluating the supply of truth and falsehood.

A more fundamental objection might be raised to this attempt to un-

¹⁰⁵ See *supra* text accompanying notes 16-18.

¹⁰⁶ For a description of the contributions that the Austrian School of Economics has made on the question of the informational role of competition, see Wonnell, *Contract Law and the Austrian School of Economics* (forthcoming in *FORDHAM L. REV.*).

¹⁰⁷ See C. FERGUSON & J. GOULD, *MICROECONOMIC THEORY* 452-53 (4th ed. 1975).

¹⁰⁸ For an early statement of the economic concept of costs as foregone opportunities, see F. WIESER, *NATURAL VALUE* 171-214 (1971) (1st ed. 1893).

¹⁰⁹ See, e.g., Ingber, *supra* note 12, at 26 (“[I]t is difficult for a person to reject ideas, opinions, and positions as being false when they coincide with his own interests or when they appeal to his half-submerged prejudices.”).

¹¹⁰ See generally F. MATCHLUP, *THE PRODUCTION AND DISTRIBUTION OF KNOWLEDGE IN THE UNITED STATES* (1962).

dertake an economic analysis of the demand and supply of truth. It might be argued that the *truth* of microeconomic theory must not be assumed for purposes of testing a theory the very purpose of which is to decide what process can give us assurance that some theory is true. After all, microeconomic theory is a product of the marketplace of ideas, and by simply assuming its truth one begs the whole question about whether the marketplace of ideas leads to truth or, say, to bourgeois illusion and false consciousness.

This objection has only limited validity. This Article contends that the law of supply and demand has validity for reasons independent of its widespread acceptance, including its logical soundness and its ability to predict and explain observations.¹¹¹ For those reasons, the microeconomic law of supply-and-demand may deserve to be considered an elite view in a way that, for reasons explained below,¹¹² macroeconomic theory may not — even if the latter theory has as many supporters. This analysis also employs findings of the philosophy of truth,¹¹³ the philosophy of science,¹¹⁴ psychology,¹¹⁵ and sociology.¹¹⁶ No argument can be constructed on the speech/truth relationship or on almost any other subject without considering as tentatively valid certain findings of the existing sciences.¹¹⁷

The kernel of truth in the objection is that these allegedly elite theories may in fact be wrong and, indeed, it may be wrong to classify them as elite theories at all. This argument for the speech/truth linkage therefore may be overturned at a later date by showing that the

¹¹¹ Microeconomic theory constructs models whose elements, from which the more complex social phenomena are logically derived, consist of individuals with limited knowledge who seek to use limited means to advance over time a set of ends. There is considerable debate concerning whether it is more important to make the assumptions of the model realistic at the possible expense of the model's predictive power or whether admittedly unrealistic assumptions should be utilized if they produce falsifiable predictions. Cf. M. FRIEDMAN, *The Methodology of Positive Economics*, in *ESSAYS IN POSITIVE ECONOMICS* (1953) (stressing importance of predictive power); F. HAYEK, *The Facts of the Social Sciences*, in *INDIVIDUALISM AND ECONOMIC ORDER* 74 (1948) (arguing that logically valid deductions from mental states may be irrelevant if the mental states are absent but cannot be contradicted by experience).

¹¹² See *infra* note 223 and accompanying text.

¹¹³ See *supra* notes 40-61 and accompanying text.

¹¹⁴ See *infra* notes 182-205 and accompanying text.

¹¹⁵ See *infra* notes 144-54 and accompanying text.

¹¹⁶ See *infra* notes 123-42 and accompanying text.

¹¹⁷ See D. LAVOIE, *supra* note 53, at 258 ("When we try to judge the validity of any given theory, we are not simply testing it against the facts. We are necessarily testing it against other theories, including those that underlie the experimental procedures being used to determine the facts.").

microeconomic or other predicates of the argument are unsound. But there is nothing wrong in this; it certainly would be paradoxical to say that the speech/truth linkage is the one fighting faith that time can never upset.¹¹⁸ All that one can hope to establish is that the speech/truth linkage deserves at the present time to be considered an elite view.

As the previous section argued, free speech will tend to accelerate progress toward truth in certain elite cultures or disciplines, and it is therefore important to identify some "meta-elite" criterion that will serve as a basis for distinguishing elite and nonelite cultures. Furthermore, as noted above, that meta-elite criterion must be independent of the variable of speech, whose effects one seeks to discover, in order to avoid circularity. The meta-elite criterion to which this section's analysis leads is that a culture or discipline deserves to be considered "elite" if the supply and demand conditions generated by that culture support the search for truth. Stated another way, an elite culture consists of a matrix of thoughts and ideas that tends to evolve among a group whose methods of inquiry involve few "technological" barriers to truth-finding and whose members manifest a strong demand for truth as such.

This supply-and-demand analysis serves as a meta-elite criterion to identify "elite" cultures that will tend to produce ideas that progress toward the truth. The next sections of the Article discuss this idea in detail, but their reasoning can be summarized briefly here. The "supply" side of the equation asks how difficult it is to distinguish truth from falsity with the methods of inquiry available to the group. For example, natural scientific cultures may progress in proportion to their ability to test their speculations about natural laws against empirical evidence under circumstances sharply reducing the likelihood of error. Similarly, social scientific cultures may progress in proportion to their ability to reduce their speculations about social laws to the kinds of familiar mental states that individuals would have to have in order to make the social system follow those alleged laws. Finally, outside the sciences, when a group is seeking not abstract regularities but concrete and perhaps ever-changing facts, the culture may progress relative to its proximity to the specific data in question and to the changes in that data over time.

The "demand" side of the supply-and-demand meta-elite criterion asks to what extent a given culture is committed to discovering the truth in a particular area of inquiry. A group may have access to the kinds of reasoning and fact-finding that would enable it to reduce the

¹¹⁸ See *infra* note 251 and accompanying text.

cost of discovering the truth, but nevertheless lack the necessary incentive to make full use of these procedures. In particular, the group may have a value commitment to a specific answer to the question it poses that is independent of the truth of that answer.¹¹⁹ In such circumstances, the group may develop a cultural matrix that hinders the pursuit of truth. The explanation for such truth-dysfunctional evolution may range along a continuum from the cynical deceptions of a self-interested group to the protective rationalizations of sincere truth-seekers who have developed a specific theory that they now would like to see vindicated.¹²⁰

To summarize, this Article argues that certain "elite" cultures tend to progress toward truth, and that the proper "meta-elite" criterion for distinguishing elite and nonelite cultures is that the former exhibit supply and demand conditions that are supportive of the search for truth. The next section of the Article contends that the disciplines of psychology and sociology, as well as microeconomics, tend to support the meta-elite criterion. If that criterion is indeed proper, it should then be possible to measure empirically the effects adding or subtracting free speech has upon those elite cultures' rate of progress toward discovering the truth.

B. The Demand for Truth as a Meta-Elite Criterion for Elite Views

1. Sociological and Psychological Support for the Criterion

Much of the recent opposition to the speech/truth thesis has been grounded upon the idea that individuals often do not want to know the truth. It has been argued, for example, that people do not believe things because they are true, but because they are pleasant.¹²¹ In this conception, free speech will not lead to the truth because the parties to the communication are necessarily predisposed to believe ideas supportive of their interests and reject ideas threatening to their interests.

This critique is extremely effective against any assertion that free speech will lead to *all* truths' being known by *all* people without regard to their interests and values, on the ground that truth somehow manifests itself so powerfully that everyone will embrace it even if it seriously threatens her interests. There is, however, no need to present the speech/truth thesis in this form. The interests and values of indi-

¹¹⁹ See *infra* notes 156-72 and accompanying text.

¹²⁰ *Id.*

¹²¹ See *supra* note 109.

viduals and the groups they form are precisely the force that drives those individuals and groups to *discover* certain factual truths, whenever knowledge of such truths can serve as a means of advancing these values. The fact that not everyone will immediately embrace those truths is no reason to denigrate the accomplishment of those who do manage successfully the difficult task of sifting truth from falsehood.

Professor Baker in particular has advanced the thesis that the interests of individuals and groups constitute an insurmountable barrier to the pursuit of truth, and he uses modern research in the sociology of knowledge and in psychology to support his claim.¹²² Baker argues that each group will have its own views about "truth" that will tend to coincide with its group interests, and that these groups will want to read and believe their "truth" rather than question whether their "truth" really corresponds to the facts. Indeed, as noted earlier, Baker is skeptical that objective truth even exists, and he fears that free speech will therefore lead to the wrong group's "truth," (meaning "interests") being furthered.¹²³

Baker's work primarily relies upon the theories of Karl Mannheim, a leading figure in the field of the sociology of knowledge.¹²⁴ Mannheim argues that the positions articulated by speakers must be evaluated against a backdrop of the overall social milieu in which the particular speaker finds herself. That milieu will in turn be heavily influenced by the economic class to which the particular speaker belongs.¹²⁵ Mannheim's conception is *not* that speakers deliberately promote their own interests under a pretense of objectivity; it is rather that the speakers grow up in a class-based cultural environment that distills in them a classification system and language that limit the ways in which they can view the world.¹²⁶ Since the classification system that evolves among a group tends to advance that group's interests, the individual speaker who honestly believes she is advancing an objective and universal truth is actually employing a system of classifying "facts" that

¹²² Baker, *supra* note 20, at 975-77.

¹²³ *Id.*

¹²⁴ Baker especially relies on Mannheim's pioneering work: K. MANNHEIM, *IDEOLOGY AND UTOPIA: AN INTRODUCTION TO THE SOCIOLOGY OF KNOWLEDGE* (1936).

¹²⁵ *Id.* at 149-50.

¹²⁶ *Id.* at 2 ("[The individual] speaks the language of his group; he thinks in the manner in which his group thinks. He finds at his disposal only certain words, and their meanings. These not only determine to a large extent the avenues of approach to the surrounding world, but they also show at the same time from which angle and in which context of activity objects have hitherto been perceptible and accessible to the group or the individual.").

distorts reality in favor of her group.

Mannheim advocates a sociology of knowledge that will identify the "relational" character of beliefs and statements.¹²⁷ Mannheim was heavily influenced by Marx, but Mannheim suggests that Marxism has been employed as a party-based doctrine to "unmask" the views of opponents rather than as a scientific doctrine in which *all* views are placed in the perspective of their social origins.¹²⁸ Mannheim's hope is that the relatively class-free intelligentsia will be able to find, if not objective "truth" (of which Mannheim, like Baker, is skeptical), then at least a holistic perspective that identifies the proper range of validity of the particular class-colored views.¹²⁹

In the language of this Article, Mannheim's sociology of knowledge performs the role of a "meta-elite" theory for assessing which views deserve elite status. Mannheim is not a believer in scholasticism; he recognizes that ideas come from the concrete and inevitably partial experience of political practice, and that those concrete perspectives of the practitioner may provide particularly valuable insights into reality.¹³⁰ Nevertheless, the overall tenor of Mannheim's theory is clearly to assign elite status to the holistic visions of the intellectual class over allegedly partial and class-protective views such as bourgeois political economy.¹³¹

Mannheim's theory obviously contains a good deal of truth, for class bias is undoubtedly an important factor that can weaken the demand for objective truth.¹³² His emphasis on the class origins of a theory as a

¹²⁷ Mannheim contrasts the "relational" character of knowledge and social position with a thoroughgoing "relativism" that might suggest the incorrect nihilistic view that all beliefs were equally valid. *Id.* at 78-80.

¹²⁸ *Id.* at 277 (Marxism could not lead to the scientific sociology of knowledge since the relationship of ideas to social position "was perceived only in the thought of the opponent.").

¹²⁹ *Id.* at 291 ("The concept of truth has not remained constant through all time, but has been involved in the process of historical change."); *see also id.* at 106 ("Totality in the sense in which we conceive it is not an immediate and eternally valid vision of reality attributable only to a divine eye. It is not a self-contained and stable view. On the contrary, a total view implies both the assimilation and transcendence of the limitations of particular points of view.").

¹³⁰ *Id.* at 10-11.

¹³¹ On Mannheim's view of abstract economics, *see id.* at 167-68. On his confidence in the intellectual class to transcend partial modes of thought, *see id.* at 159-60.

¹³² It is hard to imagine free speech between representatives of the National Association of Manufacturers and the AFL-CIO leading to any agreement about the effects of unionization, especially since those representatives are likely to employ terms such as "freedom" and "coercion" so differently that they miss each other's meaning, even assuming they are listening to each other. *See Baker, supra* note 20, at 26. Surely it is at

meta-elite criterion, however, suffers from three serious defects. First, it downplays the fact that an economic or other interest is often an enormous *advantage* in the pursuit of truth that a relatively disinterested perspective may lack. If a particular community has a strong interest in some end *X*, that community will be likely to exhibit a much stronger demand for the truth of the statement that "Means *A* achieves End *X* more effectively than Means *B*" than a group without a passionate interest in end *X*. Second, Mannheim's theory exaggerates intellectuals' ability to rise above the class struggle. Thomas Sowell has persuasively argued that intellectuals as a class have a strong incentive to depict the world in a particular way — with the masses as helpless and in great despair, rival elites such as businesspeople and the military as perpetrators of this suffering, and themselves as saviors of the former from the latter.¹³³

The third problem with Mannheim's theory is that it unjustifiably singles out economic class as the only important example of a distortion in the pursuit of truth that results from the desire to see the factual world as being consonant with some value. As noted above, placing a high value on some End *X* gives one an intense demand for the truth of the statement "Means *A* achieves End *X* more effectively than Means *B*." By the same token, however, it must be recognized that if a group has a strong value commitment to Means *A* for some reason *other* than its alleged contribution to End *X*, and especially if that commitment to *A* is so strong that the group would favor *A* even if it did not serve End *X*, the incentive structure is radically changed. Such a perspective tends to generate an intellectual culture conducive to the acceptance of theses like "Means *A* achieves End *X* more effectively than Means *B*" even if the statement is false, as long as the group believes that End *X* is widely desired, since that statement will assist the implementation of condition *A* that the group favors on other grounds. Class bias can be seen as a special case of this more general phenomenon.

Like Mannheim, I see no reason to attribute this distortion in the pursuit of truth to any deliberate attempt to mislead or obfuscate. Communities tend to form around shared values, and the existence of the community tends to reinforce commitment to those values.¹³⁴ Since

least one of the roles of academics to decide from a relatively disinterested perspective how much truth is contained in the union and management positions on the benefits and harms of unions.

¹³³ T. SOWELL, *supra* note 103, at 352-55.

¹³⁴ For a summary of the psychological literature on the question of reference groups and their effect on attitude change, see M. SMITH, *PERSUASION AND HUMAN ACTION*

one's categorization of the world, especially at the highly abstract levels of classification common in intellectual discourse,¹³⁶ is heavily influenced by the communities in which one participates,¹³⁸ those communities will tend to evolve means/ends languages and structures that make it seem natural to believe their shared value is instrumental in, or at least not detrimental to, a large number of other values.

Despite these differences, it is clear that Mannheim's conception and the one defended in this Article share the features that are common to "meta-elite" theories. Mannheim certainly does not embrace Professor Duval's thesis that one cannot aspire to judge the merits of the ideas circulating in a society; Mannheim expressly rejects such a relativistic perspective and accepts the idea that "elite" judgment of opinions is possible.¹³⁷ Thus, Mannheim urges that with the help of the sociology of knowledge, the extent of truth and falsehood in any view can be evaluated by comparing it with a holistic truth that comes from relating all such partial truths to their social origins. The "elitist" perspective offered here differs from Mannheim's in that it suggests that the "elite" cultures are often those that generate the "partial" views of passionately interested people, and that intellectuals' attempts to alter those views to make them parts of "disinterested" holistic visions are likely to distort the truth in favor of some value implicit in the vision.¹³⁸

Another similarity between Mannheim's meta-elite system and the one presented here adds yet another layer of paradox to the speech/truth issue. Mannheim was concerned that speech between members of groups from different cultural and economic circumstances could not reach the "truth" because the speakers failed to see the relational qual-

164-90 (1982); *see also* T. SOWELL, *supra* note 103, at 354 ("Egocentric visions of the world do not imply deliberate attempts at deception and self-aggrandizement. The mechanisms of human rationalization are . . . complex. . .").

¹³⁶ A less abstract word such as "street" is likely to be encountered by an individual in so many diverse contexts and among so many groups in which one participates that the risk that such a word will acquire a peculiarly group-relational meaning is rather small. By contrast, words like "Dasein" are probably encountered only within particular groups that may instill the word with a meaning particularly inaccessible to non-group members.

¹³⁷ *See* K. MANNHEIM, *supra* note 124, at 187 ("Altogether too frequently we are inclined to accept as 'objective' those categorical structures and ultimate postulates which we ourselves have unconsciously read into our experience, and which, for the sociology of knowledge, are revealed only subsequently as the partial, historically- and socially-conditioned axioms of a particular current of thought.").

¹³⁸ *See supra* note 127 and accompanying text.

¹³⁸ *See supra* note 73 and accompanying text.

ity of all knowledge.¹³⁹ With help from the sociology of knowledge, Mannheim hoped, people could be made to think in a more cosmopolitan manner, recognizing partial and situational views for what they were, and uniting what was valid in each of them into “true” holistic systems.¹⁴⁰ In short, by identifying a meta-elite criterion, Mannheim was attempting to *persuade* people to abandon the pretense, so harmful to productive communication, that such partial views were true.¹⁴¹ If Mannheim was right in saying that the holistic visions were truer than others, and if he was successful in persuading others of this, he was actually *contributing* to the linkage between speech and truth. Speakers from different groups, warned to distrust the objectivity of their own as well as the other party’s beliefs, could begin to communicate in a way that would enhance the “truth,”¹⁴² a term that in Mannheim’s skeptical conception seems roughly equivalent to the “big picture.”¹⁴³

The supply-and-demand meta-elite criterion in this Article serves a similar goal. The major purpose mentioned thus far for identifying elite views is to facilitate a study of the tendency of free speech and closed speech societies to advance the search for truth in such elite disciplines. However, it should now be clear that this Article’s attempts to persuade the reader of the soundness of the supply-and-demand meta-elite criterion perform a more active function than simply testing the speech/truth linkage. If this Article’s thesis, that elite cultures are those whose supply-and-demand conditions are hospitable to the pursuit of truth, is persuasive, perhaps future speakers and listeners will be more attentive to ideas offered under favorable supply-and-demand conditions and more skeptical of ideas offered under unfavorable conditions. In short,

¹³⁹ *Id.* at 280 (noting that members of different groups fail to communicate and are forever “talking past one another” because “they overlook the fact that their antagonist differs from them in his whole outlook. . .”).

¹⁴⁰ *Id.* at 296-97 (“The problem is not how we might arrive at a non-perspectivistic picture but how, by juxtaposing the various points of view, each perspective may be recognized as such and thereby a new level of objectivity attained.”).

¹⁴¹ *Id.* at 281 (“The sociology of knowledge seeks to overcome the ‘talking past one another’ of the various antagonists by taking as its explicit theme of investigation the uncovering of the sources of the partial disagreements which would never come to the attention of the disputants because of their preoccupation with the subject-matter that is the immediate issue of the debate.”).

¹⁴² *Id.* Mannheim is critical of the idea of a realm of “truth as such,” *i.e.*, of propositions that are true without regard to “the whole complex of traits by which man is characterized.” *Id.* at 297.

¹⁴³ Thus, Mannheim looks to the “relatively classless stratum” of intellectuals, not for objective truth, but for “an experimental outlook, unceasingly sensitive to the dynamic nature of society and to its wholeness. . .” *Id.* at 154.

if a correct meta-elite criterion has been identified, such identification should serve to strengthen the speech/truth linkage.

Commentators who are critical of the speech/truth linkage, including Professors Schauer,¹⁴⁴ Ingber,¹⁴⁵ and Baker,¹⁴⁶ have also asserted that the modern psychology of persuasion has disproved the Enlightenment's hope that human beings are rational.¹⁴⁷ An excellent summary and critique of the psychological literature appears in Mary John Smith's *Persuasion and Human Action*.¹⁴⁸ Smith argues that the phenomenon of persuasion cannot be accurately explained by employing a "hypodermic model" that treats listeners as passively absorbing messages. Rather, individuals play an active role in persuading themselves, and a persuasive message will succeed or fail based upon its ability to enlist the listener's active assent.¹⁴⁹ Listeners rarely respond to the precise message sent; they selectively interpret the message and respond to that interpretation by internalizing it *if* such internalization is seen as a goal-fulfilling act.¹⁵⁰

In short, individuals have what Smith calls "cognitive schemata" through which they classify and screen incoming messages.¹⁵¹ Messages

¹⁴⁴ F. SCHAUER, *supra* note 8, at 26 ("[T]he naiveté of the Enlightenment has since been largely discredited by . . . contemporary insights of psychology.").

¹⁴⁵ Ingber, *supra* note 12, at 15 (speech/truth linkage erroneously assumes that "socioeconomic status, experience, psychological propensities, and societal roles [do] not influence an individual's concept of truth.").

¹⁴⁶ Baker, *supra* note 20, at 976 ("Emotional or 'irrational' appeals have great impact; 'subconscious' repressions, phobias, or desires influence people's assimilation of messages; and, most obviously, stimulus-response mechanisms and selective attention and retention processes influence understanding or perspectives. In fact, these psychological processes partially explain at the level of the individual what the sociology of knowledge observes at the level of the group.").

¹⁴⁷ See *supra* notes 19-31 and accompanying text.

¹⁴⁸ M. SMITH, *supra* note 134.

¹⁴⁹ *Id.* at 5-9; see also Petty, Ostrom & Brock, *Historical Foundations of the Cognitive Response Approach to Attitudes and Persuasion*, in *COGNITIVE RESPONSES IN PERSUASION* 13 (R. Petty, T. Ostrom & T. Brock eds. 1981) ("The cognitive response approach postulates that when people receive persuasive communications, they will attempt to relate the new information to their existing knowledge about the topic. In doing this, the person may consider much cognitive material that is not in the communication itself.") [hereafter *COGNITIVE RESPONSES*].

¹⁵⁰ *COGNITIVE RESPONSES*, *supra* note 149, at 15; M. SMITH, *supra* note 134, at 9 ("The cognitive response approach holds that an understanding of the contents of the thoughts produced in the persuasion context is essential if the process of attitude change is to be understood fully.").

¹⁵¹ *Id.* An interesting series of studies suggests that distracting a listener influences persuasion by rendering it difficult for the listener to bring forth supportive or hostile cognitions in the face of a persuasive message. See Petty & Brock, *Thought Disruption*

that are consonant with those schemata, or can be made consonant by an act of interpretation, are more likely to persuade than messages that flatly contradict some preconceived beliefs about the relationships between phenomena, especially if those particular schemata are well-developed and complex.¹⁶³

If Smith's psychological theory is accurate, what implications would it have for the free speech/truth thesis? One implication would appear to be that speech and arguments are unlikely to generate rapid, radical attitude change, an implication that the available empirical evidence tends to confirm.¹⁶³ Thus, a true statement that is directly contrary to the conventional wisdom cannot be expected to overpower listeners in a short period of time merely by virtue of its truth; any strong statement that truth immediately reveals itself to listeners must be rejected.

In addition, Smith's theory tends to reinforce the supply-and-demand meta-elite criterion employed here. Smith notes that an individual's cognitive schemata often "reflect an idealized view of how things ought to relate"¹⁶⁴ rather than a faithful interpretation of reality. This fact makes it urgent to consider the circumstances under which the truth fulfills the individual's goals, the circumstances under which the truth is neutral toward those goals, and the circumstances under which the truth positively hinders the listener's value-laden goals or ideals.

To summarize, the modern sociology of knowledge and psychology of attitude change certainly call into question any vision of individuals as neutral calculating machines who weigh competing arguments with no preconceptions. Both disciplines tend to support the supply-and-demand meta-elite criterion articulated here, since under circumstances in which an individual and her group have a passionate interest in truth, psychological and sociological screening processes will tend to lead them in the direction of truth. Finally, psychological findings tend to reinforce sociological findings in saying that no individual or group can possess all the truths known by the community as a whole. Indeed, the radical diffusion of knowledge of truths appears in light of these find-

and Persuasion: Assessing the Validity of Attitude Change Experiments, in COGNITIVE RESPONSES, *supra* note 149, at 55-79.

¹⁶³ M. SMITH, *supra* note 134, at 27-53; see also McGuire, *The Probabilistic Model of Cognitive Structure and Attitude Change*, in COGNITIVE RESPONSES, *supra* note 149, at 291-307.

¹⁶³ M. SMITH, *supra* note 134, at 16 ("In general, over 30 years of research confirms that the major persuasive effect of mass media advertising and programming is not the alteration, but the creation of new and the reaffirmation of existing attitudes, norms, and values.").

¹⁶⁴ *Id.* at 30.

ings to be an inevitable fact with which society must come to terms.¹⁵⁵

2. Self-Applications of the Demand for Truth Theory

The issue of a demand for truth can be considered as it pertains to a wide variety of ideas, but for present purposes the most important applications of the theory may be self-applications, or the extent to which the supply-and-demand and free speech/truth ideas themselves are a product of the demand for truth.

Are the conclusions of microeconomic theory, and in particular its claim to having established a law of supply and demand, the product of evolutionary growth reflective of a demand for truth? It might be argued that a discipline of microeconomic "laws" evolved not because the laws are true, but because they tend to support a capitalistic system that many beneficiaries of that system wish to see preserved.¹⁵⁶ One problem with this thesis is that many people who *oppose* a laissez faire economic policy draw upon the same law of supply and demand. For example, labor union representatives who lobby the legislature for restrictions of immigration, minimum wage laws, tariffs, "buy American" laws, and the like implicitly accept the law of supply and demand.

Another problem with the thesis that the intellectual culture of microeconomics has evolved not because its participants sought the truth, but because they implicitly hoped to support the privileged position of the capitalist class, is that it no longer explains the interest relationships of the modern regulatory state. The deregulation movement has been opposed by powerful capitalist interests who are shielded from competition by such regulation.¹⁵⁷ Moreover, many of the most adamant academic spokespersons (for example, Frederick Hayek and Thomas Sowell) for the view that socialism and prosperity cannot coexist began their factual inquiries with value commitments *against* the market order.¹⁵⁸

Indeed, the often paradoxical conclusions of microeconomic theory are important factors that contribute to a genuine demand for truth about social phenomena. Microeconomic theory makes it clear that in social phenomena it is essential to consider the unintended effects of

¹⁵⁵ See *infra* notes 240-41 and accompanying text.

¹⁵⁶ See MARXISM, *supra* note 58, at 23-24 (1985).

¹⁵⁷ See B. SIEGAN, ECONOMIC LIBERTIES AND THE CONSTITUTION 327 (1980) ("Regulation creates vested interests in both public and private sectors which will strongly oppose efforts to eliminate it.").

¹⁵⁸ See E. BUTLER, HAYEK: HIS CONTRIBUTION TO POLITICAL AND ECONOMIC THOUGHT OF OUR TIME 2 (1983); MARXISM, *supra* note 58.

any policy, and for that purpose *it is essential to know the true facts* of a particular sphere of inquiry. If policies always had their intended effect, there might be very few social facts of particular importance; everything significant might be a matter of interests and values. Microeconomic theories lead us to demand truth not because social scientists can be "value free,"¹⁵⁹ but because the more intensely one may care about an ultimate value the more one must learn about the causal and empirical structure of reality that can facilitate or obstruct various attempts to further that value.

An example of a system of ideas that can only be appreciated fully within a demand-for-truth paradigm is the work Thomas Sowell has recently done on the economic positions of various ethnic groups. In a series of important books Sowell has argued that the economic position of ethnic groups is better explained by the cultural, demographic, and other traits of the groups themselves than by *present* discrimination against the groups from outside.¹⁶⁰ Sowell criticizes the "civil rights vision" that in its understandable desire for moral condemnation of racism incorrectly attributes the bulk of the disparity in the incomes of ethnic groups to present discrimination.¹⁶¹

Sowell's attack upon the civil rights vision and his microeconomic theories are intimately related.¹⁶² His writings reflect at every opportunity the microeconomists' pervasive fear of unintended consequences and the resulting imperative to avoid wishing away painful facts. It is extremely improbable that Sowell's work was motivated by some idle curiosity about truth in the area of ethnic economic conditions, and the sinister motives that others have imputed to him seem even less tenable.¹⁶³ Sowell's microeconomic perspective suggests that attempts to help minorities are likely to backfire if the causes for the incomes of ethnic groups have been misanalyzed.¹⁶⁴ For Sowell, the "civil rights

¹⁵⁹ See *infra* notes 166-71 and accompanying text.

¹⁶⁰ See, e.g., CIVIL RIGHTS, *supra* note 58; T. SOWELL, THE ECONOMICS AND POLITICS OF RACE (1983); T. SOWELL, ETHNIC AMERICA (1981); T. SOWELL, MARKETS AND MINORITIES (1981).

¹⁶¹ CIVIL RIGHTS, *supra* note 58, at 14 ("The civil rights vision is not only a moral vision of the way the world *should* be in the future, but also a cause-and-effect vision of the way the world *is* today.") (emphasis in original).

¹⁶² See T. SOWELL, *supra* note 103.

¹⁶³ For a sampling of the personal attacks to which Sowell has been subjected for his views, see CIVIL RIGHTS, *supra* note 58, at 123-40.

¹⁶⁴ *Id.* at 117-18 ("The possibility that 'too much' would be done to benefit minorities, women, or others is the least likely of the consequences of the new conception of civil rights. There is much reason to fear the *harm* that is currently being done to its supposed beneficiaries, and still more reason to fear the long-run consequences of po-

vision" attempts to help minorities by constructing a factual picture of the world that will motivate those who accept the picture to lend such help.¹⁶⁶ Stated another way, Sowell suggests that the civil rights vision suffers from a demand for a particular factual *conclusion* that is congruent with our community's basic value commitments, while in a world of ubiquitous unintended consequences what is actually needed is a *truthful* factual explanation for the incomes of various groups.¹⁶⁶

The civil rights vision is only a particularly striking example of a more general demand-for-truth problem. Unfortunately, the issue has often been presented in the form of the need for social scientists to be objective.¹⁶⁷ This is impossible; social scientists necessarily make value judgments in deciding which problems to study¹⁶⁸ and which hypotheses to formulate,¹⁶⁹ and in judging the extent to which those hypotheses have been verified or refuted.¹⁷⁰ Nor is "objectivity" necessarily desirable; the passion to do something about social problems can stimulate hard work in studying them.¹⁷¹ However, there is all the difference in the world between the type of scientific judgments that will be made by a social scientific culture that considers the *truth* of a particular question vitally important in furthering human values and a culture that sees its essential contribution to human values as providing a particular *answer* that will motivate already desired action.¹⁷²

larizing the nation.") (emphasis in original).

¹⁶⁶ *Id.* at 15 ("One of the most central — and most controversial — premises of the civil rights vision is that statistical disparities in incomes, occupations, education, etc., represent moral inequities, and are caused by 'society.'").

¹⁶⁶ *Id.* at 15-16.

¹⁶⁷ See R. FRIEDRICH, *supra* note 76, at 207.

¹⁶⁸ *Id.* at 207 ("The fact of the matter is that *all* activity, including the objectivity of the scientist, must of necessity presuppose *motivation*.") (emphasis in original); see also *id.* at 138.

¹⁶⁹ *Id.* at 156 ("[T]he selection of fruitful hypotheses of *necessity* involves considerably more than a routinized application of a depersonalized logic. Hypotheses are the result of choices that must go beyond the assurance immediately available from the empirical evidence on hand.") (emphasis in original).

¹⁷⁰ *Id.* at 156 ("Although one might assume that the so-called 'neutrality' of the scientific role is most clearly evident at that point at which a scientist squares his empirical evidence with his hypothesis, even here — at the most 'objective' moment in the scientist's role — he is, of necessity, involved in either a personal or collective value-judgment. For scientific hypotheses are never 'proven' beyond a doubt.").

¹⁷¹ *Id.* at 139.

¹⁷² It may not be necessary for the individual social scientist to be committed to the truth (as opposed to a particular answer) as long as the social scientific community as a whole has such a commitment. If the values held by most community members strongly favor the truth, an individual social scientist may actually benefit from a personal com-

A second self-application of the demand-for-truth hypothesis is to inquire into whether the speech/truth hypothesis itself has evolved from a culture supportive of the search for truth. It can be quite plausibly contended that the intellectuals who form the community of constitutional scholars care about speech because speaking is their career and greatest joy,¹⁷³ and that such a community is only too predisposed to believe that speaking is instrumental toward any value that anyone has ever held.

Indeed, much of the literature on the free speech question has tended to confirm this class bias theory of the problem. As Ronald Coase has argued, intellectuals' confidence in the marketplace of ideas and distrust of censorship has markedly contrasted with their distrust of the marketplace of goods and confidence in planning.¹⁷⁴ The recent flight of commentators away from the marketplace of ideas thesis might be seen as evidence to the contrary. However, none of these commentators has opposed widespread free speech; all have proposed some other value that free speech allegedly serves.¹⁷⁵ It would appear that once the complex and uncertain causal chain between speech and truth was carefully considered, the linkage seemed too problematic to trust with such an important function as the preservation of free speech.¹⁷⁶ Moreover, by attacking the speech/truth linkage, commentators could take advantage of the scholarly community's shared fear that free speech might be left unsupported in order to secure a favorable predisposition toward accepting other benefits of speech.¹⁷⁷

mitment to a particular answer to a question; but if the community as a whole is committed to that answer, the dynamic does not favor the truth-finding process.

¹⁷³ See McCloskey, *Economic Due Process and the Supreme Court: An Exhumation and Reburial*, 1962 SUP. CT. REV. 34, 46 ("Judges and professors are talkers both by profession and avocation. It is not surprising that they would view freedom of expression as primary to the free play of their personalities.").

¹⁷⁴ Coase, *supra* note 98.

¹⁷⁵ See, e.g., F. SCHAUER, *supra* note 8, at 15-34 (governmental incompetence argues against censorship); Baker, *supra* note 20, at 990 (first amendment protects "broad realm of nonviolent, noncoercive activity" on the grounds of self-fulfillment and participation); Blasi, *supra* note 4, at 521 (speech serves "checking value" of avoiding abuses of power).

¹⁷⁶ See, e.g., Blasi, *supra* note 4, at 550 ("The case for freedom of expression is an uneasy one if it depends on the claim that the collective decisions that result from the existing or any reasonably foreseeable processes of opinion formation are likely to be wise, to ascertain some objectively verifiable reality, to reflect the most deeply rooted intuitions of the populace, or to be 'true' in any other significant sense.").

¹⁷⁷ Thus, after criticizing the truth value, Blasi argues that "the checking value has the potential to add new support and new dimensions to the existing edifice of free-speech theory." *Id.* at 554.

Nevertheless, many cultures that have an intense interest in truth but no respect for speech as such allow speech for instrumental reasons. Despite the Soviet Union's extensive censorship, its scientists have considerable freedom of scientific discussion and inquiry, an indication that when Soviet officials feel a particular need for truth, as in matters of military technology, they reluctantly acquiesce in bourgeois values.¹⁷⁸ Corporate America, despite its conservative fear of subversive speech, ensures that its executives are well versed on the latest ideas and theories in their respective industries.¹⁷⁹

This Article cannot pretend to be free of intellectual class bias. However, the intention throughout has been to avoid *exploiting* that bias which scholars inevitably feel toward speech as a pleasurable activity in itself. In the language of Rule 403 of the Federal Rules of Evidence, the hope has been to present an argument for the speech/truth linkage with a maximum of probative value and a minimum of prejudicial effect.¹⁸⁰

Thus, the most persuasive although logically irrelevant method of convincing the intellectual community of the speech/truth linkage might be to cast doubt on competing speech theories and argue that the value is needed to come to the defense of embattled speech.¹⁸¹ Instead, this Article has said nothing against alternative speech theories and has tied the free speech/truth linkage to so many controversial positions in economics, sociology, psychology, and philosophy that one who wishes to see speech vindicated at all costs is more likely to be pushed into embracing alternative speech theories than induced to accept this argument from truth. Nevertheless, such controversial questions must be tackled since many other groups in society who have no particular desire to defend speech as such nevertheless value truth, and those groups have an incentive to demand a tightly reasoned defense of the speech/

¹⁷⁸ See R. KAISER, *RUSSIA: THE PEOPLE AND THE POWER* 338 (1976) ("Science is the one important field in which independent-minded people can occasionally defy the regime and get away with it. Scientists, at least some of them, demonstrate an independent spirit that is rarely seen in the Soviet Union — which may explain the many brilliant accomplishments of Soviet scientists despite all the difficulties already mentioned.").

¹⁷⁹ The widespread prevalence of trade journals, trade shows, and product conventions are obvious examples.

¹⁸⁰ The contrary method of advocacy by the use of non-probative, prejudicial argument has unfortunately become quite common. For a particularly blatant example, see G. DWORKIN, *DETERMINISM, FREE WILL AND MORAL RESPONSIBILITY* 10 (1970), basing an argument against the *factual* thesis of determinism by contending that it would tend to conflict with *ethical* doctrines.

¹⁸¹ See *supra* notes 176-77 and accompanying text.

truth linkage. Ideally, this Article has been such a defense; more realistically, it may serve as a springboard for further investigations by one who sees little intrinsic value to speech unless it leads to truth.

C. *The Supply of Truth as a Meta-Elite Criterion for Elite Views*

Not everything that is demanded in a market will be supplied. In the economic marketplace, many demands will remain unsatisfied either because we do not know how to supply them or because it is currently too difficult and costly (in terms of foregone values) to supply them. Similarly, it may be impossible to supply certain much-desired truths, or it may be possible but so difficult in a given area that most attempts to do so fail.

According to economic theory, as the cost of supplying any good increases, the quantity supplied will tend to decrease.¹⁸² Accordingly, one would expect that more truth will be uncovered and supplied in fields in which truth is more easily distinguished from falsehood than in fields in which the production of truth is more difficult. Of course, it is important not to forget the demand-for-truth side of the equation, but given any particular intensity of demand for truth, the supply relationship should tend to hold. This section of the Article explores that supply relationship in the context of the natural sciences, the social sciences, and the nonscientific spheres of concrete facts.

1. The Natural Sciences and Observation as a Cost-Reducing Factor

One factor that definitely tends to influence the cost of finding truth is the extent to which a particular proposition can be tested against observation, particularly if that observation is of a kind that can be experimentally repeated and attested to by multiple observers. The widely believed tendency of the natural sciences to progress more certainly and more rapidly than other human endeavors to know the world¹⁸³ would be consistent with this supply-of-truth theory.

Indeed, much of the recent skepticism toward the speech/truth

¹⁸² See M. MANSFIELD, *PRINCIPLES OF MICROECONOMICS* 47 (4th ed. 1983).

¹⁸³ Of course, a theory can be so elastic that no observation or series of observations could be considered to cast doubt upon it, but this is not science because it is not using observations to *test* theories at all. See K. POPPER, *supra* note 49, at 39, on the problem of a "criterion of demarcation" between science and pseudoscience. Popper's criterion has considerable validity even though the role of observation is to incrementally weaken or strengthen scientific research programs rather than destroy them upon the first anomaly uncovered.

linkage has reflected developments in the philosophy of science, particularly Thomas Kuhn's *The Structure of Scientific Revolutions*.¹⁸⁴ If free speech cannot even lead to truth in science, argues Professor Baker, citing Kuhn,¹⁸⁵ how can it be expected to do so in other fields? This is certainly a fair question given the supply-and-demand paradigm articulated here. On the demand side of the equation, one might expect the natural scientific community as a whole to have *less* desire to advance one proposition over another because one proposition is congruent with some fervently held and widely shared value than would be expected in the social sciences.¹⁸⁶ More importantly, even if individual scientists do develop value commitments to particular theories, which they undoubtedly do,¹⁸⁷ one would expect that the supply consideration of confirming or falsifying observation could be sufficiently effective that it might overcome a value prejudice, or even make such a "prejudice" a positive advantage.¹⁸⁸ Accordingly, Kuhn's scientific philosophy is a potentially serious challenge to any speech/truth thesis.

Kuhn distinguishes between "normal science," in which scientific communities pose and solve problems with a shared paradigm or world view and "scientific revolutions," in which those paradigms themselves are shattered. In a period of normal science, scientists will see themselves as rapidly progressing toward the solution of problems, but during scientific revolutions, such as the replacement of Newtonian with Einsteinian physics, the scientific consensus about world views that measures progress is itself undermined.¹⁸⁹ The question then becomes whether science as a whole progresses toward truth in fact, or whether it only appears to do so during periods of normal science, which are destined to be disrupted by shifts from one world view of measuring "progress" to another. The new world view may be no closer to the truth, although the new scientific consensus may declare it to be so in the textbooks from which scientists will learn their subject before the next paradigm shift.¹⁹⁰ Kuhn himself did not regard his conception as

¹⁸⁴ T. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1970).

¹⁸⁵ See Baker, *supra* note 20, at 974.

¹⁸⁶ *Id.*

¹⁸⁷ See *supra* note 53 and accompanying text.

¹⁸⁸ *Id.*

¹⁸⁹ See T. KUHN, *supra* note 184, at 121 ("Paradigms are not corrigible by normal science at all. Instead, as we have already seen, normal science ultimately leads only to the recognition of anomalies and to crises. And these are terminated, not by deliberation and interpretation, but by a relatively sudden and unstructured event like the gestalt switch.").

¹⁹⁰ *Id.* at 165 ("When it repudiates a past paradigm, a scientific community simulta-

inconsistent with scientific progress, but he did believe that scientific revolutions made it impossible to say that science was moving closer to the truth.¹⁹¹

It is important, however, to note the context in which Kuhn's statements that science fails to contribute to truth are made. Kuhn notes that paradigms perform the function of conditioning a scientific community with particular values and often inarticulable knowledge about what the phenomena under study are "like" and what research directions are promising.¹⁹² For example, one paradigm may have scientists thinking of a particular phenomenon as caused by "particles" that "collide like billiard balls" and a subsequent paradigm may lead scientists to consider the same phenomenon a product of "waves" that "grow longer and wider." These hypotheses about the ultimate constituents of the universe or the ultimate explanations for observed regularities are obviously speculative, since the scientists may never have seen either these particles or waves. The wave theory nevertheless may be pre-

neously renounces, as a fit subject for professional scrutiny, most of the books and articles in which that paradigm had been embodied. Scientific education makes use of no equivalent for the art museum or the library of classics, and the result is a sometimes drastic distortion in the scientist's perception of his discipline's past. More than the practitioners of other creative fields, he comes to see it as leading in a straight line to the discipline's present vantage. In short, he comes to see it as progress. No alternative is available to him while he remains in the field.").

¹⁹¹ [T]he nature of such [scientific] communities provides a virtual guarantee that both the list of problems solved by science and the precision of individual problem-solutions will grow and grow In the Sciences there need not be progress of another sort. We may, to be more precise, have to relinquish the notion, explicit or implicit, that changes of paradigm carry scientists and those who learn from them closer and closer to the truth.

Id. at 169.

In response to a criticism of his conception of "progress" as relativistic, Kuhn states: Taken as a group or in groups, practitioners of the developed sciences are, I have argued, fundamentally puzzle-solvers Later scientific theories are better than earlier ones for solving puzzles in the often quite different environments to which they are applied. That is not a relativist's position, and it displays the sense in which I am a convinced believer in scientific progress A scientific theory is usually felt to be better than its predecessors not only in the sense that it is a better instrument for discovering and solving puzzles but also because it is somehow a better representation of what nature is really like. One often hears that successive theories grow ever closer to, or approximate more and more closely to, the truth. . . . [A]s a historian, I am impressed with the implausibility of [this] view.

Id. at 206.

¹⁹² *Id.* at 110-34.

ferred if the observed phenomena are better explained by the laws believed to affect other kinds of waves than by the laws applicable to particles. One does not have to believe that the ultimate cause of a series of observations is “really” a wave or that it is “more true” that the ultimate cause is a wave than a particle in order to make the transition from the particle to the wave paradigm progressive.

In another sense, however, Kuhn’s theory is subject to criticism. Throughout his argument, Kuhn stresses that what a scientist observes will in large measure be determined by the governing paradigm.¹⁹³ It is true that all observations are theory-laden, and that the things that people see are often influenced by a theory that tells them what they should expect to see.¹⁹⁴ Moreover, as Imre Lakatos has stressed, scientific theories are rarely abandoned upon the first observation that purports to refute them; a scientific research program will have supportive theories that can be employed to explain away anomalous observations.¹⁹⁵ Nevertheless, it is one thing to say (in the language of this Article) that observations do not reduce *to zero* the cost of differentiating truth from falsehood; it is quite another to argue that observations do not reduce that cost at all or at least by any substantial amount. Numerous “theories” can account for an observation — the observer was tired and could not see well, her instruments were defective or theoretically unsound, something was unusual about the time of year in which the experiment was conducted, or the observer was lying; however, these theories may lose explanatory power when the experiment is repeated under different conditions by different observers.

Kuhn’s tendency to exaggerate the extent to which observations are *determined* by a paradigm¹⁹⁶ deprives him of a crucial insight into what has distinguished science from other disciplines. As Kuhn recognizes, other disciplines also have periods of “normal” activity with substantially uncontested premises followed by “revolutionary” periods in which conflicting “schools” vie for support.¹⁹⁷ Those disciplines may also *consider* themselves progressive if one revolutionary school can successfully control the publication of textbooks in the field and the like. Kuhn clearly wants to be able to find a demarcation between sci-

¹⁹³ See *id.* at 128 (“Paradigms determine large areas of experience at the same time. It is, however, only after experience has been thus determined that the search for an operational definition or a pure observation-language can begin.”).

¹⁹⁴ *Id.* at 127-29.

¹⁹⁵ See, e.g., I. LAKATOS & A. MUSGRAVE, *CRITICISM AND THE GROWTH OF KNOWLEDGE* (1970).

¹⁹⁶ See *supra* note 193 and accompanying text.

¹⁹⁷ See T. KUHN, *supra* note 184, at 208.

ence and other activities, as he evinces by the following contention:¹⁹⁸

Though scientific development may resemble that in other fields more closely than has often been supposed, it is also strikingly different. To say, for example, that the sciences, at least after a certain point in their development, progress in a way that other fields do not, cannot have been all wrong, whatever progress itself may be. One of the objects of the book was to examine such differences and begin accounting for them. Consider, for example, the reiterated emphasis, above, on the absence or, as I should say, on the relative scarcity of competing schools in the developed sciences. Or remember my remarks about the extent to which the members of a given scientific community provide the only audience and the only judges of that community's work. Or think again about the special nature of scientific education, about puzzle-solving as a goal, and about the value system which the scientific group deploys in periods of crisis and decision. . . . [There is] a need for similar and, above all, for comparative study of the corresponding communities in other fields. How does one elect and how is one elected to membership in a particular community, scientific or not? What is the process and what are the stages of socialization to the group? What does the group collectively see as its goals; what deviations, individual or collective, will it tolerate; and how does it control the impermissible aberration?

It is more than doubtful whether Kuhn's approach will explain the greater success of the sciences than of other fields; indeed, it seems to me likely that the comparisons will favor the processes employed in the nonscientific fields. Stressing the absence of "competing schools" in a field is focusing upon a symptom, not the problem; "schools" can easily be avoided by authoritarian or passive behavior in a discipline, but the problem is that in other fields fewer observations (or series of observations) come close to compelling the "closing down" of schools than in the natural sciences. It is only a slight exaggeration to say that Kuhn's depiction of the scientific community is that, during normal times at least, it is authoritarian, intolerant, oblivious to the historical underpinnings of the discipline, and unaccountable to those outside the various scientific fields.¹⁹⁹ Whether this structure is conducive to learning in a field containing a substantial body of hard-to-contest observation is problematic; it must be even more doubtful in other fields. These demand-side factors simply cannot explain the extraordinary success of the natural sciences; the existence of observations that lower the cost of finding truth remains the essential factor.

Kuhn's denial that science contributes to truth is also a considerable overstatement. As noted above, it may be true that nothing in the world

¹⁹⁸ *Id.* at 209.

¹⁹⁹ See *supra* note 189 and accompanying text.

corresponds to theory-laden scientific terms like “waves,” and that paradigms employing such terms may be justified nevertheless because they assist scientists in predicting and explaining observations.²⁰⁰ As Karl Popper has noted, however, the fact that none of our scientific theories may ultimately be true is not inconsistent with regarding science as progressing toward truth.²⁰¹ In light of Einstein’s findings, for example, Newton’s theory that force is always equal to mass times acceleration is no longer regarded as true, but the number of observations that can be explained and predicted by these theories — the “verisimilitude” of the theory in Popper’s terminology — has increased.²⁰² Uncertainty about the ultimate cause of physical regularities must not be allowed to hide the fact that science has immensely increased our ability to predict observations, and accurate predictions are themselves important truths. Moreover, science certainly has assisted the pursuit of truth by demonstrating (although admittedly not conclusively since any observation can be given an *ad hoc* explanation) that certain theories of interrelationships between phenomena are false.²⁰³ Indeed, it has been demonstrated with the same degree of accuracy that so many theories are false that we can construct all of our technology in the confidence that deviations between currently believed scientific laws and objective truth generally will be too small to observe. That is substantial progress toward truth even if it cannot be said that science has taught (or ever will teach) any certain truths.²⁰⁴

²⁰⁰ See T. KUHN, *supra* note 184, at 184.

²⁰¹ K. POPPER, *supra* note 49, at 231.

²⁰² *Id.* at 228-33.

²⁰³ *Id.* at 55 (“Only the falsity of the theory can be inferred from empirical evidence, and this inference is a purely deductive one.”).

²⁰⁴ These critical remarks are not intended to deny that Kuhn has made important contributions to the philosophy of science. As Don Lavoie has recently argued, Kuhn has contributed importantly to the realization that scientists, as flesh-and-blood human beings, need values to assist their work that are not themselves scientific or even fully articulable in nature. D. LAVOIE, *supra* note 53, at 256-61. Lavoie criticizes Popper for contending that scientists employ objective and articulable tests of falsification, and correctly notes that science could not progress without subjective judgments that include when a given theory should be regarded as falsified. Scientists need to be able to make intelligent judgments about which observations to be particularly alert for, which observations to accept, which observations to view skeptically, and which areas of research into the unknown are promising. The value-oriented *milieu* of a community of scientists during a “normal science” period may evolve in its participants particularly helpful orientations toward these matters of judgment, orientations that may mislead or disorient the scientist during “revolutionary” periods. *Id.* at 262-63. Nevertheless, Kuhn’s contributions toward the psychology and sociology of scientific communities do not establish his contention that science fails to contribute to the pursuit of truth.

It is very hard to see what Kuhn believes constitutes "progress" if it has nothing to do with truth. "Solving puzzles" is an ambiguous term; other disciplines solve puzzles *to the satisfaction of the participants* as well, or could be made to do so with sufficiently authoritarian methods. The difference in science must be that the solving of puzzles tells us something new about the outside world, at least that certain asserted interrelationships in that world are untrue.

If science has contributed substantially to the pursuit of truth, the question remains whether free speech in the sciences has performed an important role in securing that progress. As a theoretical proposition, I do not see how this can be denied; scientists clearly learn much about their field by published journals, scholarly conferences, and the like.²⁰⁵ Empirical evidence would have to consider a society that placed comparable emphasis and resources upon science but allowed less freedom of speech. The Soviet Union is not precisely such a society — social phenomena are rarely cooperative enough to allow one variable to be isolated for its effect — but it is close enough to be instructive.

According to Roy Medvedev, the number of scientists in the Soviet Union and the United States is approximately the same.²⁰⁶ Robert Kaiser's study found that in the Soviet Union "the non-scientific fields, which are dominated by politics, are the weakest. The brightest young people seem drawn to careers in the natural sciences."²⁰⁷ Kaiser also found that in the Soviet Union the "government spends huge sums to support [scientific] work even as it frustrates scientific inquiry."²⁰⁸ Thus, in some respects it would seem that the two societies can be fairly compared for scientific progress to measure the effect of free speech.

Kaiser notes that although scientists are free relative to other Soviet citizens, their free speech is restricted in innumerable ways. The politicized Academy of Science and its subdisciplines such as the society of genetics, whose leaders are often mediocre scientists with political connections, decide "which of its members will go to international meetings, whose books will be published, who will give important lectures, and so on."²⁰⁹ Moreover, due to bureaucratic delays, scientific journals are slow to publish papers and to distribute scientific literature from abroad, so that "researchers in the Soviet Union often cannot find

²⁰⁵ See *infra* notes 211-16 and accompanying text.

²⁰⁶ R. MEDVEDEV, *supra* note 78, at 22.

²⁰⁷ R. KAISER, *supra* note 178, at 485.

²⁰⁸ *Id.* at 339.

²⁰⁹ *Id.* at 332.

out whether they are pursuing ideas already dealt with in another country."²¹⁰ As Kaiser writes:

Soviet and Western scientists agree that the benefits of informal contact with foreign scientists are appreciable. But most Russian researchers are not members of the increasingly interconnected international community of scholars. They have few if any informal ties with foreign colleagues, and therefore they don't pick up the latest gossip, the new ideas that haven't yet appeared in scientific journals.²¹¹

By almost any measure, Soviet science, although not without some striking successes,²¹² has lagged behind that in the United States.²¹³ Medvedev has concurred in this assessment:

[T]he Soviet Union today lags well behind the United States in the production and utilization of scientific-technical information and even has lost its once indisputable position as leader in many aspects of space research — the first men on the moon, after all, were Americans. The gap is particularly large in biological research, as well as in applied mathematics, chemistry, and in a number of technological fields.²¹⁴

Although the worst excesses of Soviet censorship of science, such as the period of Lysenko genetics, are apparently gone,²¹⁵ Medvedev argues that "[t]here is nothing that cannot be misrepresented or banned by the censors. . . . [A] strictly scientific work on physics, chemistry, biology, or astronomy stands every chance of being labeled 'pseudo science' or 'idealism. . . .'"²¹⁶ It would certainly not be correct to attribute all of the United States-Soviet gap in science to freedom of speech, but it is difficult to believe that free speech does not explain at least some of the disparity.

²¹⁰ *Id.* at 333.

²¹¹ *Id.* at 333-34.

²¹² *Id.* at 318-19 ("When Soviet science is good, it is as good as any science in the world, and sometimes better. The best theoretical physicists and mathematicians, nuclear physicists, high-energy physicists, laser experts, and a few others are superb by any standard. The same is true of Soviet specialists in a few areas of advanced technology.").

²¹³ "From 1920 through 1974, 244 Nobel Prizes for science were awarded; Soviet scientists received seven of them, although the Soviet Union has more scientists than any other country. (American scientists won 102; British, 47.)" *Id.* at 327.

²¹⁴ R. MEDVEDEV, *supra* note 78, at 22.

²¹⁵ R. KAISER, *supra* note 178, at 337. Stalin considered Lysenko's work "Marxist genetics" and rejected cybernetics as "bourgeois idealistic pseudo-science." *Id.*

²¹⁶ R. MEDVEDEV, *supra* note 78, at 169.

2. The Social Sciences and *Verstehen* as a Cost-Reducing Factor

If free speech does advance the pursuit of truth in the natural sciences, one might ask whether it does so in the social sciences as well. A problem arises in the social sciences because the cost of distinguishing truth from falsehood is higher, so that even with a constant demand for truth its supply should be expected to be less. It is important to note exactly why the cost of discovering truth in the social sciences is higher. It is not that observations are lacking — one can observe wars, crimes, unemployment, or malnutrition just as one can observe phenomena in the natural sciences. Much of the observation may be second-hand, forcing one to rely on the credibility of sources, but that is true of the natural sciences as well.²¹⁷ Although the social sciences do not allow as much room for experimentation as many of the natural sciences, this is not the crucial factor either, especially if one considers the successes of astronomy, which suffers from the same problem.²¹⁸

Rather, the essential difference between the natural sciences and the social sciences that makes the cost of discovering truth in the latter higher has been shown in Friedrich Hayek's brilliant work, *The Counter-Revolution of Science*.²¹⁹ In the natural sciences, the phenomena often exhibit regularities only after science classifies them in a manner different than the classification effected by our senses; thus, science teaches that water and ice are "really" the same "thing" while two tasteless and odorless white powders are "really" different "things."²²⁰ By contrast, in the social sciences the way people see or think about phenomena is the data; in studying the magic rituals of a primitive tribe, any knowledge that the observer may possess (that, say, the Gods being appealed to do not "really" exist) but that is not possessed by the individuals under study is unhelpful.

This fact introduces a peculiar problem into social sciences concerning the relationship between social "laws" or regularities and observations. Classified in the manner of the natural sciences, the observable phenomena fail to exhibit regularities; whatever regularities exist are a product of individual beliefs about phenomena that are themselves unobservable. For example, studying the relative prices of corn, wheat, and soybeans over time without considering human acts of valuation

²¹⁷ D. LAVOIE, *supra* note 53, at 64.

²¹⁸ See M. FRIEDMAN, *The Methodology of Positive Economics* (1953), in *THE PHILOSOPHY OF ECONOMICS* 210, 215-16 (1984).

²¹⁹ F. HAYEK, *THE COUNTER-REVOLUTION OF SCIENCE: STUDIES ON THE ABUSE OF REASON* (1955).

²²⁰ *Id.* at 19-20.

will lead one to the conclusion that the prices exhibit no regularities — sometimes they seem to vary inversely, and sometimes together. Economic theory suggests that the ultimate determinants of price are subjective marginal rates of substitution,²²¹ but these rates cannot be observed. Since the ability to use observations to test theories is the key factor that holds down the cost of producing truth in the natural sciences, this is a particularly serious problem.

The temptation is to study whatever regularities can be temporarily observed in social phenomena, especially if they can be quantitatively measured, and to call those regularities “laws” without inquiring into their ultimate sources in purposeful human action. The logical positivists urged precisely this course to foster social scientific cultures that could rival the highly successful natural scientific cultures.²²² Macroeconomics has particularly succumbed to this temptation, observing such “laws” as the Phillips Curve that allegedly showed a fixed inverse relationship between inflation and unemployment. Not surprisingly, those “laws” have broken down over time, leaving macroeconomics in a particularly poor position.²²³

In one respect, however, social sciences have a great advantage over the natural sciences. Our position as human beings allows us to some extent, through introspection and empathetic understanding (*Verstehen*),²²⁴ to comprehend the purpose behind human actions.²²⁵ This allows social scientists some access into the ultimate cause of social phenomena, while in the natural sciences the ultimate cause of regularities such as those called “electricity” may never be known.²²⁶ However, the social scientist cannot be certain that she has correctly identified the mental state that produced a particular observable action.

This paradoxical quality of social science in general has affected psychology as well as economics. Under the influence of logical positivism and behaviorism, psychologists attempted to predict regularities in human responses to stimuli by measuring external behavior alone. It soon became clear, however, that ignoring the subjective thought processes of individuals made any predictions doubtful, and many psychologists turned to more cognitively-oriented explanations such as the

²²¹ See C. FERGUSON & J. GOULD, *MICROECONOMIC THEORY* 453 (4th ed. 1975).

²²² See F. HAYEK, *supra* note 219.

²²³ See F. HAYEK, *The Pretence of Knowledge*, reprinted in *THE ESSENCE OF HAYEK* 266 (1974). This was Hayek’s Nobel Memorial Lecture.

²²⁴ See generally M. WEBER, *THE METHODOLOGY OF THE SOCIAL SCIENCES* (1949).

²²⁵ See L. LACHMANN, *THE LEGACY OF MAX WEBER* 31 (1970).

²²⁶ See L. VON MISES, *HUMAN ACTION* 39-41 (3d ed. 1966).

theory of cognitive dissonance as a source of attitude change.²²⁷ The predictable problem has been that objective measurement of subjective states of dissonance is very difficult and that the objective criteria employed often fail to exhibit a consistent pattern of results.²²⁸ Mary John Smith's conception of individuals as goal-directed suggests an explanation for the conflicting results often obtained in dissonance research, but goals are also difficult to measure.²²⁹ Nevertheless, Smith correctly notes that the proper approach to the rejection of behaviorism is not to reject empirical experiments but to be alert for possible subjective explanations for apparent anomalies in the objective data.²³⁰

In short, progress toward truth in the social sciences has been slow for two reasons. First, under the influence of logical positivism and the desire to mimic what was believed to be scientific method, social scientists tried to limit themselves to observable phenomena. This method ultimately led social scientists to discover that without reference to conscious human action, observable phenomena failed to exhibit predictable regularities, either in macroeconomics or in behavioral psychology. Second, even after the necessity for a *Verstehen* approach became accepted, it still remained a slow process to advance toward truth in the social sciences, since fallible guesses about the purposes animating people had to be persistently checked against objective evidence that was itself ambiguous evidence of mental states.

Nevertheless, there simply can be no doubt that at least microeconomics has significantly increased our knowledge of truth in the area of social phenomena. Especially when the insights of the Austrian School of Economics into such phenomena as limited knowledge and entrepreneurship are added,²³¹ microeconomic theory has illuminated the subtle effects of private markets, price controls and other regulations, and centrally planned systems to a remarkable degree.²³² The law of supply and demand has asserted itself against wage and price

²²⁷ For an early statement of the theory, see L. FESTINGER, *A THEORY OF COGNITIVE DISSONANCE* (1957).

²²⁸ See M. SMITH, *supra* note 134, at 128-29.

²²⁹ *Id.* at 128 ("Although psychological inconsistency may be a powerful motivator, the content of a person's cognitions is critical to the effects of counterattitudinal advocacy. Some alternative theories also assume that the generative forces responsible for cognitive realignment cannot be reduced to psychological inconsistency alone. Among other things, they suggest that goal-satisfying message content is a powerful mediator of the effects of counterattitudinal self-persuasion.").

²³⁰ *Id.* at 93.

²³¹ See Wonnell, *supra* note 106.

²³² See T. SOWELL, *supra* note 103.

controls for forty centuries, leaving a sad legacy of policy failures but a strong empirical confirmation of that law.²³³ Some may still regard this progress as modest, which it undoubtedly is in contrast to the natural sciences. But since the cost of extracting truth is higher in the social sciences, this is not a relevant comparison; the proper contrast must be to the progress of the same social sciences in societies that do not permit freedom of speech.

Medvedev discusses at some length the state of social science in the Soviet Union. He states that “[t]he vast field of political science is almost entirely neglected. We are also backward in certain important aspects of applied economics, and in the field of law.”²³⁴ Moreover, “the social sciences play an extremely insignificant role in the formation of policy and the methods of governing.”²³⁵ Medvedev has no trouble attributing the social sciences’ lack of progress to the Soviet censorship scheme:

[I]t is absolutely clear that censorship has done enormous damage to the development of science in the past and continues to do so at present. We can easily see this, not only in the case of biology (whose tragic fate during the thirty years between 1934 and 1964 is rather well known), but also in that of mathematics (particularly cybernetics), chemistry, physics, and astronomy, not to mention the social sciences, where for decades there was almost no progress whatsoever — only regression of the worst kind.²³⁶

Focusing on the social sciences in particular, Medvedev argues:

Because of the virtual ban on any comprehensive treatment of the past, we are deprived of the possibility of making any proper analysis of the present. On the whole it is now the case that the appearance of any significant work is becoming impossible in the official world of social science and the arts.²³⁷

Of course it is not necessary to choose as a matter of policy between complete freedom of speech and comprehensive Soviet-style censorship. This Article, however, does not attempt to justify unlimited free speech; it attempts only to answer the skeptical view of so many writers quoted above that free speech and truth are unrelated.²³⁸

²³³ See R. SCHUETTINGER & E. BUTLER, FORTY CENTURIES OF WAGE AND PRICE CONTROLS: HOW *Not* TO FIGHT INFLATION (1979).

²³⁴ R. MEDVEDEV, *supra* note 78, at 22.

²³⁵ *Id.* at 37.

²³⁶ *Id.* at 172-73.

²³⁷ *Id.* at 182.

²³⁸ See *supra* notes 19-39 and accompanying text.

3. Cost Reducing Factors Outside the Sciences

From the above two sections, it might be concluded that while free speech may contribute to truth among scholars in the natural sciences and in certain social sciences, free speech for anyone outside these disciplines has not been defended.²³⁹

This argument, however, is a misconception of the idea of elitism. It is a fundamental tenet of microeconomics, and especially of the Austrian School component thereof, that certain spontaneous orders are capable of much more effectiveness in facilitating individuals' ability to achieve their goals than orders planned by any "elite" group.²⁴⁰ The reason is the benefits that come from the division of knowledge among market participants and a market system's ability to tap far more knowledge, and thus far more truth, than any one person or "elite" group can command.²⁴¹ Translated into the language of this Article, *every* person is a member of the elite on some issues of fact, because she has a uniquely powerful demand to know that truth and by virtue of her proximity to the concrete data is in a unique position to learn that truth at low cost.

No amount of free speech among the masses will make them experts on the abstract issues of natural science or social science. The contrary position appears almost self-contradictory, since the scientists themselves will be doing infinitely more speaking and listening about those issues which, if one assumes speech leads toward truth, must inevitably give them a huge advantage over the masses. By the same token, however, no amount of free speech among natural scientists or social scientists will enable them to know more about the concrete particulars of place and time over which individual members of the masses are elites than those individuals know.

Free speech therefore will not lead to all truth existing in any one person's or small group's mind; it will rather be dispersed among everyone who engages in communication. The production of such truths in *anyone's* mind must be regarded as a significant accomplishment, given the difficulty of the pursuit of truth. Nevertheless, the most interesting practical question may be whether truth, once discovered, will be used. The idea that free speech might assist not only in the discovery of

²³⁹ As noted earlier, Professor Schauer appears to limit the positive speech/truth thesis to these groups of professional scientists. See F. SCHAUER, *supra* note 8, at 26.

²⁴⁰ See F. HAYEK, *Socialist Calculation: The State of the Debate*, in INDIVIDUALISM AND ECONOMIC ORDER 148 (1948).

²⁴¹ See Hayek, *The Use of Knowledge in Society*, 35 AM. ECON. REV. 519-30 (Sept. 1945).

truth but also in its dissemination and use will be called the spread-of-truth thesis, and is discussed in the next section.

IV. THE SPREAD AND UTILIZATION OF TRUTH

The previous section argued that under certain conditions free speech tends to accelerate progress toward the discovery of truth. Those conditions are the ones whose supply-and-demand circumstances favor truth. Unfortunately, much speech takes place under unfavorable demand and supply conditions, that is, when the parties to a communication strongly wish to believe some fact because of its congruence with a particular value or when the parties discuss factual questions without ready access to the sources of information that could distinguish truth from falsehood. While that speech cannot detract from the fact that free speech has led to the discovery of truths by "elite" communicators, it does create an environment in which those truths, once discovered, may be prevented from being used or disseminated by a background of noise in the form of non-elite beliefs.

Nevertheless, there are several reasons to believe that truth will tend not only to be discovered but also to spread and to be used in a free speech society. The argument here is not that truth can conquer falsehood even in the most unfavorable supply-and-demand circumstances, but merely that a tendency will exist for truth to spread beyond the optimal supply-and-demand circumstances. Similarly, the argument is not that truth will be used immediately upon its discovery, but rather that a tendency will exist for truth to be used over the long run.

Professor Schauer has offered the following observations on the argument that speech will lead to the spread and utilization of truth over the long run:

[T]he validity of this response depends on just how long the long run is. If there is no limit to its duration, the assertion that knowledge advances in the long run is both irrefutable and meaningless. Yet if the relevant time period is discrete and observable, history furnishes far too many counter-examples for us to have much confidence in the power of truth consistently to prevail.³⁴²

The answer to the question "how long is the long run?" must be a functional one; it must be determined by the *reasons* that are offered to believe long-run and short-run effects will differ. If those reasons appear to take minutes, years, decades, or centuries to have whatever effect they are going to have, that time period is the relevant one for

³⁴² F. SCHAUER, *supra* note 8, at 27.

testing the spread-of-truth thesis.

In light of the overall structure of this Article, it is clear that the spread-of-truth thesis depends heavily upon the relative demands for truth as such and for pleasant-even-if-false ideas. At least four reasons justify a belief that the balance will tend to shift in the direction of true ideas over the long run. First, experience will tend to vindicate the true ideas and contradict the false ones. Of course, a "true believer" can explain away any contrary experience, and nothing is more common than to observe a speaker who propounded some thesis resolutely refusing to abandon it in the face of overwhelming evidence to the contrary.²⁴³ However, other speakers and listeners who have not developed such a powerful ego-commitment to an idea will tend to find the need to explain away the dissonance of repeated apparent falsifications an unnecessary burden in the pursuit of their goals. Thus, the original seduction of a factual statement that is congruent with some value premise may lose its seductive force when it becomes necessary to explain away a growing number of anomalous observations.

Second, true ideas have the property of remaining true forever²⁴⁴ (although the truth may become only a historical truth), while relationships of consonance between factual beliefs and values will tend to change over time. Of course, this change can occur in different directions, and it may be that individuals who once had strong value commitments in favor of the truth lose those commitments or even develop value commitments that discourage truth-seeking. The point, however, is that if there is *any* demand for truth as such, even a weak one, that demand will tend to transcend the more powerful demands for truth or falsehood that accompany strong but shifting value commitments. Over time, therefore, one would expect that ideas that were believed *only* because they were congruent with some value would be unable to survive significant value shifts. An idea that was believed because of a strong instrumental value demand for truth, however, might continue to be believed even after a value shift if there remained at least a weak demand for truth as such.

Third, experience will tend to increase the sophistication of meta-elite theories over time. The supply-and-demand meta-elite theory ar-

²⁴³ A possible explanation for this phenomenon may be Bem's self-perception theory, *i.e.*, that the affirmative advocacy of a position reinforces the speaker's belief in the proposition asserted as the speaker observes her own behavior. See D. BEM, *Self-Perception Theory*, in *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 1-62 (1972).

²⁴⁴ See F. HAYEK, *The Facts of the Social Sciences*, in *INDIVIDUALISM AND ECONOMIC ORDER* 74-75 (1948).

articulated here, while using new terms and concepts, is hardly a totally novel way of evaluating beliefs that is not applied by people all the time. If a company that produces aerosol cans says that it uses one form of can rather than another because its internal discussions suggest that the former is more profitable, it seems quite likely that people will give that conclusion elite status. It may not be correct; it is after all the function of other interested entrepreneurs to try to improve upon such elite theories,²⁴⁵ but an outsider who lacks the company's intense interest in the truth of the comparative profitability statement would be well-advised to defer.²⁴⁶ By contrast, when the same aerosol can company testifies before Congress that aerosol cans do not harm the ozone layer or that there is no technologically feasible alternative to fluorocarbons, any sensible person will be skeptical.

The point is not merely that people do apply a supply-and-demand meta-elite theory, but that the more experience individuals accumulate, the more likely they will be to apply it. The law of supply and demand operates very generally, and the individual whose trade, business, or profession calls upon her actually to know some truth may learn over time that people are most trustworthy when they have an interest in truth, and least trustworthy when they have an interest in one side of a dispute. The problem, of course, is that the power to abstract from one's own experience to a generalized supply-and-demand theory that applies to problems beyond one's immediate area of expertise is not as widespread a trait as one might wish. Nevertheless, there does seem to be reason to hope that a citizenry enriched by the need to make its own practical decisions will develop over time at least a modest critical faculty for evaluating the claims of speakers.²⁴⁷

A fourth concern is that the ideas that were generated pursuant to a demand for truth as such will tend to be more thoroughly documented and therefore more able to spread beyond the interest that generates them than are other ideas. Sowell's writings on the economics of ethnic groups, for example, are so thoroughly supported that they have influenced many people who may have misgivings about how Sowell's factual thesis might be used to hurt minorities.²⁴⁸ "True believer" publica-

²⁴⁵ See I. KIRZNER, *PERCEPTION, OPPORTUNITY AND PROFIT* 53 (1979); Wonnell, *supra* note 106.

²⁴⁶ Indeed, it is probable that the interested entrepreneur's method of discovering the most profitable use of resources could not even be fully articulated to disinterested third parties. See D. LAVOIE, *supra* note 53, at 51-92.

²⁴⁷ See A. DE TOCQUEVILLE, *2 DEMOCRACY IN AMERICA* (P. Bradley ed. 1945) (1st Cambridge ed. 1862).

²⁴⁸ See N. GLAZER, *THE NEW REPUBLIC* (1984) (discussing Sowell's influence upon

tions that preach to the faithful, by contrast, rarely can persuade those outside the culture with the same effectiveness. Thus, even if one never learns to respect ideas that are the product of an intense demand for truth *for that reason*, the ideas will nevertheless tend to spread over time because of their method of inquiry and presentation. Again, it must be admitted that people whose value systems make particular facts terribly inconvenient will have little trouble "explaining away" even thoroughly documented and apparently fair-minded arguments. However, many people who are neutral toward a particular fact or even slightly predisposed toward disbelieving it may be persuaded by a sufficiently sincere and powerful showing. The contrary position seems to imagine that the demand for truth is totally absent from the community; it would appear more realistic to assume that the desire to rationalize away contrary evidence will vary with the amount and weight of the evidence and the need for rationalization.

To summarize the argument thus far, free speech will tend to accelerate the discovery of truth in elite disciplines — under favorable supply and demand conditions. Once discovered, truth will tend to spread in a free speech environment over the long run for four reasons: True ideas will tend to be confirmed by experience, their truth can outlast shifting value commitments, their spread will be encouraged by the popular acceptance of supply-and-demand meta-elite theories, and they will tend to be supported more thoroughly with evidence and arguments than non-elite theories.

Having said this, however, it is quite clear that such a spread of truth can never eliminate the fundamental fact that truths will inevitably be held in a dispersed form by millions of people, and that no amount of free speech will lead to any single individual's or group's having access to all elite ideas, much less all truths. What guarantee is there that the masses will embrace elite scientific theories rather than succumb to some demagoguery about the Jews as the cause of all social evils? What guarantee is there that intellectuals will respect each individual's elite station over concrete facts within her experience and interest and not drive society into poverty by arrogant attempts to centrally plan all of social life?

The experience of history is of course that there are no such guarantees, nor are people always patient enough to allow the "long run" to arrive. Free speech is neither an assurance that sensible institutions will be adopted nor a substitute for such institutions. Above all, it is impor-

"reluctant" audiences).

tant to have institutions for which the principal source of accountability is their *results*, since such institutions will have an incentive to use ideas about true means of obtaining those results.²⁴⁹ If the ultimate demand is for results, the practical men and women of affairs who staff those institutions, whether economic or political, will have an incentive to temper the arrogance of both the masses and the intellectuals who think they know more about processes than they do.

Of course, one wants not simply results but good results, and some institutions are better than others precisely because the results for which they are accountable are better. As noted earlier, this Article does not take a position on whether free speech will lead to the Good as well as to the discovery of truth.²⁵⁰ Free speech does accelerate progress toward truth in elite disciplines, and that truth does tend to spread over time. If the major institutions of a society are predominantly accountable for results, that truth will also tend to be used. If a given society's institutions are comprehensively evil, it may be that such truth has little value, for it simply will be used to assist in the pursuit of evil results. One can debate at length the question of whether more harm has been done to people as a result of foolish policies or of deliberately evil ones. This Article has contended that free speech is at least an important safeguard against the former problem.

V. CONCLUSION: PURSUING THE TRUTH AND SIGNIFICANCE OF THE MARKETPLACE OF IDEAS THESIS

This Article has advanced the thesis that a linkage between free speech and truth does exist. The analysis raises three important questions for further research. First, can this Article's analysis itself survive in the marketplace of ideas? Second, assuming the thesis advanced here is ultimately persuasive, might truth nevertheless be furthered by some modest tinkering with the marketplace of ideas? Third, assuming that free speech does enhance truth, is the truth value more important than the other interests allegedly served by free speech or by governmental suppression of speech?

²⁴⁹ See T. SOWELL, *supra* note 103, at 38 ("The consumer may have no idea at all — or even a wrong idea — as to why one product costs less and serves his purposes better; all he needs is that end-result itself."). Sowell argues that in political competition "what is being 'sold' is not an end-result but a plausible belief about a complex process." *Id.* The difference between the economic and political markets seems valid; however, even in the latter, institutions such as political parties may care a great deal about results, and should perhaps be strengthened for that reason.

²⁵⁰ See *supra* notes 62-77 and accompanying text.

The first problem is, of course, to evaluate the persuasiveness of the thesis advanced here. Given the specialized intellectual worlds we inhabit, attempts such as this one to call upon numerous disciplines for insight into a single problem are particularly fraught with the possibility of significant error. The marketplace of ideas thesis suggests that truth emerges from an evolutionary process of criticizing and building upon earlier ideas,²⁵¹ and there is every reason to believe that a thorough critique of the argument presented here will at least embellish if not alter its thesis.

Second, if further analysis of the problem continues to support the thesis that free speech and truth are related, it would not necessarily follow that complete *laissez faire* in the speech area optimally promotes the truth. In the area of goods and services, for example, economic theory and experience tend to demonstrate that comprehensive attempts to supersede the market are likely to fail, but that certain policies that modestly alter market outcomes might be desirable.²⁵² This Article has made no attempt to argue that *any* government regulation of the speech market, however limited, must inevitably move society further away from the truth.

In particular, regulation of the speech market for the purpose of increasing the competitiveness of the marketplace of ideas might be justifiable on truth grounds. The one newspaper town is surely a problem, although it is not clear how serious the problem is given the existence of alternatives such as magazines, radio, network television, and now cable television, in addition to the diversity of opinion often present within individual newspapers.²⁵³ Nevertheless, it certainly must be considered possible that competition-enhancing regulation²⁵⁴ such as enforced rights of reply²⁵⁵ or antitrust regulation of newspapers²⁵⁶ might further the pursuit of truth.

²⁵¹ See F. HAYEK, *supra* note 82, at 33 (“[A]dvances in the intellectual sphere often spring from the unforeseen and undesigned. . .”).

²⁵² See F. HAYEK, “Free” Enterprise and Competitive Order, in INDIVIDUALISM AND ECONOMIC ORDER 107-18 (1948).

²⁵³ Thus, it seems almost certain that despite the decline in the number of newspapers per city, the average citizen receives more information from more different sources today than in the period before, say, the Second World War.

²⁵⁴ See F. HAYEK, *supra* note 252, at 110 (“[C]ompetition can be made more effective and more beneficent by certain activities of government than it would be without them.”).

²⁵⁵ Cf. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974) (invalidating right of reply regulation of newspapers); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969) (upholding fairness regulation of broadcasting).

²⁵⁶ See, e.g., *Citizen Publishing Co. v. United States*, 394 U.S. 131 (1969).

Finally, there is a need to place the results of this article within an overall framework of first amendment analysis. As Professor Schauer correctly notes, "[h]olding truth to be an autonomous value is not equivalent to holding it to be the only value."²⁵⁷ For example, a newspaper may have been truthful in publishing a rape victim's name, but one reasonably might consider the marginal contribution to truth in such a case outweighed by the interest in protecting privacy.²⁵⁸ Alternatively, it may be doubtful that some forms of speech such as, for example, horoscopes, contribute to the pursuit of truth, but one nevertheless may wish to protect such speech as furthering other values such as diversity or self-expression.²⁵⁹ In short, further research is needed to analyze not only the truth but also the normative significance of the marketplace of ideas thesis.

²⁵⁷ F. SCHAUER, *supra* note 8, at 17.

²⁵⁸ See *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975) (broadcaster could not be held civilly liable in action for invasion of privacy for publishing such truthful information obtained from official court records).

²⁵⁹ See Blasi, *supra* note 4, at 544-53.