The American Tradition of Language Rights: The Forgotten Right to Government in a Known Tongue

Jose Roberto Juarez Jr.

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The American Tradition of Language Rights: The Forgotten Right to Government in a "Known Tongue"

José Roberto Juárez, Jr.*

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I thank Michael Ariens, Mark Cochran, Jon Dubin, Emily Hartigan, Marsha Huie, Vincent Johnson, José Roberto Juárez, Sr., Amy Kastely, and Geary Reamey for their critique of earlier drafts of this work. The preparation of this article was facilitated by the able assistance of my research assistant, Dean Diachin.
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Me he dedicado ahora ... a la obra pesada de formar traducciones legítimas de las constituciones, nacional y del estado y de todos los decretos de la Legislatura ... por la razón que los mas de estos habitantes no entienden palabra del Castellano y es enteramente imposible gobermar un pueblo con leyes cuya existencia la masa de ellos ignoran en lo absoluto.

— Stephen F. Austin

1. Letter from Stephen F. Austin to José Antonio Navarro (Oct. 19, 1829) (original in Spanish), in THE AUSTIN PAPERS (Eugene C. Barker ed.), reprinted in AMERICAN HISTORICAL ASS'N, II ANNUAL REPORT 272 (1922) [hereinafter AUSTIN PAPERS, 1828-1834]. The English translation of the passage is:

I have dedicated myself ... to the burdensome work of preparing legitimate translations of the national and state constitutions [of Mexico] and of all the decrees of the Legislature [of the Mexican state of Coahuila and Texas] ... because most of these inhabitants [of Texas] do not understand a word of Castilian and it is entirely impossible to govern a people with laws whose existence most of them ignore absolutely.
“[The Mexican government] hath sacrificed our welfare to the State of Coahuila, by which our interests have been continually depressed . . . in an unknown tongue . . . .”

— Texas Declaration of Independence

“If English was good enough for Jesus Christ, it ought to be good enough for the children of Texas.”

— Former Texas Governor Ma Ferguson

2. The Declaration of Independence of the Republic of Texas (1836) (emphasis added), reprinted in 3 Annotated Constitution of the State of Texas 479 (West 1993) [hereinafter Tex. Const.].

3. Quoted in José A. Cárdenas, An Educator’s Rationale for Native-Language Instruction, in James Crawford, Language Loyalties: A Source Book on the Official English Controversy 342, 349 (1992). The quotation appears in numerous variations and has been described as “probably apocryphal.” David Shribman, Before Big Hair & Beauty Contests, Texas Women Got Their Nails Dirty, Hous. Chron., May 30, 1993, at 4; cf. Laurence McNamee & Kent Biffle, A Few Words, Dallas Morning News, May 2, 1993, at J9 (describing the statement as an unlikely quote” attributed to Ferguson and stating the quotation is “No more of those sinful languages in the public schools . . . . If the English language was good enough for Jesus, then it’s good enough for Texans.”). The quotation has been ascribed most often as a response by Governor Miriam (Ma) Wallace Ferguson, governor of Texas from 1924 to 1926, and again from 1932 to 1934, to an inquiry about whether she supported bilingual education. Thomas F. Eagleton, The Best and the Brightest, Sr. Louis Post-Dispatch, July 22, 1988, at C3 (quoting Ferguson as stating, “If English was good enough for Jesus Christ, it’s good enough for me.”); William Safire, On Language; Red-Hot ‘Freeze,’ N.Y. Times, May 30, 1982, § 6, at 8 (Magazine Desk) (attributing the quotation as a response to a proposal to use Spanish as a second language in Texas schools and quoting Ferguson as stating, “Not while I am Governor! If English was good enough for Jesus Christ, it is good enough for Texas children.”); Bob Tutt, New Form of an Old Enemy, Hous. Chron., Dec. 11, 1993, at 35 (ascribing the quotation as Ferguson’s defense of teaching only English in Texas schools and quoting her as stating “if the English language was good enough for Jesus Christ, it ought to be good enough for Texas school children, too”). The quotation has also been described as a response to a question about supplying Spanish-language textbooks for Hispanic students. Ronald Hire, Hous. Post, Nov. 22, 1990, at A50 (letter to the editor quoting Ferguson as stating, “If the English language was good enough for Jesus Christ, it’s good enough for the school children of Texas.”). Texas Governor Ann Richards has been quoted as ascribing the quotation as a response to a question about whether Governor Ferguson’s two daughters understood Spanish. Paul Harasim, Candidate’s Speech Delivers Naked Truth to Constituents, Hous. Post, Feb. 17, 1988, at A3 (quoting Ferguson as stating, “If the English language was good enough for Jesus Christ, it’s good enough for my children, too.”). Governor Richards has also been quoted as ascribing the quotation to a query about whether children should be punished for speaking Spanish in public schools. Vicki Haddock, The Wit and Wisdom of Ann Richards, S.F. Examiner, Jan. 27, 1991, at 115. For other variations on the quotation, see Michael Anthony, Women of the West Are Celebrated in Singers’ Fifth Season at Ordway, Star Trib., Feb. 1, 1992, at E4 (quoting Ferguson as stating, “If the English language was good enough for Jesus Christ, it’s good enough for the schoolchildren of Texas.”); Steve Hoffman et al., Outgoing NIH Chief Criticizes Clintons, Says She May Run for U.S. Senate Seat, Akron Beacon J., May 24, 1993, at C3 (quoting Ferguson as stating “Stop learning our kids dirty rotten French and Spanish. If English was good enough for Jesus Christ, it’s good enough for Texans.”). A variation of the quotation has also been credited to
I. The English Only Movement

The Texas Constitution, interpreted in light of the unique historical and legal tradition in Texas that officially sanctions multilingualism in the provision of governmental services, provides strong protection against language discrimination. This protection is essential to ensure that multilingual governmental services, such as bilingual ballots, bilingual education, and multilingual driver’s manuals survive the challenges posed by “English Only” organizers.


4. Cf. Arvel (Rod) Ponton, III, Sources of Liberty in the Texas Bill of Rights, 20 St. Mary’s L.J. 93, 94 (1988) (noting that the Texas Bill of Rights “developed from a unique combination of historical, economic and philosophical forces, which included ... the bi-cultural nature of Texas”).


7. Fred Bonavita, English-Only Group Hits Democrats: Use of Spanish at Texas Rally Criticized, HOUSTON POST, July 27, 1988, at E4 (stating that the Texas Department of Public Safety prints study manuals for the driver’s license examination in nine languages).

8. Those who seek to declare English the official language now prefer to use the term “Official English” to describe their efforts. I use the term “English Only” instead, both because it is the term first used by proponents of declaring English the official language and because it more accurately describes the attempt to limit the use of other languages. Crawford, supra note 3, at 7 (discussing controversy regarding terminology of movement to declare English the official language). Declaring English the official language could theoretically serve simply to recognize the language actually used in most governmental, educational, and commercial settings. Proponents of official English, however, clearly intend to make English the only language used in government. See, e.g., Coalition Launches “Official English 88” Campaign, UPI, Jan. 6, 1988, available in LEXIS, News Library, UPSTAT file (quoting American Ethnic Coalition chair Lou Zaeske as stating that “making English the official language of Texas ... would eliminate bilingual education in Texas”). While the focus of the English Only movement has been to prohibit multilingual governmental services, some supporters of the movement use official English declarations to attempt to prohibit the speaking of languages other than English in public. See, e.g., Marshall Ingewson, Citizens Enforce English-Only Laws: Public Misinterprets States’ Statutes, HOUSTON POST, Nov. 29, 1988, at A15 (reporting incidents in Florida including a telephone operator’s refusal to let collect call go through when it was accepted in Spanish; refusal by department store clerk to accept catalog order in Spanish; and suspension of supermarket cashier for speaking Spanish); Seth Mydans, Pressure for English-Only Job Rules Stirring a Sharp Debate Across U.S., N.Y. TIMES, Aug. 8, 1990, at 12 (reporting that after passage of the Colorado Official English amendment a school bus driver ordered that the children could only speak English on the bus). The well-established Texas tradition of Spanish-language political campaigns in South Texas, where the population is overwhelmingly Hispanic, has been attacked as “not foster[ing] social cohesiveness” and “smack[ing] of favoritism and pandering.” Ken Herman, Campaign Only in English, Group Tells Candidates, HOUSTON POST, Aug. 26, 1989, at A21 (reporting comments of American Ethnic Coalition chair Lou Zaeske); Bonavita, supra note 7, at E4 (reporting Zaeske’s opposition to campaigning in Spanish by Governor Michael Dukakis and Senator Lloyd Bentsen); cf. Charles Reinken, Some Official English Backers Hurt More than Help,
zations such as U.S. English⁹ and English First.¹⁰ These groups advocate the establishment of English as the official language of the United States and seek the abolition of governmental services in any language other than English.¹¹

This article sets forth abundant evidence that English Only proponents are wrong when they question the authority of state officials to offer multilingual governmental services¹² and that the Texas Constitution has always sanctioned the offering of governmental services in languages other than English. English Only proponents are wrong when they complain about bilingual ballots and bilingual education as recent imports to Texas imposed by federal government mandates;¹³ they are as Texan as fajitas¹⁴ and the rodeo.¹⁵ English Only proponents are wrong when they characterize bilingual ballots, bilingual education, and other bilingual governmental services as inventions of modern government created to coddle Tejanos¹⁶ who purportedly refuse to learn English;¹⁷ they were


¹⁰. English First was founded in 1986. Id. at 168.

¹¹. The development of this trend is described by Jamie B. Draper & Martha Jiménez, A Chronology of the Official English Movement, in Crawford, supra note 3, at 89-94.

¹². Founder of "Official English" Says Bush May Support the Issue, UPI, July 26, 1988, available in, LEXIS, News Library, UPSTAT file (reporting the American Ethnic Coalition has asked the Texas Employment Commission, the Texas Department of Public Safety, the State Comptroller's Office, Lieutenant Governor Bill Hobby, and House Speaker Gib Lewis by what authority "these state agencies embarked upon bilingual operation in Texas"); 23 Legislators Will Just Say 'Si' to English, Group's Founder Says, Hous. Post, Nov. 13, 1988, at A18 (reporting English Only proponent Lou Zaeske has asked the Texas Attorney General to issue an opinion on the constitutionality of the state's "engaging in bilingual operation").

¹³. 42 U.S.C. § 1973b(f)(3) (prohibiting English-only elections where more than five percent of the citizens of voting age are members of a single language minority); United States v. Texas, 506 F. Supp. 405 (E.D. Tex. 1981) (ordering the provision of bilingual education to all Mexican American students in Texas to remedy violations of federal law), rev'd on other grounds, 680 F.2d 356 (5th Cir. 1982).

¹⁴. "Beef skirt steaks" in English.

¹⁵. In English, "a gathering of cowboys who engage in contests requiring the use of cattle-driving skills."

¹⁶. I use the term Tejano in this article to denote any Mexican resident of Texas, whether born in Mexico, the Republic of Texas, or the United States. See Arnoldo de Leon, They Called Them Greasers: Anglo Attitudes Toward Mexicans in Texas, 1821-1900 xiii (1983) (adopting this definition of "Tejano").

¹⁷. See, e.g., Guy Wright, U.S. English, in Crawford, supra note 3, at 127-28 (accusing "ethnic blocs, mostly Hispanic" of "demand[ing] government funding to
established in Texas in the 1820s and 1830s at the insistence of English-speaking Anglo-American immigrants who claimed a right to communicate with the Spanish-speaking Mexican government in their own language. Those who advocate making English the official language of Texas and seek to prohibit governmental services in any language other than English invoke the mythology of the English-speaking Texan rather than the historical reality of multilingual Texans.

These efforts have arisen because, to the surprise of many Americans, nothing in the law of the United States makes English the official language. Nor do most states have any law declaring English as the state’s official language. English is the official language of only seventeen states.

18. See infra text accompanying note 35.

19. As one writer has noted, "Those who would understand Texas, now as well as 150 years ago, must once and for all discard the myth of the typical Texan, . . . and accept the concept of a multiethnic society." Terry G. Jordan, A Century and a Half of Ethnic Change in Texas, 1836-1986, 89 SW. HIST. Q. 385, 385 (1986).

20. See, e.g., J.B. Bricker, Must Learn English, Hous. Post, Nov. 8, 1989, at A22 (letter to the editor responding to the reported lack of bilingual school counselors by stating, "I thought English was the official language of the state.").


Six states have enacted constitutional amendments making English the official language: Alabama (Ala. Const. amend. no. 509) (adopted in 1990); Arizona (Ariz. Const. art. XXVIII ) (adopted in 1988); California (Cal. Const. art. III, § 6) (adopted in 1986); Colorado (Colo. Const. art. II, § 30a) (adopted in 1988); Florida (Fla. Const. art. II, § 9) (adopted in 1988); and Nebraska (Neb. Const. art. I, § 27) (adopted in 1920). Two of these amendments have been successfully challenged under the Federal Constitution. A Nebraska statute containing language similar to that portion of Nebraska's constitution requiring that "the common school branches shall be taught in [English] in public, private, denominational and parochial schools" was struck down in Meyer v. Nebraska, 262 U.S. 390 (1923). Arizona's amendment
A. The Mixed Record of Challenges Under Federal Law to English Only Laws and Practices

Attorneys representing individuals who speak languages other than English have responded to English Only efforts by bringing claims under the United States Constitution and under Federal law. The results have been mixed. The United States Supreme Court long ago struck down a Nebraska statute prohibiting schooling in any language other than English,23 and a federal district court in Arizona struck down the Official English amendment to the Arizona Constitution.24 However, the United States Supreme Court recently permitted prosecutors to strike jurors who are bilingual, even though this is often likely to result in the exclusion of most Hispanics and Asians.25 The United States Supreme Court also recently refused to review a decision of the U.S. Court of Appeals for the Ninth Circuit that permits an employer to ban the speaking of languages other than English in the workplace.26

has been struck down as a violation of the First Amendment to the United States Constitution. Ytíguéz v. Mofford, 730 F. Supp. 309 (D. Ariz. 1990), appeal docketed, Nos. 90-15546 & 90-15581 (9th Cir.).

The Georgia Legislature has passed a nonbinding resolution declaring English to be the state language. 1986 Ga. Laws 70.

Three states recognize multiple languages. English and Hawaiian are the official languages of Hawaii. Haw. Const. art. XV, § 4 (1985). Louisiana recognizes the "right of the people to preserve, foster and promote their respective historic linguistic and cultural origins." La. Const. art. 12, § 4 (1977). New Mexico's constitution required the ballots for the ratification of the constitution to be in both English and Spanish. N.M. Const. art. XXII, § 14 (Michie 1992). Publication of all laws in English and Spanish was required for the first twenty years of statehood, and continues to be permitted. Id. art. XX, § 12. Proposed amendments to the New Mexico Constitution must be published in both English and Spanish. Id. art. XIX, § 1. The New Mexico legislature is required to provide for the training of teachers in English and Spanish. Id. art. XII, § 8.


The United States Constitution sets the floor for protections the states must provide, but the state constitutions can extend "protection to rights . . . which the constitution of the United States does not give." The freedom of the state courts to determine the meaning of state law is a well-established principle of American federalism. Lawyers who perceive the federal courts as less protective of individual rights than in the past are turning increasingly to state constitutions. After years of neglect, academics are beginning to respond to calls for examinations of the protections offered by state constitutions, often using the rubric of the "new federalism."
While academics and others have responded to this call, particularly with respect to criminal law issues and free speech issues, analyses of language rights have focused almost entirely on federal law. Given the mixed record of the federal courts with respect to language rights, it is therefore appropriate to examine whether any additional protection may be available under state constitutions for individuals who speak languages other than English. This article uses the Texas Constitution to begin the examination of language rights under the state constitutions.

C. The Texas Constitution as an Appropriate Starting Point for the Examination of Language Rights Under State Constitutions

Texas is an appropriate starting point for such an examination. Innumerable Hollywood westerns have given Texas a quintessentially American image in the United States and abroad. The image of Texans has varied over the years, but whether the image was of a cowboy with a ten-gallon hat, or of a nouveau riche oil millionaire, Texans have traditionally been viewed as self-reliant, independent, English-speaking Anglo-Americans.

These images, of course, never comported with reality. With respect to language, they are especially inaccurate. As I demonstrate below, Texas has long been home to the speakers of many languages. Often overlooked is the fact that the first English-


35. Jordan, supra note 19, at 385 (noting that the "myth of the typical Texan [is] a chauvinistic notion that, on occasion, has even penetrated the scholarly community").
speaking Texans were immigrants to a Spanish-speaking country: Mexico. Few of these Anglo-American immigrants spoke Spanish, the language of the Mexican government. Texas thus provides a unique opportunity to examine the response of English-speaking Anglo-Americans who voluntarily immigrated to a country whose national language they did not speak. I argue in this article that these English-speaking Anglo-American immigrants asserted a fundamental right of access to governmental services in a "known tongue." The assertion of this right is of great importance to today's Texans who do not speak the national language—English. It is also of importance, however, for residents of other states who do not speak English, for the history of Texas in the nineteenth century gives us a window into how English-speaking Americans viewed language during this early period of American history. Courts that refuse to extend language rights to those who do not speak English today fail to recognize a fundamental right asserted by English-speaking Anglo-Americans who immigrated to Mexican Texas. These nineteenth-century Anglo-Americans, widely recognized in American lore as freedom fighters at the Battle of the Alamo, believed their fundamental freedoms included the freedom to speak and use their own language.

I argue in this article that these framers of the Texas Bill of Rights experienced the problems created whenever immigrants do not speak the national language. Their response to these problems—their assertion of a fundamental right of access to governmental services in a "known tongue"—should be considered as Texas and other states confront the problems created by residents who do not speak English. Texas continues to struggle with the problems raised by the Anglo-American immigrants of the 1820s and 1830s, since many citizens and residents of Texas speak other languages. One in four Texans speaks a language other than English at home. Texas has the third-highest rate among all the states of residents who speak a language other than English. While most Texans who speak a language other than English at home speak

36. Voices of America; Report Says that More U.S. Residents Speaking a Foreign Language at Home, DALLAS MORNING NEWS, Apr. 28, 1993, at A1. This is an increase from one in five in 1980. Id.

37. Felicity Barringer, For 32 Million Americans, English is a 2d Language, N.Y. TIMES, Apr. 28, 1993, at A18 (reporting New Mexico is first with 33.5% of its population speaking another language, California is second with 31.5%, and Texas is third with 25.4%).

Spanish, the number of speakers of Asian languages is growing at the fastest rate. The perceived threat to the English language in Texas presented by this demographic diversity has driven an English Only group based in Bryan, Texas, the American Ethnic Coalition, to spearhead efforts to establish English as the official language of Texas. Legislation to make English the official language of Texas was introduced by Democratic state representative L.E. (Pete) Patterson in 1987, but quickly died after the Mexican American Legislative Caucus corralled enough votes to block it under the rules of the Texas Legislature. Similar proposals in 1988 were also stillborn.

In opposing the English Only bills, legislators representing districts with large Tejano populations were carrying out the desire of their constituents. Most Hispanics in the United States oppose declaring English as the official language. Unlike many Anglo

39. Spanish is spoken by four million Texans or 87% of all Texans who speak a language other than English. Stefanie Asin, Census Says It All; Non-English Speakers Are Gaining Here, Hous. Chron., Apr. 28, 1993, at A1.

40. Voices of America, supra note 36, at A1 (stating the number of Vietnamese speakers in Texas rose from 23,100 in 1980 to 57,700 in 1990; Chinese speakers increased from 21,700 to 48,000; Korean speakers grew from 11,300 to 26,000).


44. E.g., William E. Clayton, Jr., Survey Results Offer Surprises; Most Hispanics Say U.S. Getting Too Many Immigrants, Hous. Chron., Dec. 16, 1992, at A1 (reporting that Latino National Political Survey shows 44.4% of Mexican Americans, 48.9% of Puerto Ricans, and 40% of Cuban Americans felt English should be the official language); Allan C. Kimball, Bryan Businessman Pushes Official Language Referendum: Issue Becomes All-Consuming Passion, Hous. Post, Feb. 28, 1988, at A12 (reporting poll by "Public Policy Research Laboratory at Texas A&M [University] showed fewer than 74 percent of all Texans favored making English the official language" but fewer than 40 percent of Hispanics favor such a proposal); Rodolfo de la Garza, Dallas Morning News, Jan. 10, 1993, at J1 (noting that "the Latino National Political Survey, the most extensive and detailed study of Hispanic attitudes, values and behavior ever conducted" found that "Mexican and Cuban noncitizens overwhelmingly disagree that English should be the official language" and a major-
English Only proponents, the minority of Hispanics who support declaring English as the official language nevertheless support the provision of some bilingual governmental services.45

While most Tejanos oppose English Only efforts, the popularity of such a measure among largely Anglo voters was evident in 1988, when 92% of the voters voting in the Republican Primary approved a nonbinding referendum in favor of designating English as the official language of Texas.46 The Texas Republican Party platform of 1988 contained an English Only plank, despite the opposition of Hispanic Republicans47 and of the Republican leadership.48

45. Clayton, supra note 44, at A1 (noting Hispanics in Latino National Political Survey “supported bilingual education so strongly that most said they would be willing to pay higher taxes to finance it”).

46. David Barron, Voters Back 'Official' English, Elected Judges, UPI, Mar. 9, 1988, available in LEXIS, News Library, UPSTAT file (stating that, with 75% of precincts reporting, 92.5% of voters in Republican primary approved proposal to declare English the official language).

47. GOP Committee Votes to Put “English Only” Resolution on Ballot, UPI, Nov. 21, 1987, available in LEXIS, News Library, UPSTAT file (reporting opposition of Texas Republican Executive Committee member H. “Pulse” Martinez to placing Official English resolution on the March 1988 primary ballot); Resolution on English a GOP Issue: Hispanics Want It Kept Off Platform, Hous. Post, Aug. 7, 1988, at A23 (reporting opposition to plank by Hispanic Republican leaders).

Encouraged by the popularity of English Only proposals among many Texans, English Only proponents have vowed to continue their efforts to abolish the use of any language other than English in the provision of any governmental service. This threat to the multilingual services provided to the more than three million Texans who speak a language other than English makes Texas a natural choice to begin the examination of language rights under state constitutions.

The recent mandate of the Texas Supreme Court directing the Texas courts to consider claims under the Texas Constitution first, instead of immediately ruling on a federal constitutional claim, underscores the need for such an endeavor. Whether viewed from a current political perspective as "conservative" or as "liberal," the

49. Native Texan Crusading, supra note 41, at A31 (reporting that English Only proponent Lou Zaeske "says he will not rest until his native state of Texas recognizes English as its official language"). Cf. Independent to Campaign for Senate, DALLAS MORNING NEWS, Jan. 20, 1993, at D12 (reporting Zaeske defended English Only efforts, but did not intend to make it a top issue in his independent campaign for the U.S. Senate); R.G. Ratcliffe, Candidates Appeal to Perot Backers; 20 Seeking U.S. Senate Seat Attend Forum, HouS CHRON., Mar. 30, 1993, at A9 (reporting that "Zaeske was booed by many in the audience when he said English should be made the official language of the United States").

50. Davenport v. Garcia, 834 S.W.2d 4, 18 (Tex. 1992) (stating that "the soundest way to avoid" the delay caused by unnecessary appeals to the United States Supreme Court "is to rely on the state constitution in the first instance").

51. While the recent emphasis on the state constitutions has been fueled by those seeking to escape the conservatism of the federal judiciary, the freedom of the state courts to interpret their state constitutions independently does not mean that the state constitution always will provide broader protection than the U.S. Constitution—a point often overlooked by proponents and critics of the "new federalism." Ex parte Tucci, 859 S.W.2d 1, 13 (Tex. 1993) (noting that a state court "may interpret its fundamental law as affording less protection than our federal charter"); id. at 32 n.34 (Phillips, C.J., concurring) (stating that the protection of a state constitution "may be greater, lesser, or the same as that provided by a different provision in the United States Constitution"). Many conservatives have opposed the independent analysis of state constitutions. See, e.g., M.P. Duncan III, Terminating the Guardianship: A New Role for State Courts, 19 ST. MARY's L.J. 809, 821 (1988) (noting the "chagrin of many conservative theorists" at state court interpretations "more oriented toward individual rights and liberties than was anticipated"); Peter Linzer, Why Bother with State Bills of Rights?, 68 Tex. L. Rev. 1573, 1574 (1990) (recognizing that "many critics see this new federalism as nothing more than a tactic of liberal activists to avoid the increasing conservatism of Republican-dominated federal courts"); Paul & Van Horn, supra note 32, at 929 (containing arguments by two assistant state prosecuting attorneys as to why current conservative interpretations of the U.S. Constitution should be followed in interpreting the Texas Constitution). The opposition of "conservatives" to the independent analysis of state constitutions is ironic since many conservatives have ardently championed federalism to oppose "liberal" federal projects. Cf. Linzer, supra, at 1574 (arguing, "that it took Warren Burger and William Rehnquist to lead us to rediscover our state bills of rights is no reason to abandon our new world"); Stanley Mosk, State Constitutionalism: Both Liberal and Conservative, 63 Tex. L. Rev. 1081 (1985) (arguing state constitutionalism offers liberals the prospect of continued expansion of individual rights and liberties, while offering conservatives the triumph of federalism). Moreover, "state bills
Texas Constitution must be interpreted in light of the experiences of Texans:

Our Texas forbears surely never contemplated that the fundamental state charter, crafted after years of rugged experience on the frontier and molded after reflection on the constitutions of other states, would itself veer in meaning each time the United States Supreme Court issued a new decision. After all, the Texas historical experience was different from that of the eastern seaboard.\(^5\)

Because Texas' historical development is significantly different from that of the eastern United States, the analysis of the provisions of the Texas Constitution must reflect that diversity.\(^5\)

The Texas courts "recognized the importance of our state constitution long before 'new federalism' even had a name."\(^5\)

As large numbers of Anglo-American immigrants arrived in the 1820s and 1830s, the government of the Mexican state of Coahuila & Texas responded by adding English as a language of government for most purposes.\(^5\)

of rights are two-edged swords that can be used aggressively by political conservatives as well as by liberals." Linzer, supra, at 1576. For an example of the use of my interpretation of language rights under the Texas Constitution for what is often viewed as a "conservative" cause—avoiding the use of legal technicalities to reverse a criminal conviction—see infra part XIA.

52. JAMES C. HARRINGTON, THE TEXAS BILL OF RIGHTS: A COMMENTARY & LITIGATION MANUAL 41 (1987) (quoted in Ex parte Tucci, 859 S.W.2d at 32 n.34 (Phillips, J., concurring)); Davenport, 834 S.W.2d at 16 (same). See also Ted M. Benn, Comment, Individual Rights & State Constitutional Interpretations: Putting First Things First, 37 BAYLOR L. REV. 493, 508 (1985) (suggesting that "pre-existing state law, matters of particular state interest, state traditions and distinctive attitudes of a state's citizenry" be used to analyze a state constitution) (citing State v. Hunt, 450 A.2d 952, 965-66 (1982) (Handler, J., concurring))); Judith Hession, Comment, Rediscovering State Constitutions for Individual Rights Protection, 37 BAYLOR L. REV. 463, 470 (1985) (noting that, "Each constitution is different, and ... the history behind every written or omitted word shape[s] the law of each state.").

53. HARRINGTON, supra note 52, at 45; cf. Brown v. State, 657 S.W.2d 797, 810 (Tex. Crim. App. 1983) (Teague, J., dissenting) (describing the plurality's holding that art. I, § 9 of the Texas Constitution must be interpreted in harmony with United States Supreme Court opinions interpreting the Fourth Amendment to the United States Constitution as an "implicit holding" that the Texas Court of Criminal Appeals now has "the role of being nothing more than mimicking court jesters of the Supreme Court of the United States"); id. at 806-07 (Clinton, J., joined by Onion, P.J., & Miller, J., concurring) ("Merely to parrot opinions of the Supreme Court of the United States interpreting the Fourth Amendment is to denigrate the special importance our Texas forebearers attached to their ... guarantees vouchsafed by the Bill of Rights they first declared and then insisted on retaining in every successive constitution."). The Texas Court of Criminal Appeals subsequently overruled the Brown holding that article I, § 9 is to be construed in accordance with Fourth Amendment law. Heitman v. State, 815 S.W.2d 681, 690 (Tex. Crim. App. 1991) (en banc).

54. Davenport, 834 S.W.2d at 13.

55. See infra part IV.
government to be even more responsive to the Texians' concerns about government in an "unknown tongue" was one of the reasons given by the Texians for declaring independence from Mexico. After Texas declared its independence from Mexico, English became the dominant language of government, but the Republic of Texas recognized the need to provide government services in Spanish to the native Tejano citizens. With the influx of German immigrants in the 1840's, governmental services in German became available. In the last half of the nineteenth century, Norwegian, Czech, Polish, and Wendish were used to provide governmental services in Texas. Regardless of the protections the United States Supreme Court and the United States Congress may deem to make available to non-English speakers, the Texas Constitution should, consistent with the intent of the framers of the Republic of Texas and the practice of the State of Texas through most of the nineteenth century, ensure that state and local government does not communicate with non-English speakers in an "unknown tongue."

I begin in Part II of this article by discussing the use of historical argument in constitutional interpretation, and its use by the Texas courts in interpreting the Texas Constitution. I then review the history of the role of language in government in Texas. In Part III, I examine the role of language in government in Texas when it was a province of the Spanish Empire. Part IV examines language in Texas government under Mexican law and practice, and describes how Mexico responded to the needs created by the sudden influx of large numbers of English-speaking immigrants. In Part V, I review the role of language in the efforts of these immigrants, the Texians, and of the native Tejanos to secure independence from Mexico. Part VI describes the use of Spanish in governmental activities during the Republic of Texas era. In Part VII, I examine the continued use of Spanish in governmental activities after Texas joined the United States in 1845, and the expansion of multilingual services with the arrival of large numbers of European immigrants to include services in German, Czech, Polish, and Wendish. Part VIII describes the increase in xenophobia and racism in Texas, and

56. I use the term "Texian" to refer to Anglo-American immigrants who resided in Texas during the Mexican and Republic of Texas eras. De LEON, supra note 16, at xiii (describing "Texian" as a "term of self-reference used by Anglos during the early years of residence in Texas").
57. See infra part VI.
58. See infra part VII.
59. See Shepherd v. San Jacinto Junior College Dist., 363 S.W.2d 742, 744 (Tex. 1962) (holding that constitutional issues may be decided "by placing the constitutional provisions, the decisions of this Court and the pertinent legislative actions in their proper chronological order").
the resulting initial imposition of English as the required language of government, in the late nineteenth century. The return of widespread multilingual governmental services since the 1960's is summarized in Part IX. In Part X, I use the history presented in previous sections to argue that the use of historical argument by the Texas courts requires that specific provisions of the Texas Constitution be interpreted to protect against language discrimination. I examine the effect of this interpretation of the Texas Constitution on previous holdings of the Texas courts in Part XI. I conclude in Part XII that the increase in multilingual governmental services in the modern era carries out the intent of the framers of the Texas Bill of Rights to provide Texans with access to government in a "known tongue." I also assert that the Texas courts should reject any future efforts to limit multilingual governmental services as a violation of the right to government in a "known tongue," and suggest that the experience of the English-speaking Anglo-American immigrants in Texas be considered as courts in other states decide language rights issues brought by residents who do not speak English.60

II. Interpreting the Texas Constitution

A. The Use of Historical Argument in Constitutional Interpretation

This article applies what Professor Phillip Bobbit has called the historical argument of constitutional interpretation:

Historical argument is argument that marshals the intent of the draftsmen of the Constitution and the people who adopted the Constitution. Such arguments begin with assertions about the controversies, the attitudes, and decisions of the period during which the particular constitutional provision to be construed was proposed and ratified.61

60. Professor Peter Linzer has identified the "potential conflict between the academic, who must look honestly at contrary arguments, and the advocate, who must seduce courts without hesitating or temporizing." Linzer, supra note 51, at 1573 n. As an attorney with the Mexican American Legal Defense and Educational Fund (MALDEF), I litigated many cases alleging language discrimination and advocated for language rights. That experience gave me a thorough grounding in the issues and has aided my teaching and my scholarship. Nonetheless, Professor Linzer correctly notes that, "[a]n honest professor who is also an honest advocate... has a hard row to hoe." Id. I join Professor Linzer in attempting to hoe that hard row.

61. Bobbit, supra note 23, at 7 (footnote omitted). This form of constitutional analysis is known by various names: "original intent," Jefferson Powell, The Original Understanding of Original Intent, 98 HARV. L. REV. 885 (1985); "originalism," Paul Brest, The Misconceived Quest for the Original Understanding, 60 B.U. L. REV. 204 (1980); "interpretivism," Earl M. Maltz, The Dark Side of State Court Activism, 63 TEX. L. REV. 995, 995-96 (1985) (defining interpretivist courts as those that "seek primarily to divine and implement the intent of the framers of their state constitu-
Historical argument was explained by Judge Bork at the confirmation hearings on his nomination to the United States Supreme Court:

[You look at the founders and the ratifiers . . . what it was that was troubling them at the time, why they did this . . . to get what the public understanding of the time was, of what the evil was they wished to aver, what the freedom was they wished to protect. And once you have that, that is your major premise and then the judge has to supply the minor premise to make sure to ask whether that value, that freedom, is being threatened by some new development in the law or in society or in technology today. And then he makes the old freedom effective today in the new circumstances.]

Historical argument has been the subject of intensive scholarly examination and criticism. It is especially problematic as a method of constitutional analysis for women and people of color, for the framers of the Texas Constitution, like the framers of constitutions elsewhere, used the legal system they created to keep women and people of color in a subordinate position. Historical argument is not the only method of deciding constitutional issues. I do not

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63. See, e.g., Bobbitt, supra note 62, at 161 (arguing that "algorithm" (such as historical method) "that some critics are searching for, and others would impose, is not only not necessary to decision and to justice but is inimical to the legitimacy and justification of constitutional review in America"); id. at 184 (arguing that the American constitutional system requires a recursion to conscience which is sought to be dispensed with whenever a particular decision process such as the historical method is insisted upon); Bobbitt, supra note 23, at 9-24 (discussing historical argument); Bork, supra note 61, at 143-60 (advocating "original understanding"); id. at 161-85 (discussing objections to "original understanding" and asserting that none of the objections are valid); Brest, supra note 61, at 204 (criticizing "originalism" as a method of constitutional interpretation); Richard S. Kay, Adherence to the Original Intentions in Constitutional Adjudication: Three Objections and Responses, 82 Nw. U. L. Rev. 226 (1988) (discussing criticisms of original intent); cf. Bobbitt, supra note 62, at 95 (arguing that Judge Bork is not a true originalist but rather a prudentialist). Professor Jefferson Powell has argued that the framers of the U.S. Constitution did not intend for the courts to use original intent to interpret that document. Powell, supra note 61, at 885.

64. See, e.g., Terrell v. Middleton, 187 S.W. 367, 371 (Tex. Civ. App. 1916) (recounting that the events leading up to the 1875 Constitutional Convention included "the disfranchisement of the whites and the enfranchisement of the negroes [sic]" and that in 1873 "the burdens had reached their limit, when an armed constabulary of former slaves surrounded the polls and sought to intimidate the whites"); Williams, supra note 30, at 1205 (noting that "one must question the [state constitutions'] drafters' commitment to equality, since slavery and formal inequality in political participation were allowed to continue"). I discuss the mixed record of the framers of the Texas Constitution with respect to issues of race infra parts V.L, VI.F, and VII.E.

65. Professor Bobbitt describes six modalities of constitutional interpretation:
suggest that historical argument is always the most appropriate form of constitutional analysis in any particular case. Nor does the use of historical argument to ascertain the intent of the framers mean the Texas Constitution cannot adapt to changing circumstances in the modern era.

Notwithstanding the criticisms properly made of the rigid application of historical argument, I use it in this article to examine language rights under the Texas Constitution because this modality has in the recent past been favored by the right-wing. Most of the leading proponents of the English Only movement, but not all, are conservatives who have aligned themselves politically with adherents of original intent as the sole legitimate method of constitutional adjudication. These English Only proponents mis-

[T]he historical (relying on the intentions of the framers and ratifiers of the Constitution); textual (looking to the meaning of the words of the Constitution alone, as they would be interpreted by the average contemporary “man on the street”); structural (inferring rules from the relationships that the Constitution mandates among the structures it sets up); doctrinal (applying rules generated by precedent); ethical (deriving rules from those moral commitments of the American ethos that are reflected in the Constitution); and prudential (seeking to balance the costs and benefits of a particular rule).


66. See Bobbitt, supra note 23, at 6 (“In this task it is not necessary to appeal to rules. You cannot decide to be convinced by any of these arguments; nor, of course, need you decide whether they are convincing. There is a legal grammar that we all share and that we have all mastered . . . .”); Ronald Dworkin, Law’s Empire 91 (1986) (noting that “we have no difficulty identifying collectively the practices that count as legal practices in our own culture”). For a discussion of choosing among the various modalities, see Richard H. Fallon, Jr., A Constructivist Coherence Theory of Constitutional Interpretation, 100 Harv. L. Rev. 1189 (1987).

67. In the Interest of J.W.T., 872 S.W.2d 189, 194 (Tex. 1994) (noting that the Texas Supreme Court has “recognized the adaptability to such changes of our state’s fundamental governing law and found considerable strength in the organic nature of its command”); Ex parte Tucci, 859 S.W.2d 1, 63 n.7 (Tex. 1993) (González, J., concurring) (rejecting the argument that the Texas Constitution cannot evolve from its meaning in 1875 because this “ignores countless decisions of this Court and other courts regarding the evolution of organic constitutional guarantees over time”); Davenport v. García, 834 S.W.2d 4, 10 (Tex. 1992) (noting that “the dimensions of our constitutionally guaranteed liberties are continually evolving”); id. at 19 (stating that “[i]n no way must our understanding of [the Texas Constitution’s] guarantees be frozen in the past; rather, our concept of freedom . . . continues to evolve over time”); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 394 (Tex. 1989) (stating that the courts seek the meaning of the Texas Constitution “with the understanding that [it] was ratified to function as an organic document to govern society and institutions as they evolve through time”).

68. Bobbitt, supra note 62, at xiii (noting that “[m]any on the right settled on historical forms of argument as the sole legitimating form”).

69. Cf. Arthur M. Schlesinger, Jr., The Disuniting of America 107-10 (1992) (rejecting an Official English amendment because it would increase racial discrimination and resentment, but arguing that bilingualism threatens the unity of the United States).
represent the history of multilingual government in Texas when they argue that government in Texas has, until very recently, always been conducted solely in English. This article summarizes part of the voluminous evidence that the original intent of the framers of the Texas Constitution, affirmed by long-standing practice, was to ensure the right of every resident of Texas to governmental services in a language known to that resident.

In asserting that the framers of the Texas Constitution recognized a fundamental right to communicate with government in a "known tongue," I am aware of the inherent difficulty of establishing the intent of framers who have been dead for more than a century. Professor Bobbit asserts that with respect to the United States Constitution, "there is not one instance in which it may be said that the Court has definitively established the intent of the Convention on any important issue. Usually when this has been attempted it has subsequently been refuted." Additional concerns are raised by the subjectivity any observer brings to the analysis. While these concerns reinforce the need to proceed carefully when using historical argument, they cannot eviscerate historical argument entirely for, if taken to their most extreme form, they are "an attack on the possibility and validity of historical investigation." If we cannot establish conclusively the specific intent of particular framers with respect to a given issue confronting the courts, we can establish the "general spirit of specific provisions" in the Texas Constitution. This spirit can then be used to attach particular conceptions to the general concepts of the Texas Bill of Rights. Concepts are the general principles, such as "equal rights" or "due course of law" set forth in a constitution. Each generation attaches

70. See, e.g., supra note 12 (describing requests by English Only proponents to state officials to provide legal authority for multilingual governmental services).
71. For a discussion of the principal criticisms of historical argument, see Fallon, supra note 66, at 1209-17.
72. Bobbitt, supra note 23, at 11; see also Dix, supra note 31, at 1403 (asserting that the Texas Court of Criminal Appeals "has not identified any reliable evidence of actual original understanding relevant to the issues it has addressed"); Mikal Watts & Brad Rockwell, The Original Intent of the Education Article of the Texas Constitution, 21 St. Mary's L.J. 771, 802 (1990) (noting the difficulty, if not futility, of ascertaining original intent).
73. See Brest, supra note 61, at 219 (describing the problems caused by bringing one's own expectations to what a framer has said); Paul & Van Horn, supra note 32, at 937 n.34 (noting that "historical or textual analysis motivated by a perceived need to reach a certain result should not be accepted unless carefully verified and examined in detail for legitimacy in fact and reason").
74. Kay, supra note 63, at 252.
75. Bobbitt, supra note 23, at 13; cf. Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 395 (Tex. 1989) (holding that gross inequalities in a school finance system could never have been contemplated by framers given the "general spirit of the times and the prevailing sentiments of the people").
particular conceptions to those general concepts, e.g., that due
course of law requires that a criminal defendant who does not speak
English must be provided an interpreter. The conceptions applied
by the Texas courts to the concepts of the Texas Bill of Rights
must comport with the general spirit of the framers who, as docu-
mented in this article, claimed a right of access to government in a
"known tongue."

B. The Use of Historical Argument to Interpret the Texas
Constitution

While no provision of the Texas Constitution requires the use
of historical argument,77 the Texas courts use historical argument
in interpreting the Texas Constitution. The historical modality of
constitutional interpretation is the "traditional method of constitu-
tional interpretation" in Texas.78 The "fundamental" purpose of
any court interpreting the Texas Constitution is to ascertain and
give effect to the "intent of the framers of the Constitution and of
the people who adopted it."79 The Texas Supreme Court follows a
methodology similar to that advocated by Judge Bork:80 "In deter-
mining that intent, 'the history of the times out of which it grew
and to which it may be rationally supposed to have direct relation-
ship, the evils intended to be remedied and the good to be accom-
plished, are proper subjects of inquiry.'"81 The provisions of the

76. Garcia v. State, 210 S.W.2d 574 (Tex. Crim. 1948). See Bobbit, supra note
23, at 23 (noting terminology used by Professors Dworkin and Bickel); Dworkin,
supra note 66, at 70-72 (1986) (describing use of concepts and conception in philo-
sophy); id. at 90-96 (discussing use of concepts and conceptions in law).
77. Cf. Bobbit, supra note 23, at 138 (noting that nothing in the United States
Constitution dictates the use of historical argument).
78. Edgewood Indep. Sch. Dist., 777 S.W.2d at 394 (quoted in Davenport v. Gar-
cia, 834 S.W.2d 4, 19 (Tex. 1992)).
79. Deason v. Orange County Water Control & Improvement Dist. No. One, 244
S.W.2d 981, 984 (Tex. 1952); Collingsworth County v. Allred, 40 S.W.2d 13, 15 (Tex.
1931) (same); see also Director of Dep't of Agric. & Env't v. Printing Indus. Ass'n of
Texas, 600 S.W.2d 264, 267 (Tex. 1980) (noting that the fundamental purpose is to
give effect to the intent of the adopters of the Constitution) (quoting Cox v. Robison,
150 S.W. 1149, 1151 (Tex. 1912)) ; Bell v. Indian Live-Stock Co., 11 S.W. 344, 345
(Tex. 1889) (stating that laws must be interpreted "in accordance with the obvious
intent of those who enacted them").
80. See supra text accompanying note 62.
81. Davenport, 834 S.W.2d at 19 (quoting Markowsky v. Newman, 136 S.W.2d
808, 813 (Tex. 1940)); Edgewood Indep. Sch. Dist., 777 S.W.2d at 394 (same); Direc-
tor of Dep't of Agric. & Env't, 600 S.W.2d at 267 (same); Travelers' Ins. Co. v. Mar-
shall, 76 S.W.2d 1007, 1012 (Tex. 1934) (same); Brown v. Strake, 706 S.W.2d 148,
App. 1916) (considering "the circumstances under which the [1875 Constitutional]
convention met, the evils sought to be remedied, and the ends to be accomplished, as
well as the personnel of the members"); James C. Harrington, Framing a Texas Bill
of Rights Argument, 24 St. Mary's L.J. 399, 412 (1993) (stating that "[u]sing a his-


Texas Constitution must be interpreted "in the light of conditions existing at the time of their adoption, the general spirit of the times, and the prevailing sentiments of the people." The factors properly considered by any court in interpreting the Texas Constitution include "the prior state of the law, the subject-matter, and the purpose sought to be accomplished, as well as . . . the proceedings of the convention and the attending circumstances."

The Texas Supreme Court has recognized that Texas courts "should be independent and thoughtful in considering the unique values, customs, and traditions of our citizens." These values, customs, and traditions include those of the native Tejanos, as well as those of German, Czech, Polish, and Wendish immigrants. The Texas courts have "the power and duty to protect the additional

torical perspective, one must also reflect on what a constitutional guarantee was designed to accomplish").

82. Mumme v. Marrs, 40 S.W.2d 31, 35 (Tex. 1931). See also Edgewood Indep. Sch. Dist., 777 S.W.2d at 395 (considering "the general spirit of the times and the prevailing sentiments of the people"); Gallagher v. State, 890 S.W.2d 587, 591 (Tex. Crim. App. 1985) (en banc) (interpreting Texas Constitution's provision granting district courts original jurisdiction of misdemeanors involving official misconduct in light of the concerns expressed at the 1876 Constitutional Convention regarding the overcrowding of the district court dockets with "petty cases"); Director of Dep't of Agric. & Env't, 600 S.W.2d at 287 (requiring consideration of "the historical climate which existed at the time" the constitutional provision was enacted in order to give effect to the framers' intent); Cramer v. Sheppard, 167 S.W.2d 147, 154 & 159 (Tex. 1942) (describing as a "fundamental canon" the need to consider intent in light of the conditions existing at the time of adoption); Koy v. Schneider, 221 S.W. 880, 890-91 (Tex. 1920) (stating that "[a]lmost every clause in a state Constitution has a fixed significance—a historic meaning—in the light of which it must be construed and applied"); Brown v. City of Galveston, 75 S.W. 488, 495 (Tex. 1903) (noting that State v. McAlister, 31 S.W. 187 (Tex. 1895), construed § 3 of art. 6 of the Texas Constitution "so as to harmonize with conditions that existed at the time of its adoption"); Duncan, supra note 51, at 839 (noting that "the social and political setting in which a particular provision originated can be quite persuasive as to how it should be interpreted"); HARRINGTON, supra note 52, at 45 (noting that deciphering intent requires a consideration of "the history of the era in which the constitutional provision developed . . . as well as the social and political problems which surrounded enactment of the proviso"); id. at 46 (discussing the need to study "the understanding of individual rights held by those drafting and ratifying the constitution"); Linzer, supra note 51, at 1584 (supporting use of the state's "history or collective 'personality' or . . . the circumstances surrounding the adoption of the particular provision").

83. Cox, 150 S.W. at 1151.

84. Davenport, 834 S.W.2d at 20; LeCroy v. Hanlon, 713 S.W.2d 335, 339 (Tex. 1986) (stating that the "powers restricted and the individual rights guaranteed in the present constitution reflect Texas' values, customs and traditions"); see Harrington, supra note 81, at 431 (noting that courts "should evaluate Texas' societial diversity, culture, traditions, racial and ethnic make-up, culture [sic], and emphasis on individuality when the provision was written").

85. Harrington, supra note 81, at 433 (noting that demography can influence constitutional development); Lawrence Gene Sager, Foreword: State Courts and the Strategic Space Between the Norms and Rules of Constitutional Law, 63 Tex. L. Rev. 959, 975 (1985) (stating that relevant strategic concerns in interpreting state constitutions include "[r]egional history, social experience . . . [and] demography").
state guaranteed rights of all Texans,"86 for they have "always given effect to the intention of the framers and ratifiers."87

While in recent years there has been vigorous debate among the justices of the Texas Supreme Court regarding the precise application of this methodology,88 the entire court uses historical argument.89 Much of the current debate among the justices of the Texas Supreme Court centers around whether there is anything in the history of particular provisions of the Texas Constitution which justifies a different reading of those provisions than that expounded

86. LeCroy, 713 S.W.2d at 339 (emphasis added) (quoted in Davenport, 834 S.W.2d at 11). See also Hession, supra note 52, at 470 (arguing that "[e]ach citizen is entitled to the unique protections offered by his or her state constitution, and it is the duty and obligation of the highest court of each state to construe these guarantees to ensure that these protections are enforced, even when this necessitates a divergence from precedent established under comparable federal guarantees").

87. Sears v. Bayoud, 786 S.W.2d 248, 251 (Tex. 1990). See, e.g., Davenport, 834 S.W.2d at 7-8 (reviewing history of free speech guarantee, noting that the "unresponsiveness of Mexico to these attempts to exercise and establish protection of free speech were a contributing factor to Texas' revolution and independence," and noting that reading the Texas Constitution's free speech guarantee broader than the First Amendment's guarantee is "[c]onsistent with this history"); Gallagher v. State, 690 S.W.2d 587 (Tex. Crim. App. 1985) (en banc) (both the majority and the dissent attempt to discern the intent of the framers of art. V, § 8 of the Texas Constitution); White v. White, 196 S.W. 508, 512-13 (Tex. 1917) (reviewing history of prior statutes and constitutional provisions to determine meaning of the right to trial by jury guaranteed in art. I, § 15); Trapnell v. Sysco Food Services, Inc., 850 S.W.2d 529, 545 (Tex. Ct. App. 1992) (refusing to apply collateral estoppel to a case tried before a judge and noting that "[o]ne of the principal grievances the citizens of Texas held against the Mexican Government was the abridgment of the right to trial by jury"), aff'd on other grounds, 1994 WL 278119 (Tex. 1994) at *7 (refusing to approve or disapprove the lower court's analysis of the Texas Constitution).

88. Compare Ex parte Tucci, 859 S.W.2d 1, 9 (Tex. 1993) (Doggett, J.) (noting in Appendix I to plurality opinion that five members of the court continue to subscribe to the broad reading of liberties guaranteed under the Texas Constitution), with id. at 30-32 (Phillips, C.J., concurring) (asserting that First Amendment precedents should be considered because the history of art. I, § 8 does not establish any difference between the guarantees of free speech under the U.S. Constitution and the Texas Constitution).

89. See, e.g., Ex parte Tucci, 859 S.W.2d at 9-12 (Doggett, J.) (Appendix I) (discussing history of free speech guarantee of Texas Constitution); id. at 30-32 (Phillips, C.J. & Cornyn, J., concurring) (reviewing history of Texas free speech guarantee but concluding that free speech under the Texas Constitution is "the shared legacy of the American heritage, if not of the entire modern constitutional tradition"); Davenport, 834 S.W.2d at 30 (Hecht, Cook, & Cornyn, JJ., concurring) (noting that the Texas Courts "look to such things as the language of the constitutional provision itself, its purpose, the historical context in which it was written, the intentions of the framers"); id. at 42 (stating that "constitutional construction must be founded upon a careful construction of each provision's language, purpose, history and intent, as well as upon precedent, theory and fundamental values"). But see Brown v. City of Galveston, 75 S.W. 488, 496 (Tex. 1903) (criticizing "doctrine" of "history and tradition" because it "furnishes no standard or rule by which to determine the validity of any law framed by the Legislature, but leaves each judge to try it according to his own judgment of what constitutes the 'history and traditions' of the state, and what rights have been vested in the people by reason of such 'history and traditions'.")
by courts interpreting analogous provisions of the U.S. Constitution.\textsuperscript{90} While many of the rights listed in the Texas Bill of Rights, like those in the federal Bill of Rights, are the historic rights of Englishmen,\textsuperscript{91} the framers of the Texas Constitution intended to include a right that arose, not from the English experience with tyrannical kings, but from the Texas experience with a government that did not provide its newest residents with sufficient access to governmental services in a language they understood.\textsuperscript{92} The history of the treatment of language rights in Texas under the various Texas Constitutions described below does justify a different reading of the provisions of the current Texas Constitution. Those provisions must be read in light of the framers' assertion of a right to communicate with government in a "known tongue," for the Texas courts applying "these antique words to contemporary situations ... must remain faithful to the essential purposes of the framers and ratifiers."\textsuperscript{93}

\textsuperscript{90} In the Interest of J.W.T., 872 S.W. 2d 189, 208 (Tex. 1994) (Cornyn, J., dissenting on motion for rehearing) (stating the majority's broad interpretation of the due course clause of the Texas Constitution might be supportable if they "could identify ... some aspect of history or a tradition unique to Texas to demonstrate that the Texas Constitution confers an authority to intervene in this case when the United States Constitution does not"); \textit{Ex parte Tucci}, 859 S.W.2d at 30-32 (Phillips, C.J., concurring) (asserting that First Amendment precedents should be considered because the history of art. I, § 8 does not establish any difference between the guarantees of free speech under the U.S. Constitution and the Texas Constitution).

\textsuperscript{91} \textsc{George D. Braden et al.}, \textsc{The Constitution of the State of Texas: An Annotated & Comparative Analysis} 3 (1977).

\textsuperscript{92} \textit{Cf. Long v. State}, 742 S.W.2d 302, 313 (Tex. Crim. App. 1987), cert. denied, 485 U.S. 993 (1988). In the \textit{Long} case, the Texas Court of Criminal Appeals noted that article I, § 10 of the Texas Constitution and the Sixth Amendment to the United States Constitution are both derived from the English common law. However, the \textit{Long} court stated that the Texas courts have not been "mere mimics of the common law," but have used Texas factual settings to write "independent and at times courageous opinions." The court then cited as an example its decision in \textit{Garcia v. State}, 210 S.W.2d 574 (Tex. Crim. 1948), which held that an interpreter must be furnished to a defendant who cannot speak English. (For a discussion of the right to an interpreter under the Texas Constitution, see \textit{infra} parts VIII.C & XI.B.) \textit{See also Koy v. Schneider}, 221 S.W. 880, 902 (Tex. 1920) (reaching interpretation "from a study of our Constitution as a whole, regardless of decisions from other states").

\textsuperscript{93} \textit{Ex parte Tucci}, 859 S.W.2d at 26 (Phillips, C.J., concurring). Because Texas does have a unique history regarding language that requires an interpretation different from that given to similar provisions of the United States Constitution, this article does not discuss the criticisms made of the "new federalism" when there is no such distinct history. Critics who argue the state constitutions should generally be interpreted like the federal constitution acknowledge an exception when the state constitution has a unique history. \textit{See e.g.}, Herasimchuk, \textit{supra} note 32, at 1513-14 (noting that a divergent result from federal precedent is appropriate when there is "constitutional history supporting broader coverage by the framers of the state constitution" or "interpretation of rights and obligations within a subject matter of special concern to that state" or "specific state traditions and public-policy concerns of the citizens"); \textit{Maltz, supra} note 61, at 1000-01 (contrasting constraints imposed by interpretive review that are lacking in noninterpretive approaches); \textit{Paul & Van Horn},
C. The Relevance of the History of Prior Texas Constitutions in Interpreting the Current Constitution

The first constitution of Texas after independence from Mexico was the Constitution of the Republic of Texas, written and adopted in 1836. The 1845 constitution, written when Texas was admitted into the Union, was the second. Three constitutions followed in relatively quick succession: "1861 to adapt to the Confederacy, 1866 to rejoin the Union, and 1869 to meet the demands of Reconstruction." Although the current version of the Texas Constitution was adopted in 1876, the courts look to the intent of the framers of prior constitutions when the provisions of the 1876 Constitution are similar to those of prior constitutions. Twenty-five of the twenty-nine sections of the Bill of Rights of the current Constitution can be traced in whole or in part to the twenty-one sections of the Bill of Rights of the 1845 Constitution. The 1845 Bill of Rights in turn is "manifestly merely an expansion and rearrangement of the seventeen [sections] of [the] 1836 [Bill of Rights]." The provisions of the

supra note 32, at 971 (acknowledging that "[i]f the Constitution of Texas, by its terms and history, dictates that it should be interpreted differently from the United States Constitution on a given issue, then by all means it is the duty of the courts to so interpret it"). But see Sager, supra note 85, at 961 (noting the possibility of an argument that United States Supreme Court interpretations should be followed unless there is "some exceptional circumstance in the language, history, or structure of the pertinent state constitutional provision").

94. The Texas Constitution "bears the distinction of being one of the few state constitutions that were derived from its own independent, national constitution." Davenport v. García, 834 S.W.2d 4, 15 (Tex. 1992). This unusual history legitimizes further an examination of the history of the Texas Constitution when interpreting its provisions. Duncan, supra note 51, at 840.

95. George D. Braden, Citizens' Guide to the Texas Constitution 11 (1972); see also LeCroy v. Hanlon, 713 S.W.2d 335, 339 n.4 (Tex. 1986) (listing the six constitutions of Texas since 1836).

96. Mumme v. Marrs, 40 S.W.2d 31, 35 (1931) (stating that "the readoption of the amendment with the same language formerly employed, without change or limitation, carries with it the meaning which the legislative department had theretofore put upon it"); Koy v. Schneider, 221 S.W. at 918 (stating that if a section remained unchanged in a redrafting of the constitution, it is presumed that the framers and voters intended that its meaning be the same as that of the original framers and voters for the proviso); Cox v. Robison, 150 S.W. 1149, 1151 (Tex. 1912) (holding that the "readoption in a subsequent Constitution of a provision found in the Constitution that it supersedes is presumed to have been with a purpose not to change the law"); id. at 1153 (stating it "is not essential that identical conditions and the same reasons should have influenced both the original adoption and subsequent readoption, although it may be assumed that in both instances the conditions were like and the reasons similar").

97. J. E. Ericson, Origins of the Texas Bill of Rights, 62 Sw. Hist. Q. 457 (1959); Harrington, supra note 52, at 18 (describing the 1836 Declaration of Rights as "setting the course for the 1845 statehood Bill of Rights, which in turn fairly well
Texas Bill of Rights most pertinent to a claim of language rights are largely derived from the 1836 and 1845 Constitutions. The intent of the framers of the 1836 and 1845 Constitutions must therefore be examined when deciphering the intent of the framers of the 1876 Bill of Rights. Determining the intent of the framers of the 1836 Constitution in turn requires an examination of the history of Texas during the Mexican period.

D. The Use of Historical Legislative Practice to Interpret the Texas Constitution

In addition to considering the original intent of the framers and ratifiers, the Texas courts also look to the practices of the legislature and of the executive branch. Long-standing practices immediately after promulgation of a constitutional provision can assist in the determination of the correct interpretation of the Texas Constitution. While the construction of the Texas Constitution by the Texas Legislature is not binding on the courts, the linguistic poli-

formed the pattern for its successors of 1861 (Secession), 1866 (post-Civil War), 1869 (Reconstruction), and 1876); Ponton, supra note 4, at 97 (noting that the present Texas Bill of Rights is “for the most part, a reproduction of the Bill of Rights of the Texas Constitution of 1845, which, in turn, came from the Constitution of the Republic of Texas of 1836”).

98. See infra part X.

99. Cf. HARRINGTON, supra note 52, at 39 (noting the need to “decipher the intent of . . . Houston, Rusk, Ellis, de Zavala, Navarro, Hogg, Ochiltree, Throckmorton, Johnson, the Grangers, and those other early Texans who sought a land where they would be treated fairly and where they could live and raise their families with little government intrusion”).

100. Stephen P. Halbrook, The Right to Bear Arms in Texas: The Intent of the Framers of the Bill of Rights, 41 BAYLOR L. REV. 629, 632 (1989) (noting that the intent of the adopters of the 1876 Constitution must be determined in the context of the events sparking the Texas Revolution); Harrington, supra note 81, at 430 (noting that the “reasons for [independence from Mexico] and the goals of the respective founders of the republic must be considered to determine the intent behind constitutional safeguards”; Ponton, supra note 4, at 94 (stating the inquiry into the origins of the Texas Bill of Rights must examine Texas history beginning with its history as a state of Mexico).

101. Travelers' Ins. Co. v. Marshall, 76 S.W.2d 1007, 1023 (Tex. 1934) (noting court's interpretation “is consistent with the history of the subject in this state”); Jones v. Williams, 45 S.W.2d 130, 133 (Tex. 1931) (stating “contemporaneous construction of a constitutional provision by the Legislature, continued and followed, is a safe guide as to its proper interpretation”); Mumme v. Marrs, 40 S.W.2d 31, 35 (Tex. 1931) (same); Collingsworth County v. Allred, 40 S.W.2d 13, 16 (Tex. 1931) (giving "great weight" to construction of constitution by seven successive legislatures). Cf. Borkr supra note 62, at 97-98 (defending Judge Bork's testimony as a plausible attempt to show constitutional interpretation had been “ratified by long practice”).
cies and practices of the Republic of Texas and early statehood are relevant considerations in interpreting the Texas Bill of Rights.102

Having established the standards used by the Texas courts when using historical argument to interpret the Texas Constitution, I now review the historical materials required by those standards to examine the treatment of language in government in Texas.

III. Government and Language in Spanish Texas

When the Spanish arrived in Texas in 1521, they found numerous Indian tribes, each speaking their own languages.103 The establishment of missions in Texas was part of a campaign by the Spanish crown to Christianize and Hispanicize the natives of the Americas.104 Hispanicization of the natives required that they abandon native languages and speak Spanish.105 Thus, the Mar-

102. Koy v. Schneider, 221 S.W. 880, 885 (Tex. 1920) (stating that "due consideration and weight (although not necessarily conclusive force) should be given by the courts to a construction placed by the Legislature upon the state Constitution"); id. (holding that "if we find a principle established by long-continued practice, we must yield to it, unless we are satisfied that it is repugnant to the plain words of the Constitution"); Cox v. Robison, 150 S.W. 1149, 1156 (Tex. 1912) (stating that while "not binding upon the courts, an unchallenged construction of a provision . . . extending over a period of more than a quarter of a century should be heeded and given effect, unless manifestly wrong").

103. There is little information available on most of the languages spoken by Texas natives. There is little agreement even on the number of languages spoken in the pre-Columbian era. Compare Merritt Ruhlen, A Guide to the Languages of the World 119 (1976) (estimating upwards of 300 Indian languages were spoken in pre-Columbian North America north of Mexico, and 200 such languages are still spoken, although many are on the verge of extinction) with Robert F. Spencer et al., The Native Americans 101 (1965) (asserting 149 languages are spoken in North America north of Mexico) and Martin Salinas, Indians of the Rio Grande Delta: Their Role in the History of Southern Texas and Northeastern Mexico 147 (1990) (noting the impossibility of demonstrating linguistic relationships among Indian languages in South Texas because of limited information). Fifteen Texas linguistic groups are identified in Thomas R. Hester, Historic Native American Populations, in Ethnology of the Texas Indians 3, 5-7 (Thomas R. Hester ed., 1991). Eleven languages are mentioned in historical records as having been spoken in South Texas. Salinas, supra, at 143.

104. Gilberto M. Hinojosa & Anne A. Fox, Indians and Their Culture in San Fernando de Béjar, in Tejano Origins in Eighteenth-Century San Antonio 114 (Gerald E. Poyo & Gilberto M. Hinojosa eds., 1991) (describing the Spanish missions as designed to gather, acculturate, and Christianize Native Texans) [hereinafter Tejano Origins]. The friars at the missions in what is today the city of San Antonio did not make assimilation into the Hispanic society a priority. Instead, they sought to give the Indians some fluency in the Spanish language and used a Coahuiltecan language dictionary-catechism in the missions. Gilberto M. Hinojosa, The Religious-Indian Communities: The Goals of the Friars, in Tejano Origins, supra, at 68-69 and 71.

105. In the late fifteenth century, Nebrija presented Queen Isabela with Castilian grammar arguing that a standardized language was necessary in order to achieve
qués de Croix, the viceroy of New Spain, sent a decree to Laredo in 1769 complaining about the inability of many Indians to speak Spanish and reminding the authorities that the "pernicious consequences" resulting from this could only be avoided if the mandates of Spanish law are followed "that there should be taught to all the Natives the Spanish Language, and in that language the Christian Doctrine." 106 Under Spanish law, government was to function in one language, and one language only: Spanish.

The Hispanicization of the native population was facilitated by the intermarriage of Spaniards and Indians. The population of Spanish towns in Texas, notwithstanding later characterizations as "Spanish," was overwhelmingly mestizo. 107 The adoption of Indian


107. I use the term “mestizo” to refer to persons of mixed Spanish and Indian ancestry. Many “mestizos” also have African ancestors as well. See *Tejano Origins*, supra note 104, at ix. I do not use the term in the specific way it was used throughout Spanish America in the eighteenth century. The Spanish established an elaborate system of racial classifications which included the mestizo (Spanish and Indian parents), the mulatto (Spanish and African), the coyote (Indian and mestizo), and the lobo (Black and Indian). See Gerald E. Poyo, *The Canary Island Immigrants of San Antonio: From Ethnic Exclusivity to Community in Eighteenth-Century Béxar*, in *Tejano Origins*, supra note 104, at 47; Hinojosa & Fox, supra note 105, at 112. For a description of the mixed race status of Tejanos, see Jesús F. de la Teja, *Forgotten Founders: The Military Settlers of Eighteenth-Century San Antonio de Béxar*, in *Tejano Origins*, supra note 104, at 32-33 (noting that while the ethnically mixed were the rule rather than the exception among the original founders of San Antonio, the missionaries collaborated in obscuring the Indian background of the settlers so that racially mixed individuals could pass as Spanish, the preferred social status). The designation of “Spanish” came to signify more about the social status of an individual than the racial background of the individual. Thus, the classification in the 1793 census of 74% of Béxar’s native-born population as “Spanish” is misleading and cloaks the importance of intermarriage in the acculturation process. Even among those identified in 1793 as “Indians,” exogamous marriages outnumbered endogamous ones thirty-two to twelve. Hinojosa & Fox, supra, at 112.

San Antonio’s first large group of European immigrants, from the Canary Islands, shared the racist attitudes of the Spanish Empire and looked down on the predominantly mixed-blood population when they arrived in 1731. Poyo, supra, at 42. Nonetheless, only five of the thirty-seven *Isleño* marriages between 1742 and 1760 involved marriages between Canary Islanders. *Id.* The other thirty-five marriages were to the native mestizo population. However, Mexicans who married Canary Islanders “accepted their *Isleño* identity, as did their children.” *Id.* at 140. Notwithstanding the popular mythology of a “pure-blooded” Spanish population of Canary Islanders in San Antonio, most “Canary Islanders” shared Indian ancestors with the Mexican population and thus were part of this Hispanicization process of the native population.
children by "Spanish" families\textsuperscript{108} and the capture of Indian slaves\textsuperscript{109} also played a role in this Hispanicization.

The Hispanicization of Texas natives, however, was far from complete. Many "independent Indians"\textsuperscript{110} lived outside the daily influence of Spanish settlements and thus maintained their own cultures and languages. Soldier-interpreters in San Antonio aided in communications with these groups.\textsuperscript{111}

\textbf{IV. Government and Language in Mexican Texas}

After Mexico obtained independence from Spain in 1821,\textsuperscript{112} previous Spanish practices regarding language continued. No decrees mandating the use of Spanish were required since the population of Texas, except for independent Indians, in 1821 was Spanish-speaking.\textsuperscript{113} The linguistic uniformity of Mexican Texas was to quickly change in the 1820s and 1830s with the arrival of large numbers of English-speaking Anglo-American immigrants.\textsuperscript{114}

\textbf{A. The First Contacts with Moses Austin: Multilingualism in Texas Government Begins}

Neither English nor Spanish was the first language used when Moses F. Austin arrived in December, 1820 in Béxar,\textsuperscript{115} then still a

\begin{itemize}
\item \textsuperscript{108} Hintjosa \& Fox, supra note 104, at 109-10 (describing adoptions of Indians by well-established San Fernando families).
\item \textsuperscript{109} Id. at 110 (describing adoption of Indians acquired in slave raids).
\item \textsuperscript{110} The term "independent Indian" is suggested by Elizabeth A.H. John, Independent Indians and the San Antonio Community, in TEJANO ORIGINS, supra note 104, at 123 (noting that "Independent Indians' rings more politely to the modern ear than the 'indios bárbaros' [barbarous Indians] of eighteenth century usage").
\item \textsuperscript{111} Id. at 127.
\item \textsuperscript{112} For a brief summary of the events surrounding the independence of Mexico from Spain, see Introduction to Constitutions of Texas, in TEX. CONST., supra note 2, at 463.
\item \textsuperscript{113} Immigration to San Antonio in the late 18th Century came primarily from the northern provinces of Mexico and from the East Texas town of Los Adaes. Poyo, supra note 107, at 85-86. At least one Corsican and one Frenchman arrived in San Antonio during this period. Id. at 91 and 94. Baron de Bastrop, a Dutchman who spoke Spanish, settled in San Antonio in 1806. I THE HANDBOOK OF TEXAS 256 (Walter Prescott Webb ed., 1952) (hereinafter I HANDBOOK OF TEXAS).
\item \textsuperscript{114} Anglo-Americans had occasionally entered Texas in the early 1800s, but formal immigration did not begin until the formation of Stephen F. Austin's colony in 1821. II THE HANDBOOK OF TEXAS 256 (Walter Prescott Webb ed., 1952) (describing occasional presence of Anglo-Americans at Nacogdoches) [hereinafter II HANDBOOK OF TEXAS]; id. at 77-78 (describing the "Long Expedition," an unauthorized entry of Anglo-Americans between 1819 and 1821); id. at 282 (describing the activities of Philip Nolan).
\item \textsuperscript{115} The city known today as San Antonio originally comprised three different communities: the five Franciscan missions, the military presidio of San Antonio, and the town of San Fernando de Béxar. Jesús F. de la Teja \& John Wheat, Béxar: Profile of a Tejano Community, 1820-1832, in TEJANO ORIGINS, supra note 104, at 2.
\end{itemize}
part of the Spanish Empire, to secure permission for the entry of Anglo-American immigrants to Texas. Instead, he spoke with Spanish Governor Antonio María Martínez in French, the only language both of them understood. The Governor initially refused his permission, but Austin persisted, using Baron de Bastrop, a Dutchman who spoke English, Spanish, and French, as an interpreter.

Moses Austin died in 1821, but his son, Stephen F. Austin, continued his efforts to secure permission from newly-independent Mexico to establish the Anglo-American colony. Stephen F. Austin was ultimately successful, and the first Anglo-American immigrants arrived in Texas in December, 1821.

B. The Efforts of a Small Minority of Anglo-American Immigrants to Learn Spanish

Stephen F. Austin did not speak Spanish when he took on his father's dream. Baron de Bastrop continued his role as interpreter during this period. Austin quickly learned Spanish, how-

These three communities merged into a single entity known as San Antonio de Béxar. Tejano Origins, supra note 104, at xx-xxi. The community was commonly called Béxar during the Spanish and Mexican periods. This name survives today as the name for the county in which the modern city of San Antonio is located.

117. Id. at 4; Examination of Moses Austin by Antonio María Martinez (Dec. 23, 1820) (stating Bastrop discharged the duty of interpreter), in The Austin Papers (Eugene C. Barker ed.), reprinted in American Historical Ass'n, II Annual Report 370-71 (1919) [hereinafter Austin Papers, 1789-1827]; Letter from Baron de Bastrop to Antonio Martinez (about Feb. 1, 1821) (stating he has translated letter from Moses Austin), in Austin Papers, 1789-1827, supra, at 380-81.
118. Handbook of Texas, supra note 113, at 81.
119. All further references in this article to "Austin" refer to Stephen F. Austin.
121. Letter from Stephen F. Austin to James W. Breedlove (Oct. 12, 1829) (describing his negotiations with the Mexican government and stating, "These arrangements were all made through an interpreter, for at that time I did not understand one word of Spanish."), in Austin Papers, 1828-1834, supra note 1, at 267.
122. See Letter from Josef Erasmo Seguin to Stephen F. Austin (Aug. 30, 1821) (letter evidently translated into French by Bastrop), in Austin Papers, 1789-1827, supra note 117, at 411 n.1; Letter from Austin to Antonio Martínez (Oct. 12, 1821) (letter in Spanish translated by Bastrop), in Austin Papers, 1789-1827, supra note 117, at 417 n.2; Austin's Memorial to Congress (May 13, 1822) (stating it is a literal translation from the French), in Austin Papers, 1789-1827, supra note 117, at 510; Letter from Stephen F. Austin to Baron de Bastrop (May 17, 1823) (asking Bastrop to translate a letter in English to the Junta Gobernativa [Governmental Council] of Texas), in Austin Papers, 1789-1827, supra note 117, at 643.
ever, and soon conducted all of his affairs with the Mexican government in Spanish.\textsuperscript{123} Although he apologized for his poor Spanish in 1828, he wrote Spanish very well.\textsuperscript{124} Austin played a critical role as translator for the Anglo-American immigrants.\textsuperscript{125}

A few of the other early Anglo-American immigrants undertook the study of Spanish seriously, and even used Spanish in communications with each other. Stephen F. Austin, for example, encouraged his brother, James E. Austin, to learn Spanish, reminding him that all "hopes of rising in this country depend on learning to speak and write the language correctly."\textsuperscript{126} James Austin wrote a letter to Stephen F. Austin, in May, 1823, which began in Spanish and finished in English.\textsuperscript{127} Stephen F. Austin re-

\begin{itemize}
  \item \textsuperscript{123} See, e.g., Letter from Austin to Emperor Iturbide (Sept. 8, 1822), in \textit{Austin Papers}, 1789-1827, \textit{supra} note 117, at 543; Letter from Austin to José Félix Tre- spalacios (Jan. 8, 1823), in \textit{Austin Papers}, 1789-1827, \textit{supra} note 117, at 567; Letter from Austin to Erasmo Seguin (Jan. 1, 1824), in \textit{Austin Papers}, 1789-1827, \textit{supra} note 117, at 718-19; Letter from Austin to Supreme Executive Power of the Republic (Oct. 1, 1824), in \textit{Austin Papers}, 1789-1827, \textit{supra} note 117, at 912-13; El Ciudadano Estevan F. Austin, Empresario, Para Introducir Emigrados Estrangeros [sic] [Citizen Stephen F. Austin, To Introduce Foreign Emigrants] (Dec. 23, 1824) (certifying in Spanish that Anthony R. Clarke was admitted as a colonist; certificate was to be presented to the commissioner so that land titles could be issued), \textit{microformed on} Texas as Province \& Republic: 1795-1845, Item 20 (Research Publications, Inc.) [hereinafter Texas as Province \& Republic] (available in St. Mary's University Academic Library); id. (June 2, 1831) (certifying in Spanish that Ira R. Lewis was admitted as a colonist), \textit{microformed on} Texas as Province \& Republic, \textit{supra}, Item 9.
  \item \textsuperscript{124} Austin wrote:
    \begin{quote}
      Debo pedir la indulgenia [sic] de V.E. por los errores de idioma qe. sin duda abundan en este papel, a consecuencia de mi falta de conocimiento del castellano, pues hace pocos años qe. lo he aprendido.
    \end{quote}
    [I should ask your Excellency for your indulgence for the mistakes in language that no doubt abound in this paper, a consequence of my ignorance of Castilian, since it has been only a few years since I learned it.]
    Stephen F. Austin to Minister of Relaciones [Relations] (Oct. 7, 1828) (translation by Juárez), in \textit{Austin Papers}, 1828-1834, \textit{supra} note 1, at 122.
  \item \textsuperscript{125} See \textit{infra} text accompanying notes 152-56.
  \item \textsuperscript{126} Samuel Harman Lowrie, \textit{Culture Conflict in Texas}, 1821-1835 121 (1932) (quoting letter from Stephen F. Austin to J.E.B. Austin July 8, 1832).
  \item \textsuperscript{127} Letter from J.E.B. Austin to Stephen F. Austin (May 4, 1823), in \textit{Austin Papers}, 1789-1827, \textit{supra} note 117, at 635. The body of the letter is in Spanish and is signed "Santiago" (James). A postscript is written in English. In his letter, "Santiago" writes:
    \begin{quote}
      Yo creo [que] V. ha hecho mas progreso (en la [sic] estudio [sic] dela mas hermosa lengua del mundo.) [que] yo. pero [sic] mi cabeza ha estado un poco trastornada como la de V.
    \end{quote}
    [I think you have made more progress (in the study of the most beautiful language of the world) than me. but my head has been a bit confused like yours.]
    \textit{Id.} (translation by Juárez).
\end{itemize}
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responded with a similar bilingual letter. 128 Stephen F. Austin wrote to Samuel M. Williams, his private secretary, entirely in Spanish. 129

Almost all of the Anglo-American immigrants, however, did not speak Spanish. 130 Nor did many appear to make any particular effort to learn Spanish. Jefe 131 (Political Chief) Ramón Múquiz was consoled by the availability of Stephen F. Austin and Samuel Williams as interpreters for the colonists since “it is certainly a misfortune [desgracia] that the Citizens who compose [the colony] do not possess the Castilian language, which failing cannot be overcome, but persuaded by you that they are men of providence [providad] and good judgment, I console myself with this idea and the hope that I confide in you and our good friend Don Samuel.” 132 By 1830, Mexican Secretary of Relations Lucas Alamán recognized the lack of progress made by the Anglo-American immigrants in learning Spanish and suggested this could be encouraged by publishing newspaper articles in Spanish in the Texian newspapers. 133

In reply, Austin agreed that extending the reach of the Spanish lan-

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130. Memorial to the Legislature (Dec. 22, 1824) (advising the Mexican state legislature that “not one in a hundred of [the Anglo-American immigrants] understand [the Spanish] language”), in AUSTIN PAPERS, 1789-1827, supra note 117, at 998; LAWS, ORDERS & CONTRACTS ON COLONIZATION, supra note 120, at 24 (noting that “neither the alcalde, nor one of the members of the ayuntamiento, understands Spanish, neither is it probable that any one will be elected for many years, who does understand it”).

131. While Texas had been a separate province under Spanish rule, after Mexican independence from Spain, it became a part of the Mexican state of Coahuila and Texas. The state initially was divided into 3 departamentos (departments). The Anglo-American colonists were all in the Department of Béxar, headquartered in what is today San Antonio but was called Béxar at that time. See supra note 115. The Department of Béxar included all the territory of what was formerly the Spanish province of Texas. CONSTITUTION OF COAHUILA & TEXAS of 1827, art. 7, reprinted in 1 Tex. Gen. Laws 424 (Gammel 1898). The Jefe (often spelled “Gefe” in documents of this era) was the Chief of the Department and was responsible for ensuring the enforcement of Mexican law in the Department. LAWS OF COAHUILA & TEXAS, DECEMBER 1825, supra note 115, at 121-24 (Gammel 1898). Each municipality sent its reports to the Jefe in Béxar; the Jefe then transmitted his own reports to the state capital in Saltillo. Jefe was quickly assimilated into the Texian vocabulary. Consistent with Texian practice, this article will not italicize “jefe” hereafter.


133. Letter from Lucas Alamán to Stephen F. Austin (Aug. 25, 1830), in AUSTIN PAPERS, 1828-1834, supra note 1, at 473.
guage was useful and noted his long-standing desire to found a college for instruction in the two languages. Austin stated his intent to introduce such a proposal before the state legislature in Saltillo.\footnote{134} Austin also believed that one of the most effective ways for the immigrants to learn Spanish would be to integrate Texas into the Mexican economy, particularly by easing tariffs to aid the cotton industry.\footnote{135}

C. The Establishment of Bilingual Government in Texas to Accommodate English-Speaking Anglo-American Immigrants

Because most Anglo-American immigrants failed to learn Spanish, Austin's Spanish-speaking skills were critical to the success of the colony. The Spanish government had recognized the problems raised by the influx of non-Spanish-speaking immigrants, and authorized Austin to govern and administer justice in the colony until a government could be organized.\footnote{136} Presumably, this administration was to be conducted in English. After independence from Spain was secured, the Mexican government granted Austin similar authority.\footnote{137} The implicit assumption that communication with the Mexican government would be in Spanish was made explicit in 1825 in Austin's contract with the government of the Mexican state of Coahuila & Texas. Article 8 of the Contract provided: “The official communications with the government, and with the authorities of the state, instruments, and other public acts, must be written in the Spanish language, and when new towns are formed

\begin{itemize}
\item \footnote{134} Letter from Stephen F. Austin to Lucas Alamán (Sept. 20, 1830), \textit{in Austin Papers, 1828-1834}, supra note 1, at 489-92. The proposal was never realized. It is described \textit{infra} IV.E.
\item \footnote{135} Letter from Stephen F. Austin to Minister of Relaciones [Relations] (Oct. 7, 1828) (requesting reduction of tariffs because these privileges will cause “a direct and intimate communication between the adopted inhabitants and native Mexicans; there will be bonds of . . . language”) (translation by Juárez), \textit{in Austin Papers, 1828-1834}, supra note 1, at 122-30.
\item \footnote{136} Translation of Official Communications from Don Antonio Martinez, Governor of Texas, to Moses Austin (Aug. 24, 1821), \textit{reprinted in} 1 Tex. Gen. Laws 27 (Gammel 1898).
\item \footnote{137} Decree of the Emperor (Feb. 18, 1823) (authorizing Austin to organize the colonists into a militia and to administer justice), \textit{reprinted in} 1 Tex. Gen. Laws 32 (Gammel 1898). The authorization to organize a militia was extended in 1825. Contract with the Government of the State for the Colonization of 500 Families, art. 6 (Apr. 27, 1825), \textit{reprinted in} 1 Tex. Gen. Laws 48 (Gammel 1898). The terms of this contract were incorporated into each of the colonization contracts Austin entered into. \textit{See, e.g.,} Contract between the Government of the State and Austin; and appointment of the latter as commissioner, art. 7 (May 15, 1828) (including all duties and obligations “which, although not expressed in this contract, are inserted in his contract for five hundred families, extended by this government the 27th of April, 1825”), \textit{reprinted in} 1 Tex. Gen. Laws 54 (Gammel 1898).
\end{itemize}
he shall promote the establishment of schools in the Spanish language, in such towns." The other empresarios, as the colony organizers were known, had similar provisions in their colonization contracts. The instructions issued under the colonization law of March 24, 1825, which authorized Austin's colony and the other Anglo-American colonies, also specifically required all communications with the Mexican government to be conducted in Spanish:

Art. 26. All the public instruments, titles, or other documents, issued by the commissioner, shall be written in Spanish, the memorials, decrees, and reports of the colonists or empresarios on any subject whatever, shall be written in the same language, whether they are to be transmitted to the government, or preserved in the archives of the colony.

Communications with the national government, communications with the state government, and the records of local government were all required to be in Spanish. However, the Mexican government and the Anglo-American immigrants themselves expected that local government within the Anglo-American settlements could be conducted in English, the only language understood by virtually all of the immigrants. Mexican law and practice assisted the immigrants in their communications with the Spanish-speaking government. By 1828 Mexican law required that the secretary of the ayuntamiento (municipality) be bilingual so that

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138. Contract with the Government of the State for the Colonization of 500 Families, art. 8 (Apr. 27, 1825), reprinted in 1 Tex. Gen. Laws 48 (Gammel 1898). The provisions of this contract were incorporated into each of the other colonization contracts Austin entered into. See supra note 137.

139. Hayden Edward's contract, for example, differed only slightly from Austin's:
8. All official communications with the government, or with the authorities of the state, and all instruments and other public acts, shall be written in Spanish. And, when the settlements (poblations) have been established, it shall likewise be the duty of the empresario to establish schools for the Spanish language.

Hayden Edward's Contract for Introduction of 800 Families into the Department of Texas (Apr. 15, 1825), reprinted in H. Yoakum, 1 HISTORY OF TEXAS FROM ITS FIRST SETTLEMENT IN 1685 TO ITS ANNEXATION TO THE UNITED STATES IN 1846 463 (1855).

140. Instructions from Coahuila & Texas Legislature to Commissioner Stephen F. Austin (Sept. 4, 1827), reprinted in LAWS, ORDERS & CONTRACTS ON COLONIZATION, supra note 120, at 71-72. A slightly different translation of these instructions can be found in 1 Tex. Gen. Laws 183 (Gammel 1898).

141. EUGENE C. BARKER, MEXICO & TEXAS, 1821-1835 22-23 (Russell & Russell 1965) (1928) (stating that "local government was never a source of serious annoyance to the colonists" because "it was always in their own hands").

142. The ayuntamiento was composed of the alcalde, regidores, and the sindico procurador. I HANDBOOK OF TEXAS, supra note 113, at 92. The alcalde is often translated as the "mayor," although his duties included those of police judge (trying civil and criminal cases) and police officer (apprehending individuals charged with misdemeanors). Id. at 25. A regidor was a member of the city council. II HANDBOOK OF TEXAS, supra note 114, at 457. The sindico procurador was a notary and city attorney; occasionally, he also served as the municipality's treasurer. Id. at 614.
the secretary could translate laws and communications from the
government to the immigrants.143 Similarly, the secretary could
translate the English-language proceedings of the ayuntamiento
into Spanish and transmit them to the Jefe at Béxar,144 or occasion-
ally, to the state government in Saltillo.145 The Mexican gov-
ernment was prepared to assist the immigrants in finding the
bilingual secretaries required by law.146 The Mexican government
also responded to the needs of the monolingual Anglo-American im-
migrants by selecting bilingual government officials where
possible.147

These terms were among the first Spanish words incorporated into the Texian vocab-

ular. Consistent with Texian practice, this article will not hereafter italicize them.

143. See infra text accompanying note 157. For examples of Spanish-language
communications transmitted by Mexican officials to Anglo-American officials, see
Letter from José Antonio Saucedo to Alcalde Sylvanus Castleman (Feb. 14, 1824)
(advising Anglo-American Alcalde in Spanish that Stephen F. Austin has the title of
"Gefe [sic] Político y Juez" [Political Chief & Judge]), in AUSTIN PAPERS, 1789-1824,
supra note 117, at 742; Letter from J. Antonio Padilla to Barrett & Gritten (Sept. 2,
1835) (advising commissioners in Spanish about military movements), in AUSTIN PA-
PERS, 1834-1837, supra note 129, at 110-11.

144. For examples of documents translated from English into Spanish and sent to
the Jefe, see Ayuntamiento of San Felipe to Political Chief (Jan. 24, 1828), in AUSTIN
PAPERS, 1828-1834, supra note 1, at 160-62; Brazoria Election Returns (Dec. 16,
1833), microformed on Microfilm of The Béxar Archives at the University of Texas
Archives, 1822-1836, Roll 159, Frame 615 (Univ. of Texas) [hereinafter Béxar
Archives] (available in City of San Antonio Public Library); Notice of J.B. Miller to
the Public (July 1, 1835), in AUSTIN PAPERS, 1834-1837, supra note 129, at 79-80.

145. Letter from Ayuntamiento of San Felipe to Members of Legislature (Sept. 27,
1830), in AUSTIN PAPERS, 1828-1834, supra note 1, at 499-500; Letter from Samuel
W. Williams to Governor (June 30, 1831), in AUSTIN PAPERS, 1828-1834, supra note
1, at 671-72.

146. Letter from J. Antonio Padilla to Stephen F. Austin (Aug. 9, 1828) (proposing
a search for bilingual secretaries in the United States, so long as they are not
Spaniards, or a search in Mexico), in AUSTIN PAPERS, 1828-1834, supra note 1, at 89-
90.

147. Official letter from Governor Luciano García to Baron de Bastrop (July 26,
1823) (noting Bastrop was commissioned to organize the new ayuntamiento of San
Felipe de Austin "on account of his geographical knowledge, and his understanding
the English language"), reprinted in STEPHEN F. AUSTIN, ESTABLISHING AUSTIN'S
COLONY: THE FIRST BOOK PRINTED IN TEXAS WITH THE LAWS, ORDERS & CONTRACTS
OF COLONIZATION 42-43 (David B. Gracy, II ed., Pemberton Press 1970) (1829); Letter
from Ramón Múisquiz to Stephen F. Austin (July 24, 1828) (advising Austin he has
informed the Governor of the necessity of assisting the Alcalde and Ayuntamiento
with the appointment of someone who understands English), in AUSTIN PAPERS,
1828-1834, supra note 1, at 75; Letter from Stephen F. Austin to Governor José Ma-
ría Viesca (May 31, 1830) (recommending C. Miguel Arciniega for appointment as
commissioner because he has the advantage of speaking English), in AUSTIN PAPERS,
1828-1834, supra note 1, at 398. Cf. Letter from Stephen F. Austin to Ayuntamiento
of Nacogdoches (May 30, 1833) (supporting the appointment of George Fisher as col-
lector because "his knowledge of the English language will give more facilities in his
intercourse with the people"), in AUSTIN PAPERS, 1828-1834, supra note 1, at 975.
The importance of a bilingual secretary was recognized by the immigrants themselves: they were quite willing to pay for this service. The Ayuntamiento of San Felipe de Austin, for example, budgeted $350 a year in 1828 for the "salary of a Secretary learned in the Spanish and English languages, who can also serve as translator." Samuel Williams, who was appointed Secretary by the Ayuntamiento, "in consequence of the difficulty which exists of getting persons acquainted with both English and Spanish, as well as in view of the burden of the labors of the secretary of the ayuntamiento, . . . has thought well to fix one thousand dollars a year for his services." The Ayuntamiento met Williams' demand.

Stephen F. Austin also played an important role as translator. Austin translated Spanish-language communications from the Mexican government and transmitted these to the immigrants. He also prepared Spanish-language translations of the English-language documents composed by the Anglo-American immigrants.

148. Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832, 21 Sw. Hist. Q. 299, 326 (Eugene C. Barker ed., 1918) (recording appointment of Samuel M. Williams as secretary on January 10, 1829 since "it is very necessary to appoint a secretary acquainted with the two languages").
149. Id. at 309.
150. Id. at 395.
151. Id.
152. See, e.g., Letter from Austin to Alcalde James Cummins (Feb. 26, 1824) (advising him that a letter from the Jefe states that Texas is free of import duties for seven years), in AUSTIN PAPERS, 1789-1827, supra note 117, at 746-47; Letter from José Antonio Saezco to Colonists (Mar. 1824) (translation by Austin), in AUSTIN PAPERS, 1789-1827, supra note 117, at 753-54; Letter from Stephen F. Austin to Josiah H. Bell (Apr. 20, 1824) (translating Constitutional Decree), in AUSTIN PAPERS, 1789-1827, supra note 117, at 770; Political Chief's Proclamation (May 20, 1824) (translation by Austin), in AUSTIN PAPERS, 1789-1827, supra note 117, at 794-95; Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832, supra note 148, at 303 (recording that Stephen F. Austin on February 10, 1828 read to the newly elected English-speaking regidores "a translation of the laws of the state on the administration of justice, on the political administration of towns, and a discussion of the powers and duties of the ayuntamiento"); Letter from J. Antonio Padilla to Stephen F. Austin (Aug. 9, 1828) (enclosing a municipal ordinance for Austin to translate so that it can be presented to the Ayuntamiento and used as a model for developing their own municipal ordinance), in AUSTIN PAPERS, 1828-1834, supra note 1, at 89; Letter from Ramón Múquiz to Austin (Nov. 26, 1829) (asking Austin to translate Múquiz' exposition against a government decree freeing all slaves and to publish it in the English-language Texas Gazette), in AUSTIN PAPERS, 1828-1834, supra note 1, at 292.
153. See, e.g., Letter from Austin to Political Chief (Mar. 25, 1828) (enclosing election returns), in AUSTIN PAPERS, 1828-1834, supra note 1, at 28; Letter from Ramón Múquiz to Stephen F. Austin (Aug. 12, 1829) (noting that necessary reports had not been filed because the Alcalde and Ayuntamiento do not speak Spanish and requesting Austin's assistance), in AUSTIN PAPERS, 1828-1834, supra note 1, at 246; Letter from Thomas Davis to Ramón Múquiz (Sept. 14, 1829) (explaining that Austin's illness had prevented the sending of necessary correspondence and advising that
Austin was "appealed to again and again for assistance in clearing up embarrassing situations in which Americans found themselves as a consequence of their inability to present their cases to the authorities."154 Austin performed these services without charge,155 although he reminded the immigrants of the burdens the role of translator placed on him.156

By 1828, the Mexican government liberalized the requirement that local government archives be maintained in Spanish. Article 37 of the Municipal Ordinance for the Government and Regulation of the Ayuntamiento of San Felipe de Austin not only permitted, but required that bilingual records be maintained.157 Article 38 required that the Ayuntamiento's secretary translate all orders and decrees into English and file them, or suffer a fine of $25.158 While the first minutes of the Ayuntamiento are entirely in Spanish, later minutes were maintained in Spanish on the left hand page and in English on the right hand page.159 Bilingualism rapidly became

Samuel Williams had returned and would take on Spanish-language duties), in Austin Papers, 1828-1834, supra note 1, at 257-58.
154. Lowrie, supra note 126, at 121.
155. Austin did charge the immigrants $60 for title to their land as "compensation for the labor of translating and attending to getting the titles for the applicant, which I am not bound to do, as empresario unless paid for it." Eugene C. Barker, The Government of Austin's Colony, 1821-1831, 21 Sw. Hist. Q. 223, 240 (1918) (quoting Austin). Austin had to keep an office with a bilingual secretary and clerks. Statement from Stephen F. Austin to - Martin (Sept. 14, 1832), in Austin Papers, 1828-1834, supra note 1, at 859-65. However, often the fee was never paid. Barker, supra, at 241.
156. Letter from Stephen F. Austin to J. H. Bell (Apr. 4, 1829) (complaining that there is no bilingual secretary "and the only way I see of getting along is for me to do all the writing that has to be done in Spanish—it is a much heavier burden than is supposed, but it seems that when I undertook the colony I enlisted [sic] myself for life"), in Austin Papers, 1828-1834, supra note 1, at 200-05; Laws, Orders & Contracts on Colonization, supra note 120, at 24-25 (reminding Anglo-American immigrants of their obligation to maintain records in Spanish and to hire a bilingual secretary of the ayuntamiento, reminding them that Austin and S.M. Williams have done all such translations, and concluding that "[f]or eight years I have endeavored to be a faithful servant to this colony; it ought not to be supposed that I am to be its slave for life").
157. Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832, supra note 148, at 319.
158. Id.
159. The minutes of the Ayuntamiento of San Felipe de Austin for 1828 to 1832 consist of three volumes. The first volume, consisting of 63 sheets written on both sides, has the first 41 sheets entirely in Spanish, except for sheets numbered 6, 7, half of 8, and 11. Thereafter the record is bilingual, with the minutes in Spanish on the left-hand page and the minutes in English on the right-hand page. Id. at 299 n.1.
the norm. For example, notices pertaining to religious matters were sent bilingually in Nacogdoches.160

Stephen F. Austin complied with the Mexican laws requiring all local governmental records to be maintained in Spanish, or, later, in both Spanish and English.161 Most Anglo-American local government officials did not. Local government in the ayuntamientos populated by Anglo-American immigrants was conducted in English. The immigrants took the required oath supporting the Mexican Constitution in English.162 Elections163 were held in English.164 Election campaigns were conducted in English.165 Ordinances were enacted in English.166 Official notices were published in English.167 Official correspondence was in English.168

160. The Board of Piety, to the Settlers of this Frontier (Mar. 10, 1831) (circular in English & Spanish), microformed on Texas as Province & Republic, supra note 123, Item 21.

161. See, e.g., Circular from Stephen F. Austin to Militia Officers (May 19, 1830) (Spanish translation of circular), in AUSTIN PAPERS, 1828-1834, supra note 1, at 393; Letters from Stephen F. Austin to Ayuntamiento of San Felipe (Sept. 27, 1830) (Spanish translation of letters), in AUSTIN PAPERS, 1828-1834, supra note 1, at 499; Letter from Stephen F. Austin to Ayuntamiento of San Felipe (Dec. 7, 1830) (Spanish translation of letter), in AUSTIN PAPERS, 1828-1834, supra note 1, at 550-51.

162. Letter from Josiah H. Bell to Austin (May 1, 1824) (attesting in English that oaths were given), in AUSTIN PAPERS, 1789-1827, supra note 117, at 782-83.

163. The right of suffrage in Coahuila and Texas was limited to native-born citizens and to foreigners who had acquired letters of citizenship. Laws and Decrees, State of Coahuila and Texas, Decree no. 24, art. 5 (1826), reprinted in 1 Tex. Gen. Laws 147 (Gammel 1898). However, the state's law of colonization permitted the foreign settlers "to elect and be elected members of the municipal body." Law for Promoting Colonization in the State of Coahuila and Texas, Decree no. 16, art. 42 (1825), reprinted in 1 Tex. Gen. Laws 105 (Gammel 1898).

164. Election returns (Aug. 16, 1823), in AUSTIN PAPERS, 1789-1827, supra note 117, at 686-87; Election proclamation (Dec. 3, 1823), in AUSTIN PAPERS, 1789-1827, supra note 117, at 714; Election return and oath of office for Alcalde (Jan. 10, 1824), in AUSTIN PAPERS, 1789-1827, supra note 117, at 719-20. See also Election Returns (Nov. 8, 1834) (election on whether to have representation at provisional Congress to be held at Béxar on Nov. 15, 1834), in AUSTIN PAPERS, 1834-1837, supra note 129, at 23.

165. To the Public (Dec. 16, 1832) (response from Henry Smith and others to a hand-bill stating the author of the handbill would not vote for William H. Wharton for Brigadier General), microformed on Texas as Province & Republic, supra note 123, Item 30.

166. See, e.g., Ayuntamiento of Brazoria, Ordinance Regulating Municipal Taxes (May 13, 1833), microformed on Texas as Province & Republic, supra note 123, Item 38.

167. Letter from Stephen F. Austin to Junta Gobernativa [Governmental Council] of Texas (May 17, 1823), in AUSTIN PAPERS, 1789-1827, supra note 117, at 644 n.1 (stating that the letter in English to be translated by Baron de Bastrop was sent to Colorado & Brazos settlers); To the settlers in Austin's settlement (July 1823) (notice from Austin regarding the administration of the settlement), microformed on Texas as Province & Republic, supra note 123, Item 3; Proclamation from Stephen F. Austin to Colonists (Dec. 2, 1823), in AUSTIN PAPERS, 1789-1827, supra note 117, at 713; Organization of Militia Battalion (June 22, 1824), in AUSTIN PAPERS, 1789-1827, supra note 117, at 838-39; Public Notice from Stephen F. Austin to His Colonists
Militia orders were published in English. Licenses were issued in English. Legal forms and writs were published in English. Promissory notes were printed in English. Administrators of probate estates provided notice of estate auctions in English.

Mexican governmental proceedings in Spanish were translated into English. For example, judicial proceedings in Spanish were translated. Gubernatorial speeches were translated into English. Political writings were translated into English.

This documentary evidence establishes that, contrary to the claims of English Only proponents, multilingual government in...
Texas is not an invention of the modern era. It is a Texas tradition established by the Mexican government in the 1820s and 1830s to benefit monolingual English-speaking Anglo-American immigrants. The Texas tradition of multilingual government established by these Anglo-American immigrants was later followed by native Tejanos and by European immigrants.176

D. Bilingual Practices of the Anglo-American Immigrants Not Authorized by Mexican Law

Mexican law envisioned a limited form of bilingual government to accommodate the needs of the Anglo-American immigrants, with Spanish required for all communication outside the Anglo-American ayuntamientos. In actual practice, however, bilingualism was permitted in communications outside the Anglo-American ayuntamientos. Communications required to be sent to the Mexican government in Spanish, for example, were sent in both Spanish and English.177

The paucity of Spanish-speakers among the Anglo-American immigrants often forced the ayuntamientos to appoint secretaries who, in violation of Mexican law, were not bilingual.178 These monolingual officials sent documents written only in English to the Jefe in Béxar. These included election returns,179 reports,180 and

176. See, e.g., infra part VI.D.1 (describing Spanish-English records in San Antonio during the Republic of Texas period); infra part VII.C.3 (describing German-English records in New Braunfels in the nineteenth century).

177. See, e.g., Letter from J.B. Patrick to Chief of Department in Béxar (Nov. 9, 1833) (bilingual letter regarding animals claimed by Béxar citizens), microformed on Béxar Archives, supra note 144, Roll 159, Frames 104-08; Letter from Ayuntamiento of San Patricio (July 14, 1834) (bilingual letter seeking direction on petition to banish individual from colony), microformed on Béxar Archives, supra note 144, Roll 162, Frame 0059.

178. See, e.g., Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832, 22 Sw. Hist. Q. 78 (Eugene C. Barker ed., 1918) (appointing Thomas G. Gazley as secretary Pro Tem in February 1830 “until a secretary acquainted with the Castilian language can be procured”).

179. Election Returns of San Patricio (Jan. 11, 1834), microformed on Béxar Archives, supra note 144, Roll 160, Frame 0082. Frame 0083 contains election returns for “Judges of first instance.” A Spanish translation exists for Frame 0083 (Frame 0084); none exists for the returns in Frame 0082. See also Election Returns of Brazoria (May 20, 1834), microformed on Béxar Archives, supra note 144, Roll 161, Frame 0616; cf. Election Returns of San Patricio (Aug. 10, 1834), microformed on Béxar Archives, supra note 145, Roll 162, Frame 0881 (election returns in English except for a translation of “Electors Voted For” (“Ciudo. Para Electores”), the location of the polling place, e.g., “De Béxar,” and “De Goliad,” and the titles of the reporting officers (“Secretario del Ayuntamiento” [Secretary of the Ayuntamiento] and “Presidente del Ayuntamiento” [President of the Ayuntamiento]).

180. Letters from Green DeWitt to Ramón Múquiz (May 8, 1829) (reporting Indian movements), microformed on Béxar Archives, supra note 144, Roll 122. DeWitt sent three reports in English on Indian activities, all dated May 8, 1829. See also
requests for instructions.\textsuperscript{181} English-language petitions were accepted.\textsuperscript{182} Even petitions to the state government were presented in English.\textsuperscript{183}

Instead of filing required reports in English, some ayuntamientos without a Spanish-speaking secretary chose not to file any reports. Mexican government officials complained about this problem and sought to have the reports filed as soon as a Spanish-speaking secretary became available.\textsuperscript{184} The Alcalde of San Felipe de Austin, for example, apologized in February, 1830 for lacking "one of the requisites to comply with my obligations, that is not understanding the Castilian language." He promised to send the necessary reports with the next mail.\textsuperscript{185} With no Spanish-speakers among the ayuntamiento's officials, the minutes began to be maintained solely in English, although Mexican law required these records to be maintained in Spanish and English.\textsuperscript{186} In April, 1830, Stephen F. Austin sent the overdue reports caused by the Al-

\textsuperscript{181} Letter from Ayuntamiento of San Patricio (Aug. 10, 1834) (explaining inability to comply with all details of electoral law), microformed on Bexar Archives, supra note 144, Roll 162, Frame 0882; Declarations Against John Houlehan (Aug. 16, 1834 - Sept. 4, 1834) (declarations by immigrants against John Houlehan for disturbing election proceedings; only Spanish is a notation "Copy of Declarations Against Juan Hulihan"), microformed on Bexar Archives, supra note 144, Roll 162, Frames 0905-0911.

\textsuperscript{182} Letter from Stephen F. Austin to Ad interim Governor Luciano Garcia (Aug. 11, 1823), in AUSTRIN PAPERS, 1789-1827, supra note 117, at 685. This letter in Spanish requests that a priest be sent. Austin stated, however:

Aqui firmaron varios Ynds. con la [sic] idioma Ingles pr. cuya causa no se asientan.

[Here signed various individuals in the English language, for which cause do not be offended].

\textit{Id.} (translation by Juárez). \textit{See also} Letter from Edwin Waller to Political Chief for the Department of Béxar (1833) (requesting approval of tax rates for Ayuntamiento of Brazoria), microformed on Bexar Archives, supra note 144, Roll 159, Frame 921.

\textsuperscript{183} To His Excellency the Governor & Congress of the State of Coahuila & Texas (1834?) (petition from Ayuntamiento of Brazoria requesting recognition as official ayuntamiento with signatures of petitioners), microformed on Texas as Province & Republic, supra note 123, Item 45.

\textsuperscript{184} Letter from Ramón Múquiz to Alcalde of the Villa [Town] of Austin (Apr. 22, 1834) (complaining that many reports were not sent the prior year, and expressing expectation the reports will be sent since a Spanish-speaking secretary had been hired), microformed on Béxar Archives, supra note 144, Roll 161, Frame 149; cf. BARKER, supra note 141, at 23 (asserting that ayuntamiento officers who were less punctilious in the observance of official etiquette caused in part by their ignorance of the Spanish language "brought only half-hearted remonstrances from the political chief, which caused no perceptible annoyance").

\textsuperscript{185} Letter from Thomas Barnett to Ramón Múquiz (Feb. 1, 1830), in AUSTRIN PAPERS, 1828-1834, supra note 1, at 329.

\textsuperscript{186} \textit{See} Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832, supra note 178, at 78 (noting that records after February 1, 1830 are in English); see supra
calde's ignorance of Spanish. Austin noted that he did not feel the fine for late reports should be imposed, but stated he stood ready to impose the fine if the Jefe should so decide. No record of a fine exists.\footnote{Letter from Stephen F. Austin to Ramón Músquiz (Apr. 3, 1830), in \textit{AUSTIN PAPERS, 1828-1834}, supra note 1, at 355-56.} Austin later recommended to Anglo-American officials that official correspondence be acknowledged, even if in English.\footnote{Letter from Stephen F. Austin to Alcalde Luke Lesassier (May 6, 1833), in \textit{AUSTIN PAPERS, 1828-1834}, supra note 1, at 963.}

James C. Davis, the secretary for the Ayuntamiento of Gonzáles, apparently followed Austin's suggestion when he wrote the Jefe in April, 1834:

> In consequence of not being so fortunate as to understand the Spanish Language, I am compelled to address you in English, which you will excuse, as I have not a translator in this municipality, or I would have done myself the pleasure of writing to you many times before this, and should not have been so remiss in answering your official letters to.\footnote{Letter from James C. Davis to Chief of Department of Béxar (Apr. 18, 1834), \textit{microformed on Béxar Archives}, supra note 144, Roll 161, Frame 149.}

Mr. Davis then asked for permission to have official documents translated by Mr. Smith\footnote{"Mr. Smith" was John G. Smith. Like Stephen F. Austin, who often used "Estevan," Mr. Smith often Mexicanized his name, going so far as to sign his last name "Esmith," as "Smith" is pronounced by Spanish-speakers. Letter from Ezekiel Williams (July 22, 1834) (translated by "Juan G. Esmith, Traductor [Translator]"), \textit{microformed on Béxar Archives}, supra note 144, Roll 162, Frame 0634.} at Béxar. Mr. Smith continued to translate English-language documents for the Ayuntamiento of Gonzáles,\footnote{Letter from Alcalde James C. Davis (May 2, 1834) (acknowledging receipt of laws "and through the translation of Mr. Smith are all understood"), \textit{microformed on Béxar Archives}, supra note 144, Roll 161, Frame 0358; Letter from Alcalde James C. Davis (May 16, 1834), \textit{microformed on Béxar Archives}, supra note 144, Roll 161, Frame 0572; Letter from Alcalde James C. Davis (May 17, 1834), \textit{microformed on Béxar Archives}, supra note 144, Roll 161, Frame 0583; Letter from Alcalde James C. Davis (May 19, 1834), \textit{microformed on Béxar Archives}, supra note 144, Roll 161, Frame 0606; Letters from Alcalde James C. Davis (May 22, 1834), \textit{microformed on Béxar Archives}, supra note 144, Roll 161, Frame 0659 and 0662; Letter from Ezekiel Williams (July 8, 1834), \textit{microformed on Béxar Archives}, supra note 144, Roll 162, Frame 0370.} and for other Anglo-American immigrants.\footnote{William B. Travis, for example, apologized to Colonel Ugartechea for not writing in Castilian "because I cannot express myself in that Language" and asked that Smith translate the letter. Letter from W.B. Travis to Colonel Ugartechea (July 31, 1835), in \textit{AUSTIN PAPERS, 1834-1837}, supra note 129, at 95.} Some of the documents from Gonzáles, however, do not have a Spanish translation.\footnote{Letter from James C. Davis (Apr. 18, 1834) (nominating four persons to serve as judges), \textit{microformed on Béxar Archives}, supra note 144, Roll 161, Frame 152; Letter from James C. Davis (May 2, 1834) (advising of the appointment of Ezekiel}
Mexican law requiring that all land titles be in Spanish was also interpreted liberally by the Anglo-American immigrants. Anglo-American surveyors wrote their field notes in English, and these were then translated into Spanish. While some land titles were only in Spanish, many were bilingual. Land titles for properties within the Anglo-American towns were in English.

E. The First Bilingual Education Laws in Texas

Austin's contract with the Mexican government required him "to promote the establishment of schools in the Spanish language" in any new towns he established. This contract provision was, as one historian has described, as "ineffective as the requirement that the colonists become Catholics." The Anglo-American immigrants established schools taught only in English. Sounding very much like today's English Only proponents, one Mexican government official complained about the failure of the Anglo-American immigrants to learn the national language:

Williams as judge), *microformed on Béxar Archives*, supra note 144, Roll 161, Frame 0360.

194. *See supra* text accompanying note 140.

195. Irvin v. Bevil, 16 S.W. 21, 22 (Tex. 1891) (relying on the original English-language field notes to ascertain the boundaries of a grant rather than the erroneous Spanish translation of the notes). *See also* Cook v. Dennis, 61 Tex. 246, 247-48 (1884) (noting that "field notes were made out in the English language, and passed to the commissioner for extending grants; that they were translated into the Spanish language, and, as thus translated, were incorporated into the grant").

196. *See, e.g.*, Juan Antonio Padilla, Comisionado General, por el Supremo Gobierno del Estado de Coahuila y Texas para el repartimiento de tierras vacías del mismo Estado [Juan Antonio Padilla, General Commissioner, by the Supreme Government of Coahuila and Texas, for the distribution of vacant lands of the same State] (1829) (Spanish language land title), *microformed on Texas as Province & Republic*, supra note 123, Item 13.


198. Town of Matagorda Certificate (Apr. 4, 1831) (stating that lot was sold to highest bidder), *microformed on Texas as Province & Republic*, supra note 123, Item 18.1; Town of Matagorda Certificate (Apr. 7, 1831) (stating that lots were donated), *microformed on Texas as Province & Republic*, supra note 123, Item 18.2.

199. *See supra* text accompanying note 138.


Texas wants a good establishment for public instruction where the Spanish language may be taught, otherwise the language will be lost. Even at present English is almost the only language spoken in this section of the republic.202

Later Mexican law did not explicitly require that schools be taught in Spanish. The Constitution of Coahuila & Texas of 1827 provided for public education "wherein shall be taught reading, writing, arithmetic, the catechism of the christian religion, a brief and simple explanation of this constitution, and that of the republic, the rights and duties of man in society, and whatever else may conduce the better education of youth."203 A state statute similarly required instruction in "reading, writing, arithmetic, the dogma of the Catholic Religion, and all Ackermann's catechisms of arts and sciences," but did not mandate that these subjects be taught in Spanish.204

By 1828, the Anglo-American immigrants secured the first law requiring bilingual schools in Texas. The state law establishing the Ayuntamiento of San Felipe de Austin provided:

Art. 29: The ayuntamiento, so far as circumstances will permit, shall promote the establishment of a school in the capital of the municipality, for the purpose of teaching the English and Spanish languages, for which purposes they will form a plan and transmit it to the governor, through the regular channel, to be presented to the legislature for approval.205

Although they later charged in the Texas Declaration of Independence that the Mexican government had failed "to establish any system of public education,"206 the Anglo-American immigrants never presented a plan to establish the bilingual school to the state legislature.

Stephen F. Austin, the "Father of Texas,"207 believed bilingual education was essential:

[Public schools for the teaching of modern languages, and especially that of Spanish, are of prime importance. These colonies

202. Eby, supra note 201, at 74 (quoting report of Colonel Juan Almonte to the Mexican government in 1834).
204. Laws and Decrees, State of Coahuila and Texas, Decree no. 92 (1829), reprinted in 1 Tex. Gen. Laws 237-40 (Gammel 1898). But see Laws and Decrees, State of Coahuila and Texas, Decree no. 144 (1830) (providing that prizes of "Fleuris Castillian grammer, orthography and catechism" be distributed to pupils who excel in "virtue and application"), reprinted in 1 Tex. Gen. Laws 267 (Gammel 1898).
205. Municipal Ordinance for the Government & Regulation of the Ayuntamiento of Austin (1828), reprinted in Minutes of the Ayuntamiento of San Felipe de Austin, supra note 148, at 318.
are composed of both foreigners and Mexicans; and the necessity for disseminating [sic] the national language among [sic] the former is evident. They themselves are fully convinced of this necessity and have made various efforts to found a school by means of voluntary contributions. Up to this time, however, these efforts have had no successful outcome. . . . The general good of the state . . . will be greatly advanced by the establishment of a literary institution—and particularly one whose principal object is the extension of the national language among a portion of the inhabitants of the state who do not know it.208

Austin proposed a trilingual Institute of Modern Languages at San Felipe de Austin, “[r]ealizing the importance of encouraging, by every possible means, the teaching of the Spanish language in the new colonies of Texas.”209 Article 5 of the proposal called for a rector who “must be master of the Spanish and English languages.”210 In addition, Article 6 proposed three professors: one of Spanish, one of English, and one of French. Article 7 provided that subjects other than language “shall be distributed among the rector and the professors in the order prescribed by the internal rules of the institution.”211 There is no evidence that the proposal was ever actually presented to the state Congress; the Institute was never established.212

Although the Mexican government explicitly permitted, through both law and practice, the use of English in the schools of the Anglo-American immigrants, the actions of the Mexican government were perceived in the early twentieth century by the leading historian of Texas education to have been unreasonable:

[T]he restrictions placed by the [Mexican] Constitution upon freedom of teaching and of publication were extremely galling to the Anglo-Americans, who were intensely jealous of their personal rights of speech, the freedom of the press, and religious liberty. It must also be remembered that the laws of the state of Coahuila and Texas required all public schools to be conducted in the Spanish language.

In light of these facts the protests of the Texas people were justified.213

Professor Eby’s assertions about legal restrictions on the teaching of English under Mexican law are incorrect;214 his comments are

209. Id. at 236.
210. Id. at 237.
211. Id.
212. Id. at 239.
213. Eby, supra note 201, at 83.
214. Except for the colonization contracts, the only law that required the teaching of Spanish in Texas schools during the Mexican period was enacted in 1833 to provide land for the funding of a school in Nacogdoches. Like the contracts, the statute
especially ironic since he wrote during a period when the state of Texas had explicitly prohibited the use of any language other than English in both public and private schools.215

F. Requests of the Anglo-American Immigrants for the Expansion of Bilingual Government in Texas

Despite these remarkably liberal provisions and practices providing access to government for monolingual English-speaking immigrants to a Spanish-speaking country,216 Anglo-American immigrants were not satisfied. Austin believed most of his difficulties were caused by the immigrants' ignorance of the Spanish language.217 Only two years after securing permission to establish his colony, Austin asked for more multilingualism in government:

I have in all cases directed all the Colonists to make their Deeds of Conveyance in Spanish as the only legal language, but as not one in a hundred of them understand that language it would afford them a great accomodation [sic] if the Law would permit them to Deed Lands and make all their Written Contracts in the English or French and permit them to be recorded in those Languages.218

required that “the Castilian language . . . shall be expressly taught,” but it did not prohibit instruction in English. Laws and Decrees, State of Coahuila and Texas, Decree no. 240 (1833), reprinted in 1 Tex. Gen. Laws 333-34 (Gammel 1898).

215. See infra part VIII.B.1.

216. See Letter from Stephen F. Austin to Archibald Austin (Feb. 24, 1830) (containing extract from newspaper clipping of N.Y. Journal of Commerce which notes, “[i]t is a singular phenomenon [sic] that a colony of Americans, almost in the infancy of our country, should be planted on a foreign soil,—there to . . . speak our language”), in AUSTIN PAPERS, 1828-1834, supra note 1, at 336.

217. Barker, supra note 155, at 238-39 (noting that Austin attributed much of his difficulty to the colonists' ignorance of the Spanish language); Letter from Stephen F. Austin to Josiah H. Bell (Mar. 17, 1829) (attributing unrest among Anglo-Americans about ayuntamiento taxes to ignorance; “this want of knowledge of the laws then I believe to be the true source of all the evils, and it cannot be remedied at this time, for it is impossible to have all the laws translated and printed in the English language”), in AUSTIN PAPERS, 1828-1834, supra note 1, at 187; Letter from Stephen F. Austin to James F. & Emily Perry (Apr. 19, 1833) (asserting Mexican officers “are generally very polite and gentlemanly men and if they spoke English there would be no difficulty with them”), in AUSTIN PAPERS, 1828-1834, supra note 1, at 952.

218. Memorial to the Legislature (Dec. 22, 1824), in AUSTIN PAPERS, 1789-1827, supra note 117, at 998. In the draft of his memorial, Austin had requested still more bilingualism:

[A]s they are all unacquainted with the Spanish language, and cannot therefore receive that instruction from the [Catholic] cura who[m] we have been expecting . . . [I request] that honorable and enlightened Body will be pleased to extend to these inhabitants all the indulgence relative to public worship and preaching in the English language, which they may deem consistent with the laws or with the general interests of the nation.

Id. at 1001. The Anglo-American immigrants were required to practice Catholicism in order to enter Texas. See infra note 967. Austin had previously refused requests
In 1826, Austin proposed a more expansive bilingual government to Bastrop, who at that time was the Texan deputy in the state Congress. Austin proposed a restructuring of the judicial system that would provide for judicial proceedings in English, which would be translated into Spanish by an official translator. This proposal was finally realized in 1834.

Austin's requests for more bilingualism in government reflected the desires of the Anglo-American immigrants. The citizens of San Felipe de Austin met on November 15, 1830, to tell their deputies in the state legislature their "wants and necessities." The third request made to the deputies was the appointment of a translator at the seat of government to translate the laws and decrees. The fourth request was to have a translator appointed to the court in the colony. The Anglo-American immigrants of the Texas of the 1820s and 1830s were provided with bilingual governmental services far more extensive than those available in Texas today; nonetheless, they wanted even more.

G. Demands by the Anglo-American Immigrants for English Translations of Mexican Law

Mexican law and practice provided the English-speaking Anglo-American immigrants with broad access to the Spanish-language laws of the country. The Mexican government required that each ayuntamiento's secretary be bilingual to permit communication between the Mexican government and the Anglo-American immigrants. The Mexican government published certain decrees in English for the benefit of the Anglo-American immigrants. Ste-
phen F. Austin maintained manuscript translations of all the Mexican laws in his office and made them available to the immigrants.\textsuperscript{225} The ayuntamientos regularly ordered the translation and printing of Mexican laws.\textsuperscript{226}

Nonetheless, the Anglo-American immigrants demanded more translations of the Mexican laws.\textsuperscript{227} Stephen F. Austin explained the critical importance of translating the laws for persons who do not speak the language of government:

I have dedicated myself in union with Don Samuel [Williams] to the burdensome work of preparing legitimate translations of the constitutions, national and of the state and of the decrees of the Legislature with the goal of printing them in a notebook, and part of them in the gazette (sic) this can seem like work of little consideration, but it is not—the work is great [and] there is nothing more necessary and important for the good of Texas,

\begin{itemize}
\item \textsuperscript{225} See Letter from Stephen F. Austin to J.H. Bell (Apr. 4, 1829) (noting that the "laws cannot be published in print so that every man will have a copy of them, and there is no other way but for the people to come and read the manuscript translations that are in the office, or to have confidence in some one"), in AUSTIN PAPERS, 1828-1834, supra note 1, at 204; Austin, supra note 120, at 3 (Nov. 1, 1829) (noting that manuscript translations of colonization laws were available in Austin's office); Letter from Stephen F. Austin to Lucas Alamán (Sept. 20, 1830) (enclosing English translations of Mexican colonization laws), in AUSTIN PAPERS, 1828-1834, supra note 1, at 490.

\item \textsuperscript{226} See Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832, supra note 178, at 83 (ordering on February 2, 1830 that a "trust-worthy discreet and confidential person" be employed to translate laws relative to judicial proceedings and that the translation be published); Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832, supra note 173, at 220-21 (ordering in 1830 the translation of Law No. 104 and the printing of 100 copies of that law and of Law No. 39).

\item \textsuperscript{227} See Memorial to the Legislature (Dec. 22, 1824), in AUSTIN PAPERS, 1789-1827, supra note 117, at 1000 ("We have not received the Laws and are unable to procure them with translations."); Letter from Matthew G. White to Stephen F. Austin (Jan. 3, 1830) (asking Austin the duties and powers of the Alcalde since he is "totaly [sic] destitute of the laws of the Republic"), in AUSTIN PAPERS, 1828-1834, supra note 1, at 316; TEX. GAZETTE, Aug. 29, 1830 (complaining that in the United States, laws are published in a newspaper everyone can read, while in Texas they are sent to an alcalde who buries them in an unknown language in the archives), cited in LOWRIE, supra note 126, at 122; Circular - Call for a Convention (Nov. 13, 1832) (asserting that the laws "are locked up in a language known to a few only, and, therefore, for all practical purposes utterly beyond our reach"), in AUSTIN PAPERS, 1828-1834, supra note 1, at 892.
\end{itemize}
because most of these inhabitants do not understand a word of Castilian and it is entirely impossible to govern a people with laws whose existence most of them ignore absolutely—All of the difficulties of Nacogdoches have proceeded entirely from the lack of [translations] of the laws, and of gefes [sic] there to administer the local [government] with the necessary prudence and effect [in a] frontier town and one mixed with so many languages and customs—I have not found a single individual of wisdom who is well informed about the national and state constitutions [and] of the laws who does not express himself entirely satisfied with them, and this is enough to prove the importance of the translations.228

The Texas Gazette, an English-language newspaper published in San Felipe de Austin,229 agreed with Austin that the immigrants' complaints about the Mexican judicial system stemmed from ignorance about the law because of the language barrier: "[h]ence emanate disgust and discontent with a system they can not understand, whose beauties they are unable to appreciate; and they attribute those evils to the law, which originated only from the want of a strict and scrupulous adherence to its provisions."230

One group of immigrants related to the editor of the Texas Gazette their understanding that a translation of the Mexican laws had not been printed because it would require suspension of the publication of the newspaper. The group expressed its preference for suspension, "for it is evident that much more general and public good will result from the publication of the Colonization Laws, than from the three or four numbers of the Gazette, whose publication would be suspended."231 The newspaper was stopped for ten weeks while Austin's translation of the Spanish and Mexican colonization

228. Letter from Stephen F. Austin to José Antonio Navarro (Oct. 19, 1829) (translation by Juárez) (emphasis added), in AUSTIN PAPERS, 1828-1834, supra note 1, at 272. See also THOMAS JEFFERSON CHAMBERS, PROSPECTUS FOR TRANSLATING INTO ENGLISH & PUBLISHING A COMPILATION OF THE LAWS IN FORCE IN THE STATE OF COAHUILA & TEXAS 1 (1832) (noting "the confusion and uncertainty which prevail in the administration of justice, emanating from the impossibility of reaching the laws which are locked up in a language understood by a few adepts only"), microformed on Texas as Province & Republic, supra note 123, Item 27.

229. The Texas Gazette was one of several English-language newspapers published by the Anglo-American immigrants. The Texas Gazette played an important role for the Anglo-American immigrants by publishing translations of the Mexican laws and of correspondence from Mexican officials. Eugene C. Barker, Notes on Early Texas Newspapers, 1819-1836, 21 SW. HIST. Q. 127, 134-35 (1917).

230. TEX. GAZETTE, Feb. 18, 1832, quoted in LOWRIE, supra note 126, at 122-23.

231. TEX. GAZETTE, Nov. 7, 1829, quoted in LOWRIE, supra note 126, at 121.
laws governing the immigrants was printed. Other state laws, as well as the municipal ordinance for the government of the Ayuntamiento of San Felipe de Austin, were also translated and published. Complaints were soon heard that the translation was not entirely reliable, and the editor of the Texas Gazette proposed asking the state government to have official translations of laws made as they were promulgated. The Gazette continued to print translations of Mexican laws. Austin also continued to press for the translation of all of the laws of Coahuila and Texas. One of the few Anglo-American lawyers who spoke Spanish, Thomas Jefferson Chambers, proposed in 1832 to publish a translation of all state laws, but it does not appear he ever did so.

In 1835, the state legislature responded to the demands of the Anglo-American immigrants by providing for the publication of all laws, decrees, and orders in Spanish and English. For the Anglo-American immigrants, this was not enough, for less than a year

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232. Stephen F. Austin, Translation of the Laws, Orders, & Contracts, on Colonization, from January, 1821, up to this Time, in Virtue of which Col. Stephen F. Austin, Has Introduced and Settled Foreign Emigrants in Texas, With an Explanatory Introduction (1829). This is the first book over twelve pages long printed in Texas. Streeter, supra note 229, at 43. The original text is microformed on Texas as Province & Republic, supra note 123, Item 12. The text is also available in 1 Tex. Gen. Laws 3-58 (Gammel 1898). See also Laws, Passed by the Legislature of the State of Coahuila and Texas (1829) (published by private printer G.B. Cotten), microformed on Texas as Province & Republic, supra note 123, Item 16.

233. Streeter, supra note 229, at 241 (describing publication of Reglamento para el Gobierno Economico Politico del Estado Libre de Coahuila y Tejas [Regulation for the Economic & Political Government of the Free State of Coahuila and Texas] in the Oct. 31, 1829 issue of Texas Gazette); id. at 244 (describing publication of Reglamento de la Milicia Nacional Local, del Mismo Estado [Regulation of the Local National Militia of the Same State] in Texas Gazette); id. at 44 (describing publication of translation of laws passed by the legislature of Coahuila and Texas in issues one through five of the Texas Gazette, from Sept. 25, 1829 to Oct. 31, 1829).

234. Translation of Decree No. 100 (1829) (municipal ordinance for government of Ayuntamiento of San Felipe de Austin), microformed on Texas as Province & Republic, supra note 123, Item 17; Streeter, supra note 229, at 45 (describing publication of translation of decree No. 100 in Oct. 31, 1829 issue of the Texas Gazette).


236. Stephen F. Austin, Editorial, Tex. Gazette, July 3, 1830 (noting publication of translation of law of April 6, 1830 and of official letter of General Manuel de Mier y Terán interpreting this law), in Austin Papers, 1828-1834, supra note 1, at 437.

237. Stephen F. Austin, Editorial, Texas Gazette, Mar. 20, 1830 (urging translation of the laws of Coahuila and Texas), described in Austin Papers, 1828-1834, supra note 1, at 347.

238. Chambers, supra note 228; Streeter, supra note 229, at 47 (stating there is no record of publication).

239. Laws and Decrees, State of Coahuila and Texas, Decree no. 319 (1835) (granting license for publication of all laws, decrees, and orders in Castilian and English and requiring delivery of 200 copies for use of state authorities), reprinted in 1 Tex. Gen. Laws 417 (Gammel 1898).
later they claimed independence from Mexico based in part on the
court of government by Mexico "in an unknown tongue." 240

H. Requests by the Anglo-American Immigrants for a
Separate Department to Operate in English

As the difficulties created by the inability of the immigrants to
speak Spanish grew, Stephen F. Austin proposed various structural
changes to facilitate communication with the government. Initially
Austin proposed in 1826 the appointment of a sub-political chief
who "should understand English and Spanish and be a medium of
communication between the political chief and the alcaldes." 241

Two years later, Austin proposed the division of the Department
of Béxar into at least two partidos, or districts. In support of
this proposal, Austin noted:

The eastern part of the department is populated with new colo-
nies whose populations in general do not understand the Castil-
lian language, nor are they accustomed to the laws and customs
of the country because, having recently arrived, they have not
had time to accustom themselves to them . . . . For these rea-
sons the presence of a Gefe [sic] is needed to organize the new
populators, install their ayuntamientos, translate the laws and
instruct them in these . . . . [N]ot one tenth of them understand
the language nor the necessary forms, and if there is no other
recourse but to go to the Gefe [sic] of the Department at Béxar
we will experience infinite difficulties in the confusion of
languages. 242

Austin then suggested that if funds were not available for two
Jefes, then funds should be provided to increase the salary of the
one Jefe and provide him with sufficient funds to pay translators
and scribes "because the same necessity requires that all the laws
and orders of the Government be published [in East Texas] in both
languages, and therefore the Gefe [sic] of the division would have
the task of making the translations and making the copies neces-
sary for each Alcalde and each Ayuntamiento . . . ." 243 Austin con-
cluded by noting that, "[t]hese reflections emanate from an ardent
desire to see my country [i.e., Mexico] flower . . . ." 244

The Mexican government responded to these entreaties in
1831, when the Department of Béxar was divided into two depart-

240. See infra part V.J.
242. Letter from Stephen F. Austin to Governor José María Viesca (Sept. 8,
1828?), in AUSTIN PAPERS, 1828-1834, supra note 1, at 102-04 (translation by
Juárez).
243. Id. at 104.
244. Id.
ments, Béxar and Nacogdoches. In 1834, the Department of Béxar was divided yet again into the Departments of Béxar and Brazos. In establishing these new departments the Mexican government attempted yet again to provide the Anglo-Americans with a government that could communicate with them in their own language. For the Anglo-American immigrants, however, the bilingual services provided by the Mexican government were not sufficient.

V. Language Rights & the Struggle for Independence from Mexico

Although the Anglo-American immigrants expected to operate their local government in their own language, they initially felt that their lack of fluency in Spanish prevented them from taking an active role in national Mexican politics. Jorge Fisher, a secretary for the Ayuntamiento of San Felipe de Austin, was fired shortly after he was hired in 1830. The Minutes of the Ayuntamiento explain:

And since he has been acting as secretary to this body he has endeavored to take advantage of their total ignorance of the Spanish language ... as adopted citizens they owed obedience to the Constitution and Laws, and that as such adopted citizens and unacquainted with the Castilian Language they could not prudently enter into political questions which they cannot understand having their origin at remote distances and being in a language different from their own, and one they are totally unacquainted with.

The immigrants' reticence towards involvement in national issues because of their lack of fluency in the national language would soon change.

A. The Multiple Causes of Independence

The reasons that led some of the Anglo-American immigrants and native Tejanos to declare their independence from Mex-

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247. See infra text accompanying note 297 (describing the establishment of Castilian and English as official languages in the Department of Brazos).
248. Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832, supra note 178, at 275-76.
249. Patricia V. Barrios, Battle Over Alamo Roles of Ethnic Groups Continues, SAN ANTONIO EXPRESS-NEWS, June 26, 1994, at B7 (quoting historian Gilberto Hinojosa as noting that many Anglo-American immigrants refused to take sides during the Texas Revolution, and quoting historian Stephen L. Hardin as noting that some Tejanos rallied to the centralist banner); Letter from Edward Gritten to Colonel Ugartechea (July 5, 1835) (asserting in Spanish that Gonzáles and Mina wish "to
ico were many and varied. Among the reasons cited in the Texas Declaration of Independence were military abuses, the inadequacies of the Mexican justice system, the failure of the Mexican Republic to abide by the federalist guarantees of the Mexican Constitution of 1824, and the failure of the Mexican government to live in tranquility and in peace with their brothers the Mexicans, with whom in no way do they want to have a war with") (translation by Juárez), in Austin Papers, 1834-1837, supra note 129, at 80; Barker, supra note 141, at 149-63 (describing affirmations of loyalty to Mexico by Anglo-American immigrants prior to August, 1835).

250. One writer has claimed that the Texas Declaration of Independence was "lifted wholesale from the U.S. Declaration of Independence and endowed with as many complaints as could be invented overnight." Jeff Long, Duel of Eagles 208 (1990) (quoted in Paul & Van Horn, supra note 32, at 941). A discussion of the validity of this accusation is beyond the scope of this article. If the courts were to accept this claim, the result would be to delete the Texas Bill of Rights from the Texas Constitution because the framers could not have intended to actually remedy any grievances. For purposes of my analysis, I use the historical narrative used by the Texas courts: the delegates to the 1836 Convention had specific grievances which they intended to remedy by crafting a Declaration of Rights which protects Texans today as the Texas Bill of Rights. See Robert M. Cover, Nomos as Narrative, 97 Harv. L. Rev. 4, 4 (1983) ("No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic . . . . Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.").

251. The Texas Declaration of Independence accused the Mexican government of "suffer[ing] the military commandants, stationed among us, to exercise arbitrary acts of oppression and tyranny, thus trampling upon the most sacred rights of the citizen, and rendering the military superior to the civil power." The Declaration of Independence of the Republic of Texas (1836), reprinted in Tex. Const., supra note 2, at 479. Complaints of abuse by the Mexican military were made bilingually. See infra text accompanying note 288.

252. The Texas Declaration of Independence alleged that the Mexican government had "ceased to protect the lives, liberty, and property of the people, from whom its legitimate powers are derived, and for the advancement of whose happiness it was instituted." The Declaration of Independence of the Republic of Texas (1836), reprinted in Tex. Const., supra note 2, at 478. The Declaration also complained that the Mexican government had "failed and refused to secure, on a firm basis, the right of trial by jury, that palladium of civil liberty, and only safe guaranty for the life, liberty, and property of the citizen." The Declaration of Independence of the Republic of Texas (1836), reprinted in Tex. Const., supra note 2, at 479; see Barker, supra note 141, at 91 (asserting that "[o]f all the grievances suffered by the colonists the defective judiciary system was . . . the most exasperating and persistent").

253. The Texas Declaration of Independence noted: the Federal Republican Constitution of their country, which they have sworn to support, no longer has a substantial existence, and the whole nature of their government has been forcibly changed, without their consent, from a restricted federative republic, composed of sovereign States, to a consolidated central military despotism. The Declaration of Independence of the Republic of Texas (1836), reprinted in Tex. Const., supra note 2, at 478. See David Montejano, Anglo-Mexicans in the Making of Texas, 1836-1986 26 (1987) (noting that the rebellion initially "appeared to be another provincial revolt of liberal federalists against the conservative
make Texas its own separate state.\textsuperscript{254} Other reasons not cited by the Texians included a desire to protect their purported “right” to own slaves,\textsuperscript{255} and Manifest Destiny, the belief held by many Americans in the nineteenth century that the United States was destined to extend from the Atlantic Ocean to the Pacific Ocean.\textsuperscript{256} Others have attributed the break to “differences in folkways and mores, in the culture patterns of the two groups.”\textsuperscript{257} Like most historical phenomena, there is no single cause that explains why a group of immigrants who had entered a foreign country less than fifteen

constitutionalists led by Santa Ana, a struggle similar to others then occurring throughout Mexico”).

\textsuperscript{254} The Texas Declaration of Independence charged that the Mexican government “hath sacrificed our welfare to the State of Coahuila . . . notwithstanding we have petitioned in the humblest terms for the establishment of a separate State government.” \textit{The Declaration of Independence of the Republic of Texas} (1836), \textit{reprinted in Tex. Const., supra note 2}, at 479. \textit{See T.R. Fehrenbach, Fire and Blood} 379 (1973) (“The Anglo-American immigrants had “only two major irritations. Mexico had no trial by jury, which offended the colonists’ sense of justice, and justice and government were administered out of Coahuila.”). Paul and Van Horn, in arguing that the Texas Bill of Rights provides exactly the same protections as the United States Constitution, emphasize that Fehrenbach suggests the Anglo-American immigrants “were basically happy living under the Mexican Constitution at that time, and that Austin had in general succeeded in overcoming whatever irritants existed.” \textit{Paul & Van Horn, supra note 32}, at 964. It is fascinating to observe two Anglo prosecutors adopt the perspectives held by many Mexicans and Chicanos regarding the Texas Revolution to support a restrictive view of the rights guaranteed by the Texas Bill of Rights. \textit{See infra} text accompanying note 256 (noting Manifest Destiny as one explanation for Texas independence); \textit{Rodolfo Acuña, Occupied America: A History of Chicanos} 5 (3d ed. 1988) (asserting that “North Americans fought the Texas War—that is U.S. dollars financed it, U.S. arms were used on Mexican soil, and Euro-Americans almost exclusively profited from it . . . . The so-called Republic held Texas in trusteeship until 1844, when the United States annexed it.”). This, however, is not the historical narrative used by the Texas courts. \textit{See supra} note 250.

\textsuperscript{255} The Constitution of the State of Coahuila and Texas adopted on March 11, 1827 declared that no one should be born a slave, and provided that the introduction of slaves was strictly prohibited six months after its adoption. \textit{Introduction to Constitutions of Texas, in Tex Const., supra note 2}, at 463-65. \textit{But see Barker, supra note 141}, at 62 (concluding that slavery was not an active cause in precipitating the revolution). \textit{See generally infra} note 353 (describing Mexican law regarding slavery and Anglo-American responses).

\textsuperscript{256} \textit{Montejano, supra note 253}, at 24 (describing Texas independence and subsequent annexation as “essentially the reflection of a ‘manifest destiny’”); \textit{Introduction to Constitutions of Texas, supra note 255}, at 467 (noting that the Constitution of the Republic of Texas “guarded the rights of the people in the vacant lands of the new Republic, which had constituted the attraction to the immigrants who then occupied the country and were now about to enter on a weary contest for the preservation of their rights therein”). \textit{Cf. Barker, supra note 141}, at v (concluding that the Texian revolution “was neither the culmination of a deep-laid program of chicanery and greed nor the glorious response of outraged freemen to calculated oppression of tyrants”); \textit{Lowrie, supra note 126}, at 7-8 (describing “writers of an earlier date who looked upon the Anglo-American movement to Texas as a conspiracy to seize the territory from Mexico”).

\textsuperscript{257} \textit{Lowrie, supra note 126}, at 179.
years before felt compelled to declare their independence.258 In the rush to consider other explanations, however, the role that language played in this effort has been minimized.259 That role is described in the remainder of Part V, below. If the Texas courts seek to give effect to the intent of the framers of the Texas Constitution,260 then their intent with respect to language must be considered.

Before proceeding, the limits of my argument should be noted. I do not claim that language discrimination was the principal motive leading the Texians to declare their independence from Mexico. Given the interplay among Texians and Tejanos, and the wide variety of motivations among the players, any attempt to identify one motive as the motive is ludicrous.261 Nonetheless, Mexico’s failure to provide even greater access to government in the English language did play a significant role in motivating many Anglo-American immigrants to seek independence from Mexico. Notwithstanding the fact that these Anglo-Americans were recent immigrants to a foreign country, they believed they had a fundamental right of access to governmental services in a language they could understand.

B. The Convention of 1832

This belief was manifested prior to any attempt to declare independence from Mexico. In 1832, the Texians pledged their sup-

258. BARKER, supra note 141, at 143 (stating that the “causes of popular movements are rarely concrete and simple; on the contrary, they are diffuse and complex”); id. at 29-31 (attributing the causes of the revolution to a variety of factors, including the absence of contacts to bring two peoples who differed in “language, religion, and civilization” closer together); id. at 146 (concluding the “Texas revolution was the product of the racial and political inheritances of the two peoples”).

259. LOWRIE, supra note 126, at 124-25 (stating that the language barrier “was not the spectacular kind to be given as a ground for revolt, though it is alluded to in the Declaration of Independence, but it was a steadily operative influence in the development of misunderstanding and antagonism”). But see Introduction to Constitutions of Texas, supra note 255, at 466 (“The laws were published in the Mexican language, with which but few of the inhabitants of Texas were familiar, and the interests of the two states were so diverse as necessarily to produce jealousy and ill-feeling between their people.”).

260. See supra part II.B.

261. Cf. Halbrook, supra note 100, at 633-40 (describing the cause of independence from Mexico solely in terms of the right to bear arms). Halbrook’s assertion that the “independence of Texas became inevitable when Mexican authorities attempted to deprive the settlers of [the] right [to bear arms],” id. at 634, weakens, rather than strengthens, his argument for anyone familiar with the complex history of Texas during this period. See also Amy Johnson, Abortion, Personhood, & Privacy in Texas, 68 Tex. L. Rev. 1521, 1537 (1990) (noting that “so often, advocates who use the historical methodology distort legislative history to lend credence to their individual opinion on the issue”).
port to Antonio López de Santa Anna in his struggle for the presidency of Mexico. In return for this pledge of support, the immigrants asked for reforms.262 At a convention held at San Felipe de Austin in October, 1832, a committee was appointed to petition the state government "to pass a law authorizing the people of Texas (whose native language is English) to have all their transactions, and obligations, written in the English language, except those which have an immediate connection with Government."263 Two days later, the Anglo-American immigrants requested bilingual education:

[Y]our memorialists pray a grant of as many leagues of land, for the promotion of education, as the Legislature, in its liberality, shall think proper to bestow; to be made to Texas as the foundation of a fund for the future encouragement of Primary Schools, in Texas, in which will be taught the Castilian and English Languages . . . . 264

The proposal authorizing government in English was ultimately rejected by the Convention.265 Instead, the Convention sought to organize a state government separate from Coahuila.266 This was the first of several attempts to establish Texas as a state separate from Coahuila; one of the reasons the immigrants sought a separate state government was to obtain more multilingual governmental services.267 Ultimately, none of the Convention's proposals were ever presented to the Mexican government.268

C. The Convention of 1833

Dissatisfied with the outcome of the 1832 Convention, some of the Anglo-American immigrants soon called for another convention. The circular calling for the convention at San Felipe de Austin asserted a right of access to the Mexican justice system in English:


265. PROCEEDINGS OF THE GENERAL CONVENTION OF DELEGATES REPRESENTING THE CITIZENS & INHABITANTS OF TEXAS (Oct. 6, 1832), reprinted in 1 Tex. Gen. Laws 503 (Gammel 1898). The Proceedings do not provide any explanation of why the committee's report was rejected.


267. See infra part V.D.

The laws which ought to be enforced, if any such there be, are locked up in a language known to a few only, and, therefore, for all practical purposes, are utterly beyond our reach.

The accurate observer, on taking a survey of our situation, must pronounce the decisive opinion, that we are without remedy for wrongs; that we are without redress for grievances; and that we must remain without them, until they are provided by the deliberate, and declared will of a majority of the people, assembled by delegation, in Public Convention.269

Stephen F. Austin prepared an address for the Central Committee which was presented to the convention in April, 1833. Austin began by noting the fundamental right of the Anglo-American immigrants to present their petitions to the government:

The people of Texas ought therefore to rely with confidence on the government for protection, and to expect that an adequate remedy will be applied to the many evils that are afflicting them.

The right of the people of Texas to represent their wants to the government, and to explain in a respectfull manner the remedies that will relieve them cannot therefore be doubted or questioned. It is not merely a right, it is also a sacred and bounden duty which they owe to themselves and to the whole Mexican nation . . . .

One could conclude from Austin's remarks that if individuals have a fundamental right to address the government, that right is meaningless if they do not have access to the government in a language they speak.271 But reliance on implication for an understanding of the role of language at the 1833 Convention is unnecessary, for the participants explicitly stated the importance of communication with the government in their own language:

The unnatural annexation of what was formerly the province of Texas to Coahuila by the constituent congress of the Mexican nation, has forced upon the people of Texas a system of laws which they do not understand . . . .

There are but few men in Texas who are qualified to prepare cases for the supreme court . . . .

The rights of the accused are committed to an alcalde who is ignorant of the formulas of the laws, and of the language in which they are written who prepares the cause for the judgment of the supreme tribunal in Saltillo, thus the lives, liberty and honor of the accused are suspended upon the tardy decision [sic] of a distant tribunal which knows not nor cares not for

269. Circular - Call for a Convention (Nov. 13, 1832), in AUSTIN PAPERS, 1828-1834, supra note 1, at 892-93.
270. Stephen F. Austin, Address of Central Committee to the Convention of April 1, 1833, in AUSTIN PAPERS, 1828-1834, supra note 1, at 935-36.
271. Cf. Robert E. Hall, Remonstrance—Citizen's Weapon Against Government's Indifference, 68 TEX. L. REV. 1409, 1415 (1990) (describing this text as announcing "the right of Texans to communicate directly with the government").
his suffering, and the rights of the community to bring offenders to speedy and exemplary punishment are sacrificed to forms equally uncertain and unknown . . . A total disregard of the laws has become so prevalent, both amongst the officers of justice, and the people at large, that reverence for laws or for those who administer them has almost entirely [sic] disappeared and contempt is fast assuming its place, so that the protection of our property[,] our persons and lives is circumscribed almost exclusively to the moral honesty or virtue of our neighbor.

. . . .

No organization can be devised under the constitution of the State of Coahuila and Texas that would suit the two extremes, separated as they are more than 400 leagues, a great part through a wilderness that cannot be passed without imminent danger from hostile Indians[.] The dissimilarity of habits[,] occupation and language also present still greater difficulties than the distance. These difficulties are hard to reconcile for the reason that the state constitution requires that all general laws shall be the same throughout the whole state[.]272

The Texians in 1833 did not yet seek independence; they claimed they wished to remain a part of the Mexican nation. But they also claimed the fundamental right to communicate with their government in their own language.

D. Language Rights as a Factor in the Attempt to Make Texas a Separate State of Mexico

The failure of the Mexican government to make Texas a state separate from Coahuila is commonly identified as a grievance that motivated the Texians to declare independence from Mexico.273 What is commonly overlooked in the discussion of this factor is the role that language played in the demand for a separate state. Austin’s address to the 1833 Convention described one of the reasons the Anglo-American immigrants sought to make Texas a separate state: to ensure that the immigrants would be provided with governmental services in a language they understood. The participants at the Convention of April 1, 1833 explicitly stated that their complaints about being linked to Coahuila did not center solely on the distance between the population centers of the two states. Rather, differences of habits, occupation, and language were greater difficulties than the distance.274

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272. Stephen F. Austin, Address of Central Committee to the Convention of April 1, 1833, in AUSTIN PAPERS, 1828-1834, supra note 1, at 937-39 (emphasis added).
273. See, e.g., Fehrenbach, supra note 254, at 379 (describing the administration of justice and government out of Coahuila as one of two major irritants to the Anglo-American immigrants).
274. See supra text accompanying note 272.
The Anglo-American immigrants were circumspect when asserting this right before the Mexican government. The 1833 Convention petition to the Mexican Congress requesting that Texas be made a separate state was less explicit about the language problem, but implicitly identified language as a part of the problem:

The honorable Congress need not be informed that a large portion of the population of Texas is of foreign origin . . . . The best mode of securing the permanent attachment of such a population is, to incorporate them into the federal system, on such equitable terms as will redress every grievance, remove every cause of complaint, and insure, not only an identity of interests, but an eventual blending and assimilation of all that is now foreign and incongruous.275

Similarly, an explanation prepared by Stephen F. Austin for the Mexican Minister of Relations was oblique in its presentation of the problem:

4th. The glory of the federal system consists in the fact that no other form of government invented by the wisdom of men, has been able to meet the local necessities of each angle of an immense country, and at the same time to unite the physical and moral force of all parts in a national center in order to work in mass, in defense of their liberty and independence.276

A petition to the Mexican Congress requesting Stephen F. Austin’s release from prison, written after the enactment of the more generous multilingual provisions described below, was similarly oblique. The petition noted that the people of Texas had “feelings, views, habits and pursuits entirely different and distinct from the people of Coahuila.”277

Among themselves, however, the Anglo-American immigrants were very explicit about their claimed right to government in their own language. About the time the Convention of 1833 was meeting, Thomas Jefferson Chambers expressed views similar to those articulated by Stephen F. Austin:

Many important laws have been undivulged as a snare to the people: and although a large majority of the inhabitants of Texas do not understand the language in which the laws are written, they never have been furnished with a translation of them, or been provided with interpreters . . . .

With but one superior tribunal of justice, and one asesor [sic] general, both located at the capital of the state, at an im-

275. Memorial of the Texan Convention of April 1833, to the General Congress of the United Mexican States (1833), reprinted in Yoakum, supra note 139, at 480-81.
276. Letter from Stephen F. Austin to Minister of Relations (Aug. 1, 1833), in Austin Papers, 1828-1834, supra note 1, at 994 (emphasis added).
277. Petition from Ayuntamiento of Brazoria to Congress (July [31?], 1834), in Austin Papers, 1828-1834, supra note 1, at 1070.
mense distance from Texas, a large majority of whose inhabit-
ants are ignorant of the language, it has left them without a
remedy for the injustice done them by the inferior judges.\textsuperscript{278}

When the Ayuntamiento of Brazoria asked other Anglo-Ameri-
can ayuntamientos for their views on the issue of statehood for
Texas in January, 1834, the letter noted:

\begin{quote}
[W]e believe that legislators arising out of the bosom of the peo-
ple, \textit{having a common language}, common wants, and common
interests, would be much more likely to understand and provide
for our political necessities, than legislators a thousand miles
distant, without any of the above named prerequisites.\textsuperscript{279}
\end{quote}

The Texas Declaration of Independence asserted that the fail-
ure of the Mexican government to establish Texas as a separate
state had deprived the Texians of their right to government in a
“known tongue.” It charged that the Mexican government

\textit{hath sacrificed our welfare to the State of Coahuila}, by which
our interests have been continually depressed through a jealous
and partial course of legislation, carried on at a far distant seat
of government, by a hostile majority, \textit{in an unknown tongue},
and this too, notwithstanding we have petitioned in the hum-
blest terms for the establishment of a separate State govern-
ment, and have, in accordance with the provisions of the
national Constitution, presented to the general Congress a Re-
publican Constitution, which was, without a just cause, con-
temptuously rejected.\textsuperscript{280}

In considering the problems the framers of the Texas Bill of Rights
were attempting to remedy, the Texas courts must consider the fail-
ure of the Mexican government to establish Texas as a separate
state. The analysis cannot end there, however. The reasons the
Anglo-American immigrants gave for seeking a separate state must
also be considered.\textsuperscript{281} One of the most important forces behind the
move for statehood was the failure of the Mexican state of Coahuila

\textsuperscript{278} Thomas Jefferson Chambers, Exposition of the Part Taken by T.J. Chambers
in the Difficulties of Texas in the Summer of the Past Year; and His Views Upon the
Present Most interesting measure of Separating Coahuila & Making It a State(Apr.
1833) \textit{microformed on Texas as Province & Republic, supra} note 123, Item 39.
Chambers became \textit{asesor general} (state attorney) in February 1834 and helped
frame the judicial code establishing a bilingual court system for Texas, described
\textit{infra} text accompanying notes 296-300. Chambers was appointed superior judge of
Texas under that bilingual court system, but never assumed the duties of that office.
\textit{I Handbook of Texas, supra} note 113, at 326.

\textsuperscript{279} The Ayuntamiento of Brazoria to the Ayuntamiento of _ (Jan. 2, 1834),
\textit{microformed on Texas as Province & Republic, supra} note 123, Item 44 (emphasis
added).

\textsuperscript{280} \textit{The Declaration of Independence of the Republic of Texas} (1836) (em-
phasis added), \textit{reprinted in Tex. Const., supra} note 2, at 479.

\textsuperscript{281} \textit{Harrington, supra} note 45, at 52 (noting that in interpreting the Texas Con-
stitution there must be considered “the whole thrust of problems with the central
government in Mexico when Texas formed that country’s northern frontier”).
and Texas to address the needs of immigrants who did not speak the national language.

E. Language Rights & Complaints About the Mexican Justice System

Complaints by the Anglo-American immigrants about the Mexican justice system are also commonly recognized as another factor that eventually led to independence from Mexico. The Texas Declaration of Independence began by asserting that the Mexican government had "ceased to protect the lives, liberty, and property of the people, from whom its legitimate powers are derived, and for the advancement of whose happiness it was instituted."282 The Declaration later complained that the Mexican government "has failed and refused to secure, on a firm basis, the right of trial by jury, that palladium of civil liberty, and only safe guarantee for the life, liberty, and property of the citizen."283

Generally overlooked, however, is that many of the complaints of the Texians about the Mexican justice system stemmed from the problems created by the failure of the Mexican government to address language differences. As the 1833 Convention had noted, because the Anglo-American alcaldes and accused did not speak Spanish, they were ignorant of the laws, and thus the certainty that law ordinarily brings was entirely missing. As a result, disregard for the law had become prevalent, causing a perceived crime wave among Anglo-Americans.284

When the 1833 Convention complained that few men were qualified to prepare cases for the supreme court, they were not complaining about a lack of lawyers.285 The lack of qualifications

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283. Id. at 479.
284. See supra text accompanying note 272.
285. See supra text accompanying note 272. Stephen F. Austin complained about the influx of lawyers among the immigrants, and the problems that resulted: As regards the lawyers who you say in your letter are causing all the disturbance in the country, I believe they are an evil and a great one but they are patronized and encouraged and paid by the people .... The truth is that the evil lays in the people [themselves]. It is a part of the national character of Americans to be contentious and litigious, and I do believe that a lawyer would fatten on 100 Americans, when he would starve on 10,000 of any other people on earth. If you wish to correct this evil therefore go to the foundation and cut it up by the roots. Let every man settle his differences by an arbitration of his neighbors, or if he goes to law let him attend to his own business and not employ a lawyer. I know of no other way of correcting the evil for if the Alcalde was to silence all the lawyers and suffer none to appear before him, the PEOPLE would immediately cry out despotism and oppression and say it was a hard case that a man could not employ an
stemmed from the lack of Spanish-speaking lawyers required because the Mexican government did not provide access to the justice system for lawyers who only spoke English.

Nor were complaints about the problems posed by the monolingual status of the justice system limited to the Anglo-American immigrants. In the Béxar Remonstrance, the Tejanos of Béxar asked the state legislature for statehood for Texas, described the problems in the administration of justice, and noted:

And so it is that this evil needs a quick and effective remedy, requiring the naming of judges of letters and public scribes, without forgetting the heterogeneous population of Texas that for this reason needs lawyers of true and proven providence and attainments, associated with very faithful interpreters who know perfectly the Spanish and English languages . . . .

The framers of the Texas Bill of Rights, native Tejanos as well as the Anglo-American immigrants, believed that the residents of Texas had a right of access to the justice system in their own language.

F. The Desire for Multilingualism, Not English Monolingualism

While the Anglo-Americans insisted on the right to communicate with the government in their own language, the assertion of this right did not mean that government should be conducted only in English. Austin believed Texas would be made a separate state

agent to attend to his business for him, and a talking lawyer would go about bawling oppression, that he was not allowed to exercise his profession and that the Alcalde had taken his bread from him and his poor family (if he had one) etc. etc. And the people would no doubt take sides with the lawyer and curse the Alcalde much more for silencing the lawyers than they now do for not silencing them—An honest and conscientious lawyer is a valuable member of society—there is none more so, but a hot headed fractious [abusling and contentious lawyer is a curse on any community, and ought to be discountenanced but I really cannot see any other effectual remedy [sic] than the one I have pointed out to correct this evil—it must be corrected by settling disputes by means of arbitration in each neighborhood, and by never employing a lawyer in any case[.]

Letter from Stephen F. Austin to Josiah H. Bell (Mar. 17, 1829), in AUSTIN PAPERS, 1828-1834, supra note 1, at 190.

286. Representación Dirijida [sic] Por el Ilustre Ayuntamiento de la ciudad de Béxar al Honorable congreso del Estado, manifestando los males que afligen [sic] Los Pueblos de Texas, y los Agravios que Han Sufrido Desde la Reunion de Estos con Coahuila [Representation directed by the illustrious ayuntamiento of the city of Béxar to the Honorable State Congress, manifesting the ills that afflict the peoples of Texas, and the grievances they have suffered since their reunion with Coahuila] (Dec. 19, 1832) (translation by Juárez), microformed on Texas as Province & Republic, supra note 123, Item 37.
only if the native Tejano population supported the move. Tejanos would not have supported an effort by recently-arrived immigrants to condemn natives to government in a language they did not understand. The efforts of the Texians were bilingual. When fear of the military grew in June 1832, Stephen F. Austin advised the President of the Ayuntamiento of San Felipe de Austin to officially report any abuses by the military to the Chief of the Department. Austin also recommended publishing the official complaints and reports of such abuses in Spanish and in English. The Béxar Remonstrance was published in both Spanish and English. Austin prepared instructions from the 1833 Convention for the mission to Congress in Spanish. A Tejano, Don Erasmo Seguin, was appointed to the mission to present the petition to the Mexican Congress. Other Tejanos translated the memorial for Austin.

G. The Mexican Government's Response to the Demands of the Anglo-American Immigrants: More Bilingual Governmental Services

While Mexico did not agree to make Texas a separate state, further concessions were made to address the needs of monolingual English-speaking immigrants. Stephen F. Austin had asserted that "[w]ith only two measures Texas would be happy—judges who understand English even if only in provisional cases and the trial by jury." In May, 1833, the state legislature responded to these requests. Judges were required to provide interpreters in civil and criminal cases “commenced or contested in the state by persons unacquainted with the language of the country.”

In 1834, a Department of Brazos was established. Article 11 of the decree establishing the new Department gave English full

287. Letter from Stephen F. Austin to Samuel M. Williams (Jan. 12, 1834), in AUSTIN PAPERS, 1828-1834, supra note 1, at 1026.
288. Letter from Stephen F. Austin to Horatio Chriesman (June 19, 1832), in AUSTIN PAPERS, 1828-1834, supra note 1, at 784.
289. See supra note 288; Letter of D.W. Anthony to Stephen F. Austin (Jan. 20, 1833) (requesting English copy instead of Spanish copy for publication that was sent to English-language newspaper), in AUSTIN PAPERS, 1828-1834, supra note 1, at 917-18; STREETER, supra note 229, at 49 (noting that copies of the newspapers do not survive to verify the translations).
290. Stephen F. Austin's Instructions from the Convention (Apr. 13, 1833), in AUSTIN PAPERS, 1828-1834, supra note 1, at 946-47.
292. Id.
293. Letter from Stephen F. Austin to J. Francisco Madero (about Apr. 20, 1833) (translation by Juárez), in AUSTIN PAPERS, 1828-1834, supra note 1, at 959.
equality with Spanish in local government in Texas: "The Castilian and English shall be lawful languages in Texas; both may be used in the acts of the public administration as the case may require, except in communications with the supreme power, which shall be made expressly in Castilian." 295

One month later, the state legislature responded to the immigrants' continuing complaints about the judicial system by establishing a bilingual court system for Texas. Judges who were not "acquainted with both the legal idioms of Texas" were required to appoint an interpreter at a salary of $1000 per year. 296 Criminal trials were required to be conducted in the language of the accused party, so long as the accused spoke either English or Spanish. 297 If jurors who spoke the language of the accused could not be found in that district, the case had to be transferred to the nearest district where such jurors could be found. 298 A party appealing a case to the state supreme court with a written record in English was given the right to have the record translated into Spanish at his own cost by a translator appointed by the judge. 299 The law was ordered published in both English and Spanish. 300

Mexico attempted to respond to the needs of her new monolingual English-speaking immigrants by providing for bilingual services far greater than any provided by the State of Texas or by the United States today. Mexico had previously created separate departments for the Anglo-American immigrants, 301 which ensured that "the independence of the colonists was . . . about as complete as


296. Laws and Decrees, State of Coahuila and Texas, Decree no. 277, art. 18 (1834), reprinted in 1 Tex. Gen. Laws 366 (Gammel 1898).

297. Id. art. 30, at 367. Prior to the establishment of an officially bilingual court system, cases had been tried in English before the Alcaldes of the Ayuntamientos. The Alcalde had judicial responsibility for trying civil and criminal cases. 1 HAND-BOOK OF TEXAS, supra note 113, at 25. See, e.g., Verdict of the Jury (Jan. 31, 1824) (finding defendant guilty of stealing hogs and horses), in AUSTIN PAPERS, 1789-1827, supra note 117, at 734; Subpoena (May 13, 1824), in AUSTIN PAPERS, 1789-1827, supra note 117, at 792; Proceedings against John Houlehan for disturbing elections (Aug. 16, 1834 to Sept. 6, 1834) (requesting permission to expel Houlihan), microformed on Béxar Archives, supra note 144, Roll 162, Documents 905-17 and 965-73.

298. Laws and Decrees, State of Coahuila and Texas, Decree no. 277, art. 30 (1834), reprinted in 1 Tex. Gen. Laws 367-68 (Gammel 1898).

299. Id. art. 134, at 379.

300. Id. art. 140, at 380. See PLAN PARA EL MEJOR ARREGLO DE LA ADMINISTRACION DE JUSTICIA EN TEXAS (1834) (publishing decree in Spanish & English), microformed on Texas as Province & Republic, supra note 123, Item 805.

301. See supra text accompanying notes 245-47 and 295.
laws could make it.”302 When Stephen F. Austin learned of the establishment of three departments, and the provision of judges and of trial by jury, he asserted that “every evil complained of has been remedied.”303 Yet for the Anglo-American immigrants, this was not enough.304

H. The Consultation of 1835

On October 3, 1835, Mexican President Antonio López de Santa Anna issued a decree that centralized power in Mexico City. The Anglo-American immigrants called for a consultation to be held in San Felipe de Austin to decide what the response of Texas should be.305 On October 25, 1835, Lorenzo de Zavala called for Mexican liberals to join forces with Texas.306 On November 7, 1835, the Consultation issued a declaration refusing to acknowledge the authority of the existing Mexican government within Texas. Independence was not yet declared, however. Instead, the Consultation expressed continued faithfulness to the Mexican government “so long as that nation is governed by the Constitution and Laws that were formed for the government of the Political Association.”307

The Consultation operated bilingually. Lorenzo de Zavala was appointed to “translate such documents or proceedings of this house as may be required.” de Zavala was also requested to translate into Spanish the Consultation’s declaration for a provisional government; 500 copies were ordered printed “for distribution among our Mexican fellow citizens of the republic.”308 This declaration was to be provided not just to the Anglo-American settlements, but “to the

302. BARKER, supra note 141, at 24 (noting that political chiefs of each department were named by the governor from nominees presented by the ayuntamientos, elected by the immigrants).

303. Letter from Stephen F. Austin to Oliver Jones (June 2, 1834), in AUSTIN PAPERS, 1828-1834, supra note 1, at 1059. See also Petition from Ayuntamiento of Brazoria to Congress (about July 31, 1834), in AUSTIN PAPERS, 1828-1834, supra note 1, at 1070 (recognizing that the new state laws “applied the necessary remedy to our wrongs” and “tendering our most cordial and heartfelt gratitude both to the Federal and State Govts”).

304. Cf. Lowrie, supra note 126, at 123 (describing enactment of 1834 statute permitting the use of English in legal documents, but concluding that “no law could remove the barrier of language”).

305. I HANDBOOK OF TEXAS, supra note 113, at 403.


308. JOURNALS OF THE CONSULTATION HELD AT SAN FELIPE DE AUSTIN (Nov. 8, 1835) [hereinafter SAN FELIPE DE AUSTIN JOURNALS], reprinted in 1 Tex. Gen. Laws 526 (Gammel 1898). The translation is microformed on Texas as Province & Repub-
people of each municipality of the department of Béxar.” Proclama-
tions were sent out in Spanish to the Tejanos. Austin sent an
address in Spanish to Béxar explaining the activities of the Anglo-
Americans and specifically guaranteed the rights of Texas towns in-
habited primarily by Spanish-speaking Tejanos:

5th. The People of Béxar, Goliad, Guadalupe, Victoria, and San
Patricio and of any other part of Texas will not be molested in
any way in electing their representatives to the General consul-
tation if they wish to do so.

The Consultation established a provisional government that
purported to operate as a state within the Mexican nation. The
intent of the framers of the Texas Bill of Rights to establish a bilin-
gual government is evidenced by the practices of this provisional
government. The plan for the provisional government established
by the Consultation in November, 1835 provided for a General
Council consisting of one member from each municipality in
Texas. One of the fifteen representatives at the General Council
was a Tejano: J. A. Padilla of Guadalupe Victoria. On the third
day of the Council, Mr. Padilla requested “an interpreter to attend him
during the sitting of the Council, which was granted, and D. B. Ma-
comb was appointed interpreter.” Immediately thereafter, the
report from the Committee on the Affairs of State and Judiciary
was presented. It asserted: “The people should at all times have the
ready means of knowing the acts of their public agents.” Mr. Pa-
dilla was one of three members of this committee. Obviously Mr.
Padilla, who needed an interpreter at the General Council, could
not know the acts of his public agents if those acts were only avail-
able in English, or if communication in any other language but Eng-

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309. SAN FELIPE DE AUSTIN JOURNALS, supra note 308 (Nov. 9, 1835), reprinted in 1 Tex. Gen. Laws 527 (Gammel 1898).
311. Address by Stephen F. Austin to Inhabitants of Béxar (about Nov. 18, 1835) (translation by Juárez), in AUSTIN PAPERS, 1834-1837, supra note 129, at 256-58. The original address is available as EL CONSEJO GENERAL DEL GOBIERNO PROVI-
SIONAL DE TEJAS, AL PUEBLO MEXICANO (1835), microformed on TEXAS AS PROVINCE & Republic, supra note 123, Item 94. Five hundred copies were printed in Spanish and two hundred copies were printed in English. STREETER, supra note 129, at 65.
312. I HANDBOOK OF TEXAS, supra note 113, at 403.
313. Id. at 677.
l on December 12, 1835. Id. at 659.
315. Id. at 563 (Nov. 17, 1835).
316. Id. at 564.
lish were to be prohibited. Thus, Article VI of the plan for the provisional government of Texas provided that judges would "be made a court of record for conveyances, which may be made in English."\textsuperscript{317} The use of the permissive "may" indicates a desire to permit the use of English or, as required under Mexican law, Spanish.

That a bilingual government was contemplated is also evident from the appointment of Tejanos as judges at Guadalupe Victoria, Goliad, and Béxar, where the populations were almost entirely Tejano and therefore Spanish-speaking.\textsuperscript{318} Similarly, Tejanos who were almost certainly monolingual Spanish-speakers were appointed as commissioners for organizing the militia.\textsuperscript{319}

The Council provided for the translation of Spanish documents into English,\textsuperscript{320} and of English documents into Spanish. Translation obviously was necessary to monitor the Mexican Army.\textsuperscript{321} Communications in Spanish were received from Mexican Federalist General José Antonio Mexía.\textsuperscript{322} An interpreter was used when the General Council heard a request from Colonel González, an officer in the Mexican Army, to join the Texian army at Béxar.\textsuperscript{323} A resolution thanking Col. González for his intercession on behalf of Texian prisoners of war was ordered translated and furnished to him.\textsuperscript{324} A communication in Spanish regarding the military movements of the Mexican Army was presented by Mr. Padilla and translated.\textsuperscript{325}

Thus, even as Anglo-Americans moved towards independence from Mexico, they continued to extend to Tejanos the same right they claimed for themselves: the right to communicate with government in their own language.

\textsuperscript{317} SAN FELIPE DE AUSTIN JOURNALS, supra note 308, at 540 (emphasis added); Plan and Powers of the Provisional Government of Texas, reprinted in TEx. CONST., supra note 2, at 471-72.


\textsuperscript{319} Id. (appointing Sylvester De León, Plácido Benavides [Benavides] and Manuel Carabajal [Carbajal] at Guadalupe Victoria; and appointing Caleb Bennett, Antonio Vásques [Vásquez] and Ramón Falcón at Goliad).

\textsuperscript{320} Id. at 575 (Nov. 20, 1835).

\textsuperscript{321} Id. at 623 (Dec. 4, 1835).

\textsuperscript{322} Id. at 681 (Dec. 19, 1835) (noting receipt of "several letters in the Castilian language").

\textsuperscript{323} Id. at 605-06 (Nov. 30, 1835).

\textsuperscript{324} Id. at 672 (Dec. 16, 1835).

\textsuperscript{325} Id. at 615 (Dec. 2, 1835); id. at 616 (Dec. 3, 1835).
I. The Movement Towards Independence

After the Consultation adjourned on November 14, 1835, the loyalist sentiments of the participants rapidly evaporated. The Texians invoked natural rights as the justification for their radical and revolutionary actions. These natural rights declarations must be read in the context of the immigrants' earlier grievances. Among the reasons they believed the Mexican government had failed to protect their natural rights was the failure of the Mexican government to provide greater access to governmental services in a language known to the immigrants. On November 30, 1835, Stephen F. Austin wrote a letter to the provisional government that set forth the grievances of the Anglo-Americans, including the effect of speaking a different language. Because the centralist decree of October 3rd would prevent a consideration of the differences of the Anglo-Americans, including language, he asserted a fundamental right to secede from Mexico:

Had the change been effected by constitutional means or had a national convention been convened and every member of the confederacy been fairly represented, and a majority agreed to the change, it would have placed the matter on different ground, but even then, it would be monstrous to admit the principle, that a majority have the right to destroy a minority, for the reason that self preservation is superior to all political obligations.

That such a government, as is contemplated by the before mentioned decree of 3d October, would destroy the people of Texas, must be evident to all, when they consider its geographical situation, so remote from the contemplated centre of legislation and power, populated as it is by a people who are so different in education, habits, customs, language, and local wants from all the rest of the nation, and especially where a portion of the central power have manifested violent Religious prejudices and jealousies against them. . . .

The decree of the 3d October therefore if carried into effect evidently leaves no remedy for Texas but resistance, secession from Mexico and a direct resort to natural right.326

The General Council also asserted natural rights as the basis for seeking independence:

By the laws of creation and nature, all men are free and equal, of these natural rights no man can be forcibly deprived, on the principles of immutable justice . . . of necessity, all the legitimate powers of any government are immediately derived from the governed . . . resistance is therefore a duty. The protection of our liberties, our natural and reserved rights make it so.327

326. Letter from Stephen F. Austin to Provisional Government (Nov. 30, 1835) (emphasis added), in Austin Papers, 1834-1837, supra note 129, at 270.
327. San Felipe de Austin Journals (Dec. 4, 1835), supra note 308, at 622.
These natural rights arguments were translated and presented to Tejanos and to the rest of the Mexican population:

[The people of Texas] wish to save themselves as they have a right to do, by the law of nature.

... 

[Can it be possible that the whole nation will declare war against us because...we wish to defend the rights which God has given to man, and which the Mexican nation has solemnly guaranteed to us? No, it cannot be believed. The free Mexicans are not unjust, and they will take part in our favor.]

To arms then patriotic Mexicans...

J. The Declaration of Independence

On December 11, 1835, the General Council called for an election on February 1, 1836 to elect delegates to a convention at Washington-on-the-Brazos. Consistent with Stephen F. Austin's earlier guarantee that the rights of Tejanos would be protected, the elections for delegates in Béxar to the convention at Washington-on-the Brazos were held in Spanish. Three Tejanos were elected as delegates: Lorenzo de Zavala (representing Harrisburg), and Francisco Ruiz and Antonio Navarro (representing Béxar).

The Convention at Washington-on-the-Brazos began on March 1, 1836. On the second day of the convention, a Declaration of Independence was adopted by the delegates. The Texas Declaration of Independence began with a list of the circumstances that had driven the Texians to declare independence from Mexico: "When a government has ceased to protect the lives, liberty, and property of the people, from whom its legitimate powers are derived, and for the advancement of whose happiness it was instituted."

Language is not explicitly cited in this introduction, but in fact it

328. Proclamation from the General Council of the Provisional Government of Texas to the Mexican people (Dec. 11, 1835), JOURNAL OF THE PROCEEDINGS, supra note 314, at 651-52. Five hundred copies of this proclamation were ordered printed in Spanish, and two hundred copies in English. Id.

329. See supra text accompanying note 311.

330. Letter from Juan Seguin to Francisco Ruiz (Feb. 10, 1836) (advising Ruiz that he has been elected as a delegate), reprinted in JESUS F. DE LA TEJA, A REVOLUTION REMEMBERED: THE MEMOIRS & SELECTED CORRESPONDENCE OF JUAN N. SEGUIN 135-36 (1991). All of Juan Seguin's correspondence reproduced in the appendix in this work is in English, but de la Teja has identified those documents written by Seguin that are not in Spanish. Id. at 197-200.

331. Lorenzo de Zavala was a native of the Yucatán in Mexico. I HANDBOOK OF TEXAS, supra note 113, at 498.


was one of the principal complaints the Texians had about the Mexican justice system. The Texians had complained about the inability to enforce laws published in Spanish, and how this had created an atmosphere of lawlessness. Thus this complaint regarding the lack of protection of Texian lives, liberty, and property must be read in the context of the complaints that had previously been presented to the Mexican government. Inaccessibility to the Mexican judicial and legal system because of language problems was a perennial complaint of the Texians.

Later in the Declaration of Independence, the Texians directly asserted the right to communicate with their government in their own language:

[The Mexican government] hath sacrificed our welfare to the State of Coahuila, by which our interests have been continually depressed through a jealous and partial course of legislation, carried on at a far distant seat of government, by a hostile majority, in an unknown tongue, and this too, notwithstanding we have petitioned in the humblest terms for the establishment of a separate State government, and have, in accordance with the provisions of the national Constitution, presented to the general Congress a Republican Constitution, which was, without a just cause, contemptuously rejected.

The Mexican government’s refusal to establish Texas as a separate state from Coahuila has been well-recognized as a cause of the independence movement. But often overlooked is the role that language played in this desire to establish a separate state. It was not language differences alone which were complained of; rather, it is that the Coahuila-dominated state government was unwilling to address the needs of the English-speaking immigrants in Texas by expanding multilingual governmental services. This is one of the principal complaints registered in the text of the Texas Declaration of Independence quoted above.

The Texas Declaration of Independence did not merely assert these complaints as grievances. It asserted a fundamental right to have these grievances remedied:

When, in consequence of such acts of malfeasance and abduction on the part of the government, anarchy prevails, and civil society is dissolved into its original elements, in such a crisis, the first law of nature, the right of self-preservation, the inherent and inalienable right of the people to appeal to first principles, and take their political affairs in their own hands in extreme cases, enjoins it as a right towards themselves, and a sacred obligation to their posterity, to abolish such government,

334. See supra text accompanying note 272.
and create another in its stead, calculated to rescue them from impending dangers, and to secure their welfare and happiness.\textsuperscript{336}

The Texians practiced what they preached. Immediately after the draft of the Constitution for the Republic of Texas was presented to the Convention, de Zavala moved to appoint an interpreter to translate "the constitution and laws of this government into the Spanish language."\textsuperscript{337} The motion was approved on March 10, 1836.\textsuperscript{338}

**K. The Bilingual War for Independence from Mexico**

Like the Texan movement for independence from Mexico, the war for independence was conducted bilingually. Lieutenant Colonel Juan Seguín commanded three companies. Companies A and C were composed almost entirely of Anglo-Americans; like most Texian troops, the language of command was no doubt English. Company B was composed primarily of Tejanos; Spanish was the language of command here.\textsuperscript{339} Lieutenant Colonel Seguín wrote to his commanding officer, General Thomas J. Rusk, in Spanish.\textsuperscript{340} Secretary of War John A. Wharton requested that Seguin make his reports in English, but authorized the employment of an interpreter to make this possible.\textsuperscript{341}

Communications with Tejanos continued to be conducted in Spanish. When a Tejano requested permission to pick corn and beans from a field near Béxar, Austin wrote to him in Spanish and explained why the military situation precluded such activities.\textsuperscript{342} Captain Thomas Pratt was ordered to collect horses and mules from the ranches near Béxar, accompanied by Captain Menchaca, because "as he is acquainted with the Country and Language you may find it eligible [sic] to consult with him on such points as may be

\begin{footnotes}
\item[336] \textit{The Declaration of Independence of the Republic of Texas} (1836), \textit{reprinted in Tex. Const., supra} note 2, at 478; \textit{Braden, supra} note 91, at 2-3 (describing the social contract philosophy of the Texas Bill of Rights).
\item[337] \textit{Journals of the Convention of the Free, Sovereign and Independent People of Texas, in General Convention Assembled} (Mar. 9, 1836), \textit{reprinted in 1 Tex. Gen. Laws} 878 (Gammel 1898).
\item[338] \textit{Id.} at 885 (Mar. 10, 1836).
\item[339] \textit{Muster Roll of Seguín’s Regiment} (Dec. 31, 1836) (listing members of Companies A, B & C), \textit{reprinted in De la Teja, supra} note 330, at 148-51.
\item[340] \textit{See e.g., Letter from Juan Seguín to General Thomas J. Rusk} (June 7, 1836), \textit{reprinted in De la Teja, supra} note 330, at 141-42, and \textit{supra} note 332.
\item[341] \textit{Order No. 1} from Secretary of War John A. Wharton to Juan Seguí (Sept. 17, 1836), \textit{reprinted in De la Teja, supra} note 330, at 144-45.
\item[342] \textit{Letter from Stephen F. Austin to Antonio de la Garza} (Nov. 16, 1835), \textit{in Austin Papers, 1834-1837, supra} note 129, at 255-56.
\end{footnotes}
necessary to carry into due effect the object of your mission."\textsuperscript{343} Lieutenant Colonel Seguín continued to use Spanish in official communications with the Alcalde of Béxar.\textsuperscript{344} Proclamations delivered in Spanish to Tejano citizens were translated into English and published in the Texian newspapers.\textsuperscript{345}

\textbf{L. The Limitations of Historical Argument: Racism \& the Framers During the Struggle for Independence}

As noted above,\textsuperscript{346} historical argument is problematic since the framers did not extend equal rights to all Texans. Thus, while Tejanos were provided services in Spanish during the struggle for independence, it should be noted that anti-Mexican sentiment ran high among some Texians. Some of this sentiment was a result of mistrust of the Tejanos, who were indistinguishable from other Mexicans. Henry Smith, the first governor of the provisional government, argued that the Mexican inhabitants of Béxar had failed to join the Texians, “which is evidence, strong and conclusive, that they are really our enemies.” He therefore argued they should not be entitled to a seat in the General Council. He was open, however, to the other Tejano towns: “As it respects the other Mexican jurisdictions, where the touch-stone could be more properly applied, it would be different.”\textsuperscript{347} William B. Travis claimed that the Tejanos at Béxar “are all our enemies, except those who have joined us here-tofore . . . those who have not joined us . . . should be declared public enemies, and their property should aid in paying the expenses of the war.”\textsuperscript{348}

Part of the anti-Mexican sentiment was racist. Governor Henry Smith, for example, vetoed a plan to assist Mexican Federal-

\begin{itemize}
\item 343. Orders from Lieutenant Colonel Juan Seguín to Captain Thomas Pratt (Mar. 26, 1837), \textit{reprinted in DE LA TEJA, supra note 330}, at 163.
\item 344. Letter from Juan Seguín to Nicolás Flores (Mar. 29, 1837), \textit{reprinted in DE LA TEJA, supra note 330}, at 165.
\item 345. Notice from Juan N. Seguín to the Inhabitants of Béxar (June 21, 1836) (requesting that cattle be carried to where the enemy cannot use them), \textit{published in TELEGRAPH AND TEXAS REGISTER, Sept. 21, 1836, reprinted in DE LA TEJA, supra note 330}, at 165.
\item 346. \textit{See supra} text accompanying note 64.
\item 347. Letter from Governor Henry Smith to President and Members of the Legislative Council (Dec. 12, 1835), \textit{JOURNAL OF THE PROCEEDINGS, supra note 314, reprinted in 1 Tex. Gen. Laws 658-59} (Gammel 1898).
\item 348. Letter from W. Barrett Travis to Convention (Mar. 3, 1836), \textit{id. at} 846. \textit{See also} F. W. Johnson et al. Protest (Nov. 6, 1835) (protesting against any Mexican “save those belonging to our army” being permitted to gather “corn—Beef or any provisions of any Sort”), \textit{in AUSTIN PAPERS, 1834-1837, supra note 129}, at 242-43. Two Texians were “opposed to Mexicans entering the Camp at all,” while one was “opposed to permission being given to them to return when once entering the army.” \textit{Id.}
\end{itemize}
ist General Mexía, stating "I consider it bad policy to fit out or trust Mexicans in any matter connected with our Government, as I am well satisfied that we will in the end find them inimical and treacherous." Smith’s successor, James W. Robinson, was no better in his assessment of Native Americans and Mexicans:

Surrounded on one side by hordes of merciless savages, brandishing the tomahawk and scalping knife, recently red with human gore; and on the other, the less merciful glittering spear and ruthless sword of the descendents [sic] of Cortes, and his modern Goths and Vandals...350

The Texas Declaration of Independence asserted that the Mexican people of the interior “are unfit to be free, and incapable of self-government.”351

Racism against African Texians was also blatant. Stephen F. Austin had mixed feelings about slavery, but prior to independence he did not hesitate to invoke his purported constitutional right “as a Mexican” to own slaves.352 With independence from Mexico, the Texians intended to maintain slavery, an institution they had struggled to preserve despite Mexican laws prohibiting slavery.353

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349. Letter from Governor Henry Smith to the President and General Council (Dec. 9, 1835), JOURNAL OF THE PROCEEDINGS, supra note 314, reprinted in 1 Tex. Gen. Laws 643-44 (Gammel 1898). The Council overrode the veto. Id. Governor Smith was removed from office on January 11, 1836, in part because of his refusal to cooperate with Colonel González and General Mexía. Id. at 762-70.

350. Letter from James W. Robinson to President and General Council (Jan. 14, 1836), id. at 780 & 783.

351. THE DECLARATION OF INDEPENDENCE OF THE REPUBLIC OF TEXAS (1836), reprinted in Tex. Const., supra note 2, at 480. Presumably this characterization did not apply to the Mexicans of Texas since three Tejanos (Francisco Ruiz, José Antonio Navarro, and Lorenzo de Zavala) signed the Texas Declaration of Independence. Cf. GOLIAD DECLARATION OF INDEPENDENCE (Dec. 20, 1835) (“The general diffusion among the Creole population of a like attachment to the institutions of their ancient tyrants. Intellectually enthralled, and strangers to the blessings of regulated liberty, the only philanthropic service which we can ever force on their acceptance, is that of example.”), reprinted in 1 Tex. Gen. Laws 817, 818 (Gammel 1898). The Goliad Declaration of Independence was signed by two Tejanos, M. Carbajal and Miguel Aldrete.

352. Letter from Stephen F. Austin to John Durst (Nov. 17, 1829), in AUSTIN PAPERS, 1828-1834, supra note 1, at 288-89.

353. Mexican law strictly regulated slavery and envisioned the abolition of slavery in the near future. Initially, Stephen F. Austin was able to persuade the Mexican Congress to reverse its intended ban on slavery; instead the first immigrants were permitted to bring slaves, but the children of the slaves were to be freed at age fourteen. BARKER, supra note 141, at 72; see Colonization Law of 1823, Mexico, art. 30 (1823), reprinted in 1 Tex. Gen. Laws 30 (Gammel 1898). This guarantee of slavery did not apply to later colonists. BARKER, supra note 141, at 72; Laws and Decrees, State of Coahuila and Texas, Decree no. 16, art. 46 (1825) (providing that “in respect to the introduction of slaves, the new settlers, shall subject themselves to the laws that are now, and shall be hereafter established on the subject”), reprinted in 1 Tex. Gen. Laws 105 (Gammel 1898); Laws and Decrees, State of Coahuila and Texas, Decree no. 190, art. 35 (1832) (similar language to same effect), reprinted in 1 Tex.
The General Council prohibited “the importation and emigration of free negroes and mulattoes into Texas.”

A committee of the General Council condemned proposals to sell land to Native Americans as “in the highest degree criminal and unpardonable on the part of those engaged in this wicked enterprise [sic].” Similarly, the Texas Declaration of Independence accused Mexico of using emissaries to incite “the merciless savage, with the tomahawk and scalping-knife, to massacre the inhabitants of our defenceless [sic] frontiers.”

VI. Government and Language in the Republic of Texas

By 1836, the influx of Anglo-American immigrants had made Tejanos a minority in their own land. One might expect that the Texians would ignore the Tejano minority and conduct government in English, the language of the majority of the population.

Gen. Laws 189, 193 (Gammel 1898). The preliminary text of the Constitution of 1827 prohibited slavery “now and forever” and declared all slaves free. Stephen F. Austin was able to change this to a milder version prohibiting enslavement in the future and prohibiting the introduction of new slaves after six months. Streeter, supra note 229, at 238. Mexican law on slavery during this period included the Constitution of Coahuila & Texas, art. 13 (Mar. 11, 1827) (providing that “no one shall be born a slave in the state” and that after six months slaves may not be introduced under any pretext), reprinted in 1 Tex. Gen. Laws 424 (Gammel 1898); Laws and Decrees, State of Coahuila and Texas, Decree no. 18 (1827) (providing for the manumission of one-tenth of an owner’s slaves with each change in ownership), reprinted in 1 Tex. Gen. Laws 202 (Gammel 1898). Mexican President Guerrero on September 15, 1829 issued a proclamation emancipating all slaves in Mexico, but later declared the proclamation had no effect on slaves in Texas. Barker, supra note 141, at 77-79. The Anglo-American immigrants widely flouted these anti-slavery laws, often by claiming their slaves were indentured servants. See id. at 74-75. In 1832, state law attempted to close this loophole. Laws and Decrees, State of Coahuila and Texas, Decree no. 35 (1827) (permitting slave to change masters if new master indemnifies old master for cost of slave), reprinted in 1 Tex. Gen. Laws 202 (Gammel 1898). The Anglo-Americans vigorously protested these limits. For a description of the role of slavery in the movement for independence from Mexico, see Paul D. Lack, Slavery and the Texas Revolution, 89 S.W. Hist. Q. 181 (1985).

354. The Journal of the Proceedings (Jan. 1, 1836), supra note 314, at 721-22. The ordinance was approved on Jan. 5, 1836. Id. at 738. The ordinance is also reprinted in 1 Tex. Gen. Laws 1024-25 (Gammel 1898) (noting that the ordinance “was handed over to Governor Smith for approval but never returned”).

355. Letter from D.C. Barrett to General Council (Jan. 2. 1836) (discussing proposal to sell lands to Creek Indians), reprinted in 1 Tex. Gen. Laws 724 (Gammel 1898).


357. Jordan, supra note 19, at 393 (estimating that in 1836, “no more than 7,000 or 8,000 Spaniards, Christianized Indians, and mestizos resided in Texas, already for a decade a minority group in their own homeland”).
But such was not the case. The government of the Republic of Texas recognized the Tejanos as citizens, and respected the language rights of the Tejano minority. The Texians who, when they had been the minority had asserted a right to communicate with the Mexican government in English, now provided opportunities for the Tejanos to communicate with the government of the Republic of Texas in Spanish.

A. Bilingual Government in the Republic of Texas

The Convention at Washington-on-the-Brazos adopted a Constitution for the newly-established Republic of Texas on March 16, 1836. The Constitution was ratified at an election held on the first Monday of September, 1836.

The Constitution of the Republic of Texas was signed by the three Tejano delegates to the Convention: Francisco Ruiz, José Antonio Navarro, and Lorenzo de Zavala. While Lorenzo de Zavala spoke English, Francisco Ruiz and Jose Antonio Navarro did not. Few Tejanos spoke English in 1836. It is inconceivable that these Tejano framers intended to condemn themselves and their fellow Tejanos to life in their own homeland under a government to be conducted “in an unknown tongue,” particularly when the Anglo-American immigrants had so recently urged the Mexican government to provide more bilingual governmental services.

Nor does the evidence suggest the Texian framers intended to establish an English-only government. The Texians had boldly asserted a right to communicate with their government in their own

358. Hardy v. De León, 5 Tex. 211, 227 (1849) (finding that Sylvester De León of Victoria was a citizen of the Republic of Texas and rejecting argument that he was a citizen of Mexico and an alien enemy).

359. Cf. Harrington, supra note 81, at 430 (noting that “racial and ethnic polarization [between Tejanos and Anglos] was often exacerbated, but the people recognized the need to structure a modus vivendi to establish stability”).

360. Tex. Const., supra note 2, at 492, n.*.


362. See 1 HANDBOOK OF TEXAS, supra note 113, at 498 (stating that de Zavala studied English while imprisoned by the Spanish government).

363. Antonio Navarro requested and received an interpreter when he served in the Constitutional Convention of 1845. See infra text accompanying note 495. José Francisco Ruiz was “unable to speak English.” II HANDBOOK OF TEXAS, supra note 114, at 514.

364. See Bobbitt, supra note 23, at 190 (“Historical argument suggests a sort of social contract between government and the people, the original intention of both parties being held to determine the construction of that instrument, the written Constitution, that is the memorialization of the agreement. Courts, on this view, examine legislation to see if it comports with the original understanding of the parties.”).
language. Whatever their failings from a modern perspective with respect to issues of race, gender, and slavery, these individuals were all too familiar with the problems created when a minority is unable to communicate in the language of the government of the majority. Thus, both the laws and the practice in the Republic of Texas established multilingualism in governmental services.

1. Provisions for Non-English-Speaking Government Officials

The Constitution of the Republic of Texas provided: “All Judges, Sheriffs, Commissioners, and other civil officers shall remain in office, and in the discharge of the powers and duties of their respective offices, until there shall be others appointed or elected under the Constitution.”\(^\text{365}\) Since many of these officials were monolingual Spanish-speaking Tejanos, the Constitution clearly contemplated that these governmental functions would continue to be carried out in the language spoken by the particular governmental official. This continued to be the practice after officials were named under the authority of the new Constitution. Thus, land sales in Nacogdoches in 1839 before Judge Louis Rúz were in Spanish.\(^\text{366}\)

Just as Tejanos, aided by interpreters, had served in the various conventions leading up to the establishment of the Republic of Texas, Tejanos served in the Congress of the Republic of Texas with the assistance of interpreters. Senator Juan Seguín “never acquired command of English.”\(^\text{367}\) He therefore debated in the Senate of the Republic of Texas in Spanish.\(^\text{368}\) Although he needed an interpreter, Seguín served as Chair of the Committee on Military Affairs, and served on the Committee of Claims and Accounts.\(^\text{369}\)

2. The Provision of Bilingual Laws

The Republic of Texas provided bilingual laws for Texians and for Tejanos. Responding to one of the major complaints of the Texi-

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\(^{365}\) Const. of the Republic of Tex., Schedule § 8 (1836), reprinted in Tex. Const., supra note 2, at 490.


\(^{367}\) De la Teja, supra note 330, at 53. A newspaper reporter in 1886 interviewed Seguín and reported that “[t]he old gentleman speaks some English, but the conversation was mainly carried on through the medium of his grandson, Mr. Guillermo M. Seguín” Laredo Times, reprinted in Clarksville Northern Standard, Feb. 25 1887, reprinted in De la Teja, supra note 330, at 192.

\(^{368}\) See De la Teja, supra note 330, at 33.

\(^{369}\) Id.
ans before independence, Spanish and Mexican laws were translated into English. The Constitution of the Republic of Texas provided: "[A]ll laws relating to land titles shall be translated, revised, and promulgated." The Congress of the Republic of Texas required the commissioner of the general land office to appoint a translator who "shall understand the Castillian [sic] and English languages" and who was required to translate and record "all the laws and public contracts relative to the titles of land which are written in the Castillian [sic] language, and also . . . all original titles which are written in the Castillian [sic] language." The laws of the Mexican state of Coahuila & Texas were published in both Spanish and English. The Velasco Treaty, terminating the war for independence, was also published in both languages.

Because the Texians had complained of the injustice of being required to obey laws they could not understand, the Republic of Texas "in justice to that numerous portion of our fellow citizens who understand only the Spanish language, and who are consequently wholly ignorant of the most important laws to which their obedience is required," authorized the translation of all general and penal enactments. Further, the Congress required that, "in future all general enactments shall as soon as practicable be translated into Castilian, and transmitted to the chief justices and justices of the peace of said counties [sic], who shall give all due publicity to said laws; provided, the expense shall not exceed three hundred dollars annually." A similar statute, but without the three hundred dollar limitation, was enacted in 1839. At the end of the session, Senator Seguín was promised he would be kept informed of the progress in publishing these translations. In March, 1839, the Department of State advised Senator Seguín that they had waited for the laws of the last session to be printed, which took longer than ex-

370. See supra part IV.G.
373. Secretary of State of Republic of Texas, Laws & Decrees of the State of Coahuila & Texas, in Spanish & English (1839), microformed on Texas as Province & Republic, supra note 123, Item 310. This translation would have been published earlier but for difficulties in finding a suitable translator. Streeter, supra note 229, at 115.
374. Agreement between Santa Anna & the Texian Government (1836), microformed on Texas as Province & Republic, supra note 123, Item 177.
376. Id.
pected, but promised that the laws would be "forwarded by next packet" to be translated and printed in New Orleans.378

When the translations of the laws into Spanish were still not available almost a year later, Senator Juan Seguín, a hero of the Texas Revolution and the only Tejano in the Senate, addressed the Senate on the issue, first challenging the exorbitant estimate of the cost of the translations:

I wish, sir, to know upon what data the Second Auditor founded his estimate of the cost of translating and printing the Laws to be enacted by the present Congress, to the amount of $15,000. I wish to know, Mr. President, what the cost of translating the laws, enacted [sic] by the former Legislative bodies of Texas is, laws which in virtue of the existing laws upon that subject, ought to have been translated, and printed; also, what laws have been translated, and where do they exist?379

Then, echoing the view of the Anglo-American immigrants prior to independence, Seguín asserted a right to the translations:

My constituents have, as yet, not seen a single law translated and printed; neither do we know when we shall receive them: Mr. President, the dearest rights of my constituents as Mexico-Texians are guaranteed by the Constitution and the Laws of the Republic of Texas; and at the formation of the social compact between the Mexicans and the Texians, they had rights guaranteed to them; they also contracted certain legal obligations—of all of which they are ignorant, and in consequence of their ignorance of the language in which the Laws and the Constitution of the land are written. The Mexico-Texians were among the first who sacrificed their all in our glorious Revolution, and the disasters of war weighed heavily upon them, to achieve those blessings which, it appears, [they] are destined to be the last to enjoy, and as a representative from Béxar, I never shall cease to raise my voice in effecting this object.380

Secretary of State Lipscomb had apparently expressed doubts about continuing the translation because of the expense.381 On June 21, 1840, Senator Seguín wrote to the acting Secretary of State, again inquiring as to the progress of the translation. Acting Secretary of State Joseph Waples responded on July 1, 1840 that the translation had been delayed because paper could not be ob-

378. Letter from Nathaniel C. Amory to Juan Seguín (Mar. 16, 1839), reprinted in De la Teja, supra note 330, at 173.
379. Juan Seguín, Address to the Senate of the Republic of Texas (Feb. 1840), reprinted in De la Teja, supra note 330, at 174.
380. Id. (emphasis added). In 1974, Juan N. Seguín's remains were moved from Nuevo Laredo, Tamaulipas, Mexico to Seguín, Texas. The inscription on the tomb asserts that Seguín supported "bi-lingual publishing of textbooks," but there is no evidence to support this assertion. De la Teja, supra note 330, at 55.
381. Streeter, supra note 229, at 149. The Republic was charged $2.50 per printed page. Id.
tained in New Orleans, but that it should be completed soon.\textsuperscript{382} The Spanish translation was finally printed in 1841.\textsuperscript{383} It included the Declaration of the People of Texas in General Convention Assembled (Nov. 7, 1835), the Plans and Powers of Establishing the Provisional Government (Nov. 13, 1835), the Texas Declaration of Independence, the Constitution of the Republic of Texas, most of the Acts of the first three Congresses, and two joint resolutions. Not included in the translation were the acts incorporating towns and private corporations nor the act establishing the General Land Office.\textsuperscript{384}

A third statute requiring translation of the laws into Spanish “immediately upon the adjournment of Congress of each year” was enacted in January, 1842.\textsuperscript{385} Five days later, however, the Secretary of State was ordered to suspend the printing of the laws in Spanish.\textsuperscript{386} There is little in the records of the Congress of the Republic of Texas that would indicate why this decision was made. One explanation might be that, for the first time in the history of the Republic, no Tejanos served in the Congress to pressure their

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382. Letter from Joseph Waples to Juan Seguín (July 1, 1840), reprinted in \textit{DE LA TEJA}, \textit{supra} note 330, at 175.

383. Publication was in late 1841. The printer wrote to the Secretary of State’s office in August 1841 promising to complete the translation “in about three weeks.” \textit{Letter from J.W. Cruger to J. Waples, reprinted in 3 JOURNALS OF THE SIXTH CONGRESS OF THE REPUBLIC OF TEXAS, 1841-1842 278 (Capital Printing Co., Inc. 1945) (1842) [hereinafter JOURNALS OF CALLED SESSION, 1842]. In October, 1841, Mr. Waples reported to the Secretary of State that “there has not been much done since the adjournment of the last Congress, that we have been apprized of. The appropriation then made of $10,000 was paid to Messrs. Cruger & Moore for arrearages due for said printing.” \textit{Letter from Joseph Waples to Samuel A. Roberts, Secretary of State (Oct. 12, 1841), reprinted in \textit{REPORT OF THE SECRETARY OF STATE, 1841}, reprinted in \textit{JOURNALS OF CALLED SESSION, 1842}, supra, at 276.}

384. Streeter, \textit{supra} note 229, at 149. For the finished translation, see S.P. Andrews, \textit{Constitución, Leyes Generales [sic], & c. de la Republica de Tejas. Traducidas al Castellano, por S.P. Andrews, abogado de los tribunales de dicha república. Por disposición del Secretario de Estado (1841), microformed on Texas as Province & Republic, \textit{supra} note 123, Item 477.}

385. Joint Resolution of Jan. 12, 1842, 1842 Republic Tex. Laws 35, \textit{reprinted in 2 Tex. Gen. Laws 707 (Gammel 1898). The joint resolution provided: [T]he Secretary of State . . . is hereby required, immediately upon the adjournment of Congress of each year, to cause all laws of a general nature to be translated into the Spanish language, and published in any newspaper of the city of San Antonio; or should there be no newspaper published in San Antonio, the said laws shall be printed in some paper published in the Republic: provided, that at least two hundred and fifty copies of each number of the paper containing the laws be furnished the Secretary of State for circulation; and provided, further, the expense of such translation and publication shall not exceed six hundred dollars per annum.}

colleagues to provide Spanish translations.\textsuperscript{387} The convoluted legislative history of these two bills reveals, however, that for the Anglo-American representatives of areas with large Tejano populations, the availability of Spanish language translations was a legislative priority. This legislative history leaves one wondering how each legislative body could independently take such contradictory actions over a very short period of time.\textsuperscript{388}

\textsuperscript{387} José Antonio Navarro served in the Third Congress in 1838 and 1839. He was elected to the Fourth Congress, but resigned because of illness. He served as state senator in the First and Second Legislatures after statehood. \textit{II HANDBOOK OF TEXAS, supra} note 114, at 262-63. Juan N. Seguin, the only other Tejano to serve in the Congress of the Republic of Texas, was elected to the Senate in 1838. He resigned in 1840. \textit{Id.} at 590.

\textsuperscript{388} A bill to suspend the printing of the laws in Spanish was first introduced in the House on Dec. 10, 1841. \textit{H.J. OF TEx., 6th Cong. 125} (Capital Printing Co., Inc. 1944) (1841-42) [hereinafter \textit{HousE JOURNAL, 1841-42}]. The journal of December 15th characterized the proposal as a joint resolution on its second reading. \textit{Id.} at 162-63 (Dec. 15, 1841). The following day, the joint resolution "was laid on the table." \textit{Id.} at 165 (Dec. 16, 1841).

The very next day, a bill requiring the translation of the laws of each session of Congress and their publication in a public journal was engrossed. \textit{Id.} at 183 (Dec. 17, 1841). There is no record in the \textit{Journal} of a second reading. The bill was passed on third reading on December 22, 1841, with the journal noting that Mr. Van Ness, the representative from Bexar County, supported it. \textit{Id.} at 203.

On December 31st, the joint resolution to suspend the printing of laws was resurrected, read a third time, and passed. \textit{Id.} at 248. This already confusing legislative history does not end here, however. On January 4, 1842, the House took up the bill providing for the printing of the laws in Spanish, "with the amendments of the Senate" and adopted it! \textit{Id.} at 272. Thus, as of January 4th, a law requiring the publication of the laws in Spanish was enacted by the Congress. Under the Constitution of the Republic of Texas, this bill became law if not returned by the President of the Republic within five days after being presented to him for his approval and signature. \textit{CONST. OF THE REPUBLIC OF TEXAS, art. 1, § 26 (1836)}, reprinted in \textit{TEX. CONST., supra} note 2, at 484.

The Senate, in the interim, had also been busy. The first bill to suspend the printing of the laws in Spanish had been introduced in the Senate on November 23, 1841, two weeks before any such proposal in the House. \textit{1 JOURNALS OF THE SIXTH CONGRESS OF THE REPUBLIC OF TEXAS 1841-1842 58} (Von Boeckmann-Jones Co. 1940) (hereinafter \textit{SENATE JOURNAL OF 1841-42}). The bill was referred the following day to the Judiciary Committee, almost immediately after Senator Daingerfield, the senator from Bexar County, was added to that committee. \textit{Id.} at 60. The following day, the judiciary committee recommended approval of the bill, but Senator Daingerfield submitted a minority report in which he proposed that any laws that "have not been translated and published under the provisions of the Act hereby repealed be translated and published in one of the News-Papers of the Republic" \textit{Id.} at 61. The next day, Senator Daingerfield succeeded in having the committee reports made the special order of the day for the following Monday. \textit{Id.} at 64. On November 30, 1841, the bill to repeal the required publication of the laws in Spanish was referred to a special committee composed of Senators Daingerfield, Byrne, and Owen. \textit{Id.} at 80. Senator Byrne represented Goliad, Refugio, and San Patricio. Senator Owen represented Matagorda, Jackson, and Victoria. Thus all three members of the special committee represented areas of the state whose population, prior to independence, had been predominately Tejano. The special committee reported a substitute bill, and this report was adopted. \textit{Id.} at 89 (Dec. 3, 1841). However, later that same day the report was "laid on the table." \textit{Id.} at 91.
One explanation for the contradiction might be the exorbitant bills submitted by a Houston printer for the printing of the translations. After spending less than $10,000 for translations in 1840, and again in 1841, Secretary of State Samuel A. Roberts reported to President Mirabeau B. Lamar in October, 1841 that the cost of 2,000 copies of the translated laws was estimated to be more than $75,000. Secretary of State Roberts reported the cost of printing the acts of the First, Second, and Third Congresses to have been $7,221. He estimated the cost of printing the acts of the Fourth and Fifth Congress to be $9,562.60; however, because the paper money of the Republic was not accepted at face value, the actual cost in paper money of the Republic was estimated to be $75,684 for 2000 copies. Secretary of State Roberts noted that no more than 200 copies of any law had ever been published in English, and that the publication of 2000 copies seemed excessive given the proportion of Spanish-speakers in the population. He complained that the cost of the Spanish translations was double that of the English printings, and that the printer, J. W. Cruger, was accruing a profit of four hundred per cent. He cancelled the contract with Mr. Cruger and, contradicting the judgment of the Congress of the Republic, described it as "a useless expenditure of a large sum of money."

The disparagement by Secretary of State Roberts of the translations as "useless," and his claim in his letter to Cruger that the

The Senate took no further action until December 23, 1841, when it received a message informing it of the passage by the House of a joint resolution for the translation of the laws into Spanish. This was the bill passed by the House on December 22, 1841, and described above. The resolution received a first reading on December 23, 1841. The joint resolution received a second reading on December 29, 1841. A third reading of the joint resolution, amended to provide for the printing of 250 copies, was completed on December 30, 1841, and the bill was passed. This was the amended bill that was enacted by the House on January 4, 1842.

On January 3, 1842, however, the Senate received a message from the House informing it that a joint resolution to suspend the printing of the laws in Spanish had been approved. The joint resolution received its first reading in the Senate that same day. The joint resolution received a second reading the following day. The joint resolution was read a third time, and passed, on January 5, 1842. The House had approved the Senate's earlier bill requiring Spanish translations the day before.

389. The Republic had spent $5,595.52 on the translation and printing of laws in Spanish in 1840. Report of the Secretary of the Treasury, in Journals of Called Session, 1842, supra note 383, at 324. In 1841, $10,000 was spent for this purpose. Id. at 329.


391. Id. at 188.

number of copies was "nearly equal to every person speaking the Castillian [sic] Language in the Republic," 393 may have been an exaggeration for effect, or he may have actually believed this to be the case. Roberts was a recent immigrant to Texas, having arrived in 1837. Thus, he had never experienced the frustrations of the earlier Anglo-American immigrants because of the unavailability of translations of Spanish and Mexican law prior to independence. Roberts never lived in areas of the Republic with large Tejano populations, and had spent several years after his first trip to Texas in the United States as secretary of the Texas legation to the United States. 394 He thus had little familiarity with conditions outside of East Texas and Austin.

Senator Seguín, of course, had complained earlier about the excessive cost estimates for publishing the translations of the laws. 395 His complaints were certainly justified. Samuel Whiting, a printer in Austin, estimated the cost of printing 2,000 copies of a 330 page Spanish translation to be $1,699. 396 Cruger had charged the Republic $6,397 for this same work. 397 The translation had cost $824. 398 Thus, the total cost of the translations for the first three Congresses should have been no more than $2,523. The clerk in the Secretary of State's office responsible for the printing of state documents had suggested requiring all printing to be done in Austin to facilitate supervision and avoid problems with Mr. Cruger's work. 399

The ire of Roberts regarding the expense of the translations was raised when Cruger informed him that Acting Secretary of State Mayfield had contracted with Cruger in May 1840 to publish the next set of translations. 400 Although Roberts unilaterally cancelled the contract, the suspension of the translation of the laws by the Congress may have been intended to ensure that the financially

393. Id.
394. II HANDBOOK OF TEXAS, supra note 114, at 485.
395. See supra text accompanying note 379.
398. Id. The translation price is not stated directly in the letter but is derived from the difference between the quoted cost of printing ($6,397) and the quoted cost of printing plus translation ($7,221). Id.
troubled Republic\textsuperscript{401} would not be subject to a claim by Cruger if the Spanish translations were published by another printer. Although translations of the laws were suspended for a few years, Texas resumed the publication of the laws in languages other than English immediately after statehood.\textsuperscript{402}

3. Other Bilingual Governmental Practices

The Republic of Texas did not wait for official translations to be published to inform Tejanos and Texians of the laws and activities of the government. Secretary of State Stephen F. Austin recommended to President Sam Houston that Mexican General Vicente Filisola’s observations on the Texas campaign be translated into English and published at government expense.\textsuperscript{403} When the Congress of the Republic of Texas called upon Texians to unite against Indian attacks, the call was ordered published in Spanish as well as English.\textsuperscript{404} Legislative action to protect the frontier was also published in Spanish.\textsuperscript{405} Rewards for the capture of fugitives were announced in Spanish.\textsuperscript{406} When General Thomas J. Rusk issued a General Order regarding hunger in Nacogdoches, he did so in Spanish.\textsuperscript{407} A proclamation by President Sam Houston regarding the Tejanos at Nacogdoches was published in Spanish.\textsuperscript{408} Re-

\begin{footnotes}
\item 401. See, e.g., Petition of Samuel Whiting, reprinted in Senate Journal of 1841-1842, supra note 388, at iii-iv (petition from printer who had not been paid for the Senate Journal, and therefore had refused to print the House Journal); Letter from Samuel A. Roberts, Secretary of State, to J.W. Cruger (Oct. 26, 1841) (noting the "present exhausted condition of the Treasury"), reprinted in Journals of Called Session, 1842, supra note 383, at 277.
\item 402. See infra part VII.A.2.
\item 403. Letter from Stephen F. Austin to President Sam Houston (Nov. 21, 1836), in Austin Papers, 1834-1837, supra note 129, at 458.
\item 404. For English text see Address of Congress to All the People of Texas (Nov. 12, 1838), microformed on Texas as Province & Republic, supra note 123, Item 261. The Senate ordered 600 copies, of which 100 were to be printed in Spanish. The bill from the printer does not include the charges for the Spanish copies. Streeter, supra note 229, at 106.
\item 405. Joint Resolution Appropriating Money & Arms for the Protection of the Frontier (1838), microformed on Texas as Province & Republic, supra note 123, Items 273-74. The Senate on November 8, 1838 ordered that 100 copies be printed in Spanish. The printer's bill is dated November 7, 1838. Streeter, supra note 229, at 106.
\item 406. A Proclamation by the President of the Republic of Texas (Aug. 30, 1838) (offering reward in English and Spanish for one Cox), microformed on Texas as Province & Republic, supra note 123, Item 282.
\item 407. Orden General (Aug. 22, 1838) (regarding hunger among American and Mexican families at Nacogdoches), microformed on Texas as Province & Republic, supra note 123, Item 247.1.
\item 408. Proclamation (Aug. 8, 1838) (statement by President Sam Houston in English and Spanish regarding the rebellion by Tejanos at Nacogdoches), microformed on Texas as Province & Republic, supra note 123, Item 291.1.
\end{footnotes}
ulations for the conduct of trade with settlements near the Río Grande were sent in Spanish to the county judges at San Patricio, Béxar, Goliad, and Victoria. A proclamation opening trade on the Río Grande was published in English and in Spanish. A proclamation calling for elections in San Augustine County may have been issued in Spanish.

Independent Indians continued to live in Texas during this period. The President of the Republic was authorized to appoint up to four interpreters to deal with Native Americans.

4. The Continuing Use of Spanish-Language Laws by the Texas Courts

With independence, Anglo Texians established a judicial system which operated primarily in English. Given the demographics of the Republic of Texas, and the fact that most lawyers knew only English, this is not surprising. Because Spanish and Mexican law continued to apply in many cases, however, the courts had to refer to Spanish-language laws, or to English translations of those laws. Chief Justice Hemphill felt no obligation to translate the Spanish law he cited in Mills v. Waller, although in Garrett v. Nash, he quoted Spanish law extensively and then provided translations.

5. A New Language in Texas: The German Immigrants

A few German immigrants began to arrive in Texas during the Republic of Texas period. In 1841, a bill incorporating the German

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409. AL JUEZ SUPERIOR DEL CANTÓN DE SAN PATRICIO [To the Superior Judge of San Patricio County] (June 13, 1838), microformed on Texas as Province & Republic, supra note 123, Item 293.
410. Texas as Province & Republic, supra note 123, Items 293A-C.
411. PROCLAMATION (by President Mirabeau B. Lamar opening trade with Mexican citizens on the Río Grande) (Feb. 21, 1839), microformed on Texas as Province & Republic, supra note 123, Items 362-63. One hundred and fifty copies were made in English and 150 copies in Spanish. STREETER, supra note 229, at 125.
412. STREETER, supra note 229, at 201 (Item B-11) (noting printer's bill for 200 proclamations in Spanish, but stating that no copy of proclamation has been discovered to date).
413. Act of Jan. 14, 1843, § 3, 1843 Republic Tex. Laws 22, reprinted in 1 Tex. Gen. Laws 842 (Gammel 1898). For an example of the appointment of such interpreters prior to the enactment of this statute, see Letter from Sam Houston to Luis Sánchez (July 6, 1842), reprinted in JOURNALS OF CALLED SESSION, 1842, supra note 383, at 135-36.
414. See supra note 357.
415. See supra part VI.A.2.
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Union was approved.\textsuperscript{418} With the arrival of large numbers of German immigrants after statehood, German-language governmental services were soon fully developed.\textsuperscript{419}

\textbf{B. The Lack of Language Requirements for Citizenship in the Republic of Texas}

Like other aliens, German immigrants were precluded from being appointed to office.\textsuperscript{420} However, citizenship was freely extended by the Republic of Texas to all white persons. No language requirement was imposed for citizenship. Anyone except slaves and Indians who resided in Texas on the date of the adoption of the Texas Declaration of Independence was granted citizenship by the Constitution, regardless of the length of residence in Texas.\textsuperscript{421} For those arriving after the Texas Declaration of Independence becoming a citizen of the Republic of Texas was a simple procedure, so long as the immigrant was white:

All free white persons who shall emigrate to this Republic, and who shall, after a residence of six months, make oath before some competent authority that he intends to reside permanently in the same, and shall swear to support this Constitution, and that he will bear true allegiance to the Republic of Texas, shall be entitled to all the privileges of citizenship.\textsuperscript{422}

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\item \textsuperscript{418} Act of Jan. 4, 1841, 1841 Republic Tex. Laws 89, \textit{reprinted in} 2 Tex. Gen. Laws 553 (Gammel 1898).
\item \textsuperscript{419} See infra part VII.C.3.
\item \textsuperscript{420} Act of Dec. 14, 1837, 1837 Republic Tex. Laws 61, \textit{reprinted in} 1 Tex. Gen. Laws 1403 (Gammel 1898).
\item \textsuperscript{421} \textit{Const. of the Republic of Tex.}, General Provisions § 10 (1836), \textit{reprinted in} Tex. Const., supra note 2, at 491. \textit{See also Const. of the Republic of Tex.}, art. I, § 7 (1836), \textit{reprinted in} Tex. Const., supra note 2, at 482 (providing that senators "shall be chosen by districts, as nearly equal in free population (free negroes and Indians excepted), as practicable").
\item Notwithstanding the Indian and African ancestry of virtually all Tejanos, supra note 107, no attempt was made in 1836 to limit the rights of Tejanos on this basis. By 1845, this would change. See infra part VII.B. Similarly, it does not appear that a statute prohibiting all "negroes, mulattoes, Indians, and all other persons of mixed blood, descended from negro or Indian ancestors, to the third generation inclusive, though one ancestor of each generation may have been a white person" was applied to the Tejanos, although by its terms it would have precluded most Tejanos from qualifying as witnesses. Act of Dec. 22, 1836, § 26, 1836 Republic Tex. Laws 198, 205-06, \textit{reprinted in} 1 Tex. Gen. Laws 1258, 1265-66 (Gammel 1898).
\item \textsuperscript{422} \textit{Const. of the Republic of Tex.}, General Provisions § 6 (1836), \textit{reprinted in} Tex. Const., supra note 2, at 490. These liberal citizenship provisions are consistent with those extended to the Anglo-American immigrants by Mexico. Foreigners who "exercise any useful profession or industry, by which, at the end of three years, they have a capital to support themselves with decency, and are married" were naturalized under Mexican law. They were then eligible to obtain letters of citizenship. Laws, Orders and Contracts for Austin's Colony of 1823, Mexico, arts. 27 and 28 (1823), \textit{reprinted in} 1 Tex. Gen. Laws 30 (Gammel 1898). In 1828, naturalization was extended to all foreigners one year after they established themselves upon
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Once a citizen, the immigrant was eligible to vote if he was twenty-one years or older and had resided in the district or county where the election was held for six months. Any immigrant who had lived in the Republic of Texas for at least three years preceding the election was eligible for the office of President of the Republic of Texas. The framers of the Republic of Texas, as immigrants themselves, provided for very liberal provisions that ensured the active participation of future immigrants in a very short period of time after their arrival in the Republic, regardless of their ability to speak English.

C. Plans for Bilingual Government by the Santa Fé Expedition

Additional evidence that the Republic of Texas continued to believe in the right to communicate with the government in one's own language is found in the plans developed for the Santa Fé expedition. This expedition was an ill-fated attempt by the Republic of Texas to assert jurisdiction over the Spanish-speaking population of the Mexican state of Nuevo México (today New Mexico) east of the Rio Grande. The Republic of Texas was well aware that the colonizable lands. Naturalization Law of the General Congress, Mexico, art. 14 (1828), id. at 461. Other foreigners had to reside in Mexico for 2 years. Id., art. 1, at 460. Coahuila and Texas had previously extended even more generous benefits, providing for naturalization for foreigners as soon as they "have obtained lands, and established themselves in these settlements." Laws for Promoting Colonization, State of Coahuila and Texas, Decree no. 16, art. 31 (1825), id. at 103-04. The state legislature in 1827 established a procedure permitting the Governor to issue letters of citizenship. Laws and Decrees, State of Coahuila and Texas, Decree no. 12 (1827), id. at 185-86. In 1835, foreigners who had not obtained letters of citizenship were precluded from holding office or being admitted to popular meetings. Laws and Decrees, State of Coahuila and Texas, Decree no. 312, art. 2 (1835), id. at 409. Article 4 of the statute provided that in the Texas Departments foreigners should receive the certificates of citizenship "without difficulty," but at the same time required that the executive guard against fraud. Id. at 410.

425. The Republic of Texas claimed its territorial boundaries extended to all of the lands north and east of the Rio Grande. Act of Dec. 19, 1836, 1836 Republic of Texas Laws 133-34, reprinted in 1 Tex. Gen. Laws 1193-94 (Gammel 1898). See also Letter from Secretary of State Abner S. Lipscomb to Commissioners of Santa Fé (Apr. 14, 1840), reprinted in Report of the Secretary of State, 1841, reprinted in Journals of Called Session, 1842, supra note 383, at 287 (noting that the Republic of Texas claimed the "ancient" boundary, "from the mouth of the Rio del Norte to its source"). This claim had no basis in historical fact. I. J. Cox, The Southwest Boundary of Texas, 6 Q. Tex. St. Hist. Ass'n 81, 102 (1902) (concluding that the "[u]ndisputed documentary evidence of more than a century" reviewed in the article shows Texas did not extend to the Rio Grande); I Handbook of Texas, supra note 113, at 194 (noting that "in 1721 the Medina River was considered the boundary
Nuevo Mexicanos did not speak English. As a result, the Republic prepared documents for the Nuevo Mexicanos in Spanish. The Texas Declaration of Independence was published in Spanish in 1841. Proclamations to the citizens of Santa Fé, Nuevo México were issued in Spanish, along with the Texas Constitution and a statute governing the property of the Catholic Church. The preparation of these documents inviting the Nuevo Mexicanos to join Texas is consistent with the Texians' pre-Independence assertions that all persons have a fundamental right to communicate with the government in their own language.

The Republic sought to assure the Nuevo Mexicanos of their complete equality with the other citizens of the Republic. Acting Secretary of State Samuel A. Roberts instructed the Commissioners who were to attempt to assert jurisdiction over Santa Fé:

First. You will assure them of the protection of the Government in the enjoyment of life, liberty and property: . . . of the liberty of speech and press . . . and in short, of all the political privileges contained in the bill of rights and constitution . . . you must keep constantly before their minds, the fact, that they are invited to share equally with us, all the political rights which we ourselves enjoy. It is believed, in fact, that this is the hinge upon which the success of of [sic] your negotiations will turn. Let them be convinced that the equality which we promise, is.

between Texas and Coahuila”). The land between the Nueces River and the Río Grande was part of the Spanish province of Nuevo Santander, and after independence from Spain became part of the Mexican state of Tamaulipas. See infra note 459.

426. Letter from Samuel A. Roberts, Acting Secretary of State, to William G. Cooke, Antonio Navarro, Richard F. Brenham, and William G. Dryden, Commissioners (June 15, 1841), reprinted in Report of the Secretary of State, 1841, reprinted in Journals of Called Session, 1842, supra note 383, at 289 (noting that Santa Fé “is inhabited by a people, strangers to our institutions and to our system of Government, speaking a different language, and deriving their origin from an alien source, whose religion, laws, manner and customs, all differ so widely from our own”) (emphasis added). This description of the origin of Santa Fé as alien is ironic, since the origins of Nuevo México were very similar to those of Texas: both were part of the Spanish Empire, and subsequently were a part of Mexico. Roberts was a newcomer to Texas and had never lived in Texas when it was a part of Mexico, nor had he lived in areas of the state with large Tejano populations. See supra text accompanying notes 393-94.

427. Declaration of Independence (1841), microformed on Texas as Province & Republic, supra note 123, Item 468. These Spanish copies were probably prepared for use by the Santa Fé Expedition. Streeter, supra note 229, at 147.

428. Proclama de Su Excellencia [sic] Mirabeau B. Lamar, a los Ciudadanos de Santa Fé (1841) [Proclamation of His Excellency Mirabeau B. Lamar to the Citizens of Santa Fé], microformed on Texas as Province & Republic, supra note 123, Item 493; Letter from Joseph Waples to Samuel A. Roberts, Secretary of State (Oct. 12, 1841), reprinted in Report of Secretary of State, 1841, reprinted in Journals of Called Session, 1842, supra note 383, at 275-77 (reporting that 500 copies of the Constitution in Spanish and of the President's address to the Citizens of Santa Fé were received at a cost of $420).
not imaginary; let them feel and understand, that they are really to be freemen; that they are to be citizens of a Republic, in whose government the voice of each one of them, will be as potent as that of the highest in our land; that their representation in our legislature, will be in proportion to their numbers, which will ensure to them, an equal participation in the making of laws for the future, and of repealing such as are now in force, and which may be obnoxious. 429

If the Texians had the political right to communicate with the government in a "known tongue," then the Nuevo Mexicanos had to be provided this right as well. This was explicitly acknowledged in the plans for the government of Santa Fé to be established after the Commissioners extended the jurisdiction of the Republic. Those plans explicitly limited the operation of the local government to the (Spanish-speaking) citizens of Santa Fé:

[Y]ou will . . . appoint such persons to conduct the public business . . . . In making these appointments, the President instructs me to say, that you will restrict yourselves to the citizens of Santa Fé . . . .

[Y]ou may recommend, and even urge them to select from their own citizens, delgates, not to exceed three in number, to be sent to our seat of government, during the session of the next Congress, who may from their own personal observation, examine into the operations of our system of government, and report to their constituents on their return. Although these delegates will not be entitled to a vote on the floor of Congress, they will undoubtedly be permitted to occupy seats on it, and to speak on any subject that may concern them.

. . .

[P]olicy undoubted requires that they should be assured, there will be no attempt on our part to change or modify their municipal law, without first obtaining their express consent. 430

The delegates proposed to be sent to the Congress no doubt would have been provided interpreters, like those provided to the Tejano representatives.

Since all of the municipal law in Santa Fé was in Spanish, and all of the officials spoke Spanish, this plan clearly envisioned the continued operation of local government in Spanish. This is verified in the amplified instructions provided to Colonel William G. Cooke, who was to remain in Santa Fé to implement the jurisdiction of the Republic of Texas:


430. Id. at 291-92.
First. You will not be permitted, either directly or indirectly, to make any alterations whatever, (except such as are hereinafter particularly mentioned) in any of the laws of that country, nor in the mode of their administration.

Second. The tribunals, as now constituted, will remain inviolate, save only the removal of such functionaries as hold their offices directly from the Supreme Government of Mexico, and in whose appointments the people of Santa Fé have had no voice; even these, you will in all cases retain, unless their removal is formally demanded by a written petition from the people.

... The foregoing instructions, as well as the instructions to the Joint Commissioners, are all grounded upon the broad principle, that not a single alteration or innovation, should be made in the laws, usages, or customs of the people of that country, which the change in their government does not render absolutely necessary... In short, no alteration whatever will be made, either in the municipal law, the modes of procedure in their courts, or in conducting their public affairs, which do not, of necessity, follow from the new position in which they will be placed, by the change in their Government.431

D. Bilingual Local Government

While the Republic of Texas never exercised jurisdiction over Nuevo México, the population in some areas of the new nation was predominantly Tejano. In addition to providing these Tejanos with access to the national government in Spanish, the Republic of Texas permitted those areas of the new nation with large Tejano populations to conduct local government in Spanish.

1. San Antonio

The population of San Antonio remained largely Tejano through most of the Republic of Texas period.432 As in other areas of the Republic with large Tejano populations, Spanish continued to be the language of daily interchange. When the defenders of the


432. Ray F. Broussard, San Antonio During the Texas Republic: A City in Transition 16 (1967) (noting Mary Maverick's account in 1838 that the Mavericks and two Irish families were the only English-speakers in the city); id. at 14 (stating that John W. Smith was elected mayor in 1837, but that all eight city council members were Tejanos); Auguste Fréttelière, Adventures of a Castrovillian, in CASTROVILLE & HENRY CASTRO, EMPRESARIO 91 (Julia Nott Waugh ed., 1934) (“The city of San Antonio [in 1844] had at that time about 1,000 inhabitants, nine-tenths of whom were Mexicans, and the Spanish language was generally spoken.”); Broussard, supra, at 29 (stating that by 1846 the population was only half Tejano).
Alamo were buried in San Antonio in 1837, addresses were made in Spanish and English.\textsuperscript{433} An 1838 invitation to a banquet and ball to celebrate the battle of San Jacinto was sent in Spanish.\textsuperscript{434}

The first records of the City of San Antonio in the Republic of Texas period are entirely in Spanish.\textsuperscript{435} Statutes of the Republic of Texas were translated into Spanish,\textsuperscript{436} and elections were conducted entirely in Spanish.\textsuperscript{437}

Just as the Mexican government had previously provided for a bilingual secretary of the ayuntamiento in the Anglo-American settlements, the Republic of Texas now required the mayor and aldermen of the city of San Antonio to appoint “a clerk or secretary, who shall possess a competent knowledge of the Castilian and English languages.”\textsuperscript{438} The cities of Victoria and Gonzáles were subject to the same requirements.\textsuperscript{439} These requirements were extended to the towns of San Patricio, Franklin, and Refugio in May, 1838.\textsuperscript{440} As the Tejano population of these cities declined, either through forced expulsions or because refugees fled continued battles be-

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\begin{enumerate}
\item \textsuperscript{433} Letter from Juan Seguín to General Albert Sidney Johnston (Mar. 13, 1837) (noting that Seguín made an address “in the Castillian [sic] language as I do not possess the English” and that Major Western addressed the group in English), reprinted in \textit{DE LA TEJA}, supra note 330, at 161-62. Juan Seguín’s comments in Spanish are reproduced in \textit{DE LA TEJA}, supra note 330, at 156.
\item \textsuperscript{434} \textit{INVITATION} (Apr. 21, 1838), microformed on \textit{Texas as Province & Republic}, supra note 123, Item 228. One of the hosts was Erasmo Seguín, but the others, “Coronel” [Colonel] W.H. Karnes, W.H. Daingerfeld, and Joseph Baker, were not Tejanos. \textit{Id.}
\item \textsuperscript{435} \textit{CITY OF SAN ANTONIO, JOURNAL OF CITY COUNCIL A} 1-11 (minutes in Spanish for the period from June, 1837 through February, 1838) [hereinafter \textit{SAN ANTONIO CITY COUNCIL JOURNAL A}]. The Work Projects Administration prepared an English translation of the Spanish language documents from the Republic of Texas period. \textit{SPANISH MINUTE BOOK ONE, SPANISH MINUTE BOOK TWO, & JOURNAL A}, (Works Project Administration, trans., n.d.) (copy available at City Clerk’s Office in San Antonio City Hall).
\item \textsuperscript{436} \textit{SAN ANTONIO CITY COUNCIL JOURNAL A}, supra note 435, at 2-3 (minutes of June 5, 1837 containing a translation of the statute incorporating the city).
\item \textsuperscript{437} \textit{SAN ANTONIO CITY COUNCIL JOURNAL A}, supra note 435, at 3-4 (containing election documents for election of Sept. 1837).
\item \textsuperscript{440} Act of May 24, 1838, \textit{§§} 6-7, 1838 Republic Tex. Laws 29-30, \textit{reprinted in} 1 Tex. Gen. Laws 1499-1500 (Gammel 1898).
\end{enumerate}
\end{footnotesize}
tween the Republic of Texas and Mexico, the requirement for bilingual secretaries was removed.

On March 1, 1838, the Tejanos of San Antonio began to maintain bilingual city records. Imitating the practice of the Anglo-American immigrants during the Mexican period, they kept English language records on the left hand page and Spanish-language records on the right-hand page. This bilingual practice continued until October, 1840, when records again were maintained only in Spanish. Bilingualism resumed in January, 1841. At the end of that year, however, minutes were maintained only in Spanish. Bilingual records resumed in April, 1842 and continued until August of that year.

Juan Seguin served as Mayor of San Antonio in 1841 and 1842. Since Seguin did not speak English, he communicated with other governmental officials in Spanish.

After August, 1842, there is a nineteen-month gap in the records; during this period San Antonio was in turmoil as the military forces of the Republic of Texas and of Mexico advanced and

441. Broussard, supra note 432, at 29 (describing the exodus of Tejanos from San Antonio when Seguin, their last protector, fled the city; by 1846, the population had declined to 750, half Tejano and half Anglo, from a population of 1,500 Tejanos and 250 Anglos in 1839); Montejano, supra note 253, at 27 (describing exodus of 200 Tejano families from San Antonio by the 1840's); id. at 28-29 (noting force, fraud and apprehension as causes of Tejano exodus and describing the failure of a plan to drive Tejanos out because of the refusal of Germans to participate); see infra part VI.F (describing expulsions and mistreatment of Tejanos).


443. See supra text accompanying note 159.

444. SAN ANTONIO CITY COUNCIL JOURNAL A, supra note 435, at 12 (containing election results of Mar. 5, 1838 in English).

445. Id., at 53-54 (containing minutes of Oct. 29, 1840 and Nov. 4, 1840 in Spanish).

446. Id., at 57 (containing minutes of Jan. 9, 1841 in English).

447. Id., at 74-76 (containing records in Spanish from Nov. 15, 1841 to Feb. 1, 1842).

448. SAN ANTONIO CITY COUNCIL JOURNAL A, supra note 435, at 79-92 (containing bilingual records from Apr. 18, 1842 to Aug. 23, 1842).

449. II HANDBOOK OF TEXAS, supra note 114, at 590.

450. See supra note 367 and accompanying text.

451. See Letter from Juan Seguin to Mirabeau B. Lamar (Nov. 1839) (requesting special election after resignation of Jose Antonio Navarro from Congress), reprinted in DE LA TEJA, supra note 330, at 173-74; Letter from Juan Seguin to Bexar County Judge (Apr. 18, 1842) (resigning as president of corporation of City of San Antonio), reprinted in DE LA TEJA, supra note 330, at 179.
When municipal government resumed operation in March, 1844, the minutes explain the lack of records as due to the "disorganized state of this County." The decline in the Tejano population during this period had an immediate effect on the maintenance of municipal records: after March 30, 1844, all the records are maintained only in English.

The maintenance of records only in English does not mean that governmental services were provided only in that language. As San Antonio experienced an influx of immigrants speaking other languages, the city responded by addressing the needs of those immigrants. German and French immigrants, for example, were found to be regularly violating regulations for the use of irrigation water. The City Council in July, 1844 ordered the irrigation regulations to be translated into French and German and posted in public places. Multilingual governmental services would continue to be provided in San Antonio after statehood was achieved in 1845.

2. Laredo

The Republic of Texas claimed that the border of Texas extended to the Rio Grande. The lands of the Rio Grande had never been a part of Texas prior to 1836. Santa Fé had been a part of Nuevo México, while the land between the Nueces River and the Rio Grande had been part of the Spanish province of Nuevo Santander, and later the Mexican state of Tamaulipas. Laredo in 1836 considered itself a part of Tamaulipas.

452. II HANDBOOK OF TEXAS, supra note 114, at 185.
453. SAN ANTONIO CITY COUNCIL JOURNAL A, supra note 435, at 100 (Mar. 30, 1844).
454. See supra text accompanying note 357.
455. Spanish-language records are found at the end of the journal. These are copies of affidavits prepared in November, 1841 regarding land titles. SAN ANTONIO CITY COUNCIL JOURNAL A, supra note 435, at 154-57, 178.
456. Ordinance of June 22, 1844, SAN ANTONIO CITY COUNCIL JOURNAL A, supra note 435, at 105 (ordering "that the 5th Section of the Law respecting the Rights of the Water, be published in the French & German Languages and that after such publication the said Law shall be rigidly enforced"); BROUSSARD, supra note 432, at 33.
457. See infra part VII.C.1.
458. See supra note 425.
459. See supra note 426 (describing lack of historical evidence for boundary claims of the Republic of Texas); MONTEJANO, supra note 253, at 30 (noting that the Nueces River was the boundary between the Mexican states of Texas and Tamaulipas). Even the Texas Supreme Court, more than thirty years later, conceded that Texas exercised "no permanent jurisdiction" over the area except along and near the Nueces river, including Corpus Christi, on the gulf; and the State of Tamaulipas exercised jurisdiction on and near the Rio Grande, on the eastern side of it, until after the annexation of Texas to the United States, (on the 29th of December, 1845,) shortly
Although the Republic of Texas never exercised jurisdiction over Laredo, Texas law uses a narrative of Texas history that assumes that the lands of the Rio Grande were a part of the Republic. In determining land titles in South Texas, for example, the Texas courts use the fiction that the laws of the Republic of Texas controlled property, and that Mexico did not control this land.\(^{460}\) If the Texas courts use the fiction that Texas law controls land titles in South Texas after Dec. 19, 1836, then this narrative of Texas law must also apply to the continued use of Spanish in the municipal government of Laredo from 1836 until the arrival of the United States Army in November, 1846. If the Texan claim to Laredo is to be taken seriously, as post-1845 events require, the continued use of Spanish in local government in Laredo during the Republic of Texas period is further support for my assertion that multilingual government was envisioned by the framers of the Texas Constitution.\(^{461}\)

The claim of the Republic of Texas to Laredo was clearly a "paper claim."\(^{462}\) There are no documents in the Laredo Archives from after which, armed occupation of the disputed territory was taken by the United States, on behalf of Texas, since which time Texas has exercised jurisdiction.

State v. Rodriguez Sais, 47 Tex. 307, 309-10 (Tex. 1877). (This case is incorrectly cited as "State v. Sais," reflecting the common failure of legal publishers to understand the Hispanic practice of using both parents' last names. See Yvonne Cherena Pacheco, Latino Surnames: Formal & Informal Forces in the United States Affecting the Retention and Use of the Maternal Surname, 18 T. MARSHALL L. REV. 1, 16-19 (1992)). See also State v. Gallardo, 166 S.W. 369, 370-71 (conceding South Texas remained under the jurisdiction of the Mexican state of Tamaulipas until after annexation by the United States).

\(^{460}\) State v. Ballf, 190 S.W.2d 71, 87 (Tex. 1944) (holding that "a title good against the Mexican government on December 19, 1836, is good also against the State of Texas"), cert. denied, 328 U.S. 852 (1946); Gallardo, 166 S.W. at 370-71 (Tex. 1914) (conceding Texas did not establish jurisdiction between the Nueces and Rio Grande Rivers until after annexation in 1845); id. at 373 (holding that claims under Spanish and Mexican land grants must be determined "by the character of the title under which they claim as it existed on December 19, 1836") (emphasis added); Kenedy Pasture Co. v. State, 231 S.W. 683, 691 (Tex. 1921) (noting that Texas courts have "never recognized the validity of any Mexican title to land in this territory originating after December 19, 1836," since "the sovereignty of Mexico over this territory after December 19, 1836 was never rightful, and Mexico accordingly had no power after that date to create titles to land within it"). But see Treviño v. Fernández, 13 Tex. 630, 666 (1855) (considering the effect of an 1844 Tamaulipas state court judgment regarding land in Cameron County because "the acts of the Government in actual possession, in the ordinary administration of its laws, so far as they affect private rights, are valid").

\(^{461}\) See Cover, supra note 250, at 4 (noting that for "every constitution there is an epic").

\(^{462}\) Montejano, supra note 253, at 18 (describing the Republic of Texas' claim to the Rio Grande as a "paper claim . . . for the republic had no control or influence beyond the Nueces," and noting that campaigns to assert the territorial claims "failed miserably"); cf. id. at 30 (describing the strip between the Nueces River and
officials of the Republic of Texas from 1836 to 1845. In contrast, the municipal archives of this period are filled with reports to and from the state authorities of Tamaulipas. Documents were sent to and received from Mexican authorities in Mier, Ciudad Guerrero, Matamoros, and Mexico City. Taxes were collected under Mexican law, and elections were held under Mexican law. Census information in 1845 was sent to the Mexican government. Because Laredo continued to be governed by Mexico during the Republic of Texas period, government continued to be conducted solely in Spanish.

Three attempts were made by the Republic of Texas to assert control over Laredo; all were unsuccessful in bringing Laredo under the permanent control of the Republic. In March, 1837, twenty-two filibusters, led by Erastus "Deaf" Smith, were repulsed by Mexican forces. The Texas Rangers under Captain Jack Hays robbed horses at Laredo in January, 1841, but did not assert control over the Rio Grande as a "no-man's land," claimed by the Republics of Texas and Mexico but actually controlled by Indian tribes.

463. Laredo Archives, supra note 106, Folders 120-79. The documents microformed on the Laredo Archives are organized in folders; each document in a folder is numbered. All references to documents in the Laredo Archives below use the numbering system set out in ROBERT D. WOOD, S.M., INDEXES TO THE LAREDO ARCHIVES (1993). The numbering of the folders on the microfilm occasionally differs from that in the Indexes; such differences in numbering are indicated in brackets ([ ]).

464. Examples in the Laredo Archives, supra note 106, include: Letter from Military Commander to Mayor (Sept. 22, 1837), Folder 129, Document 38; Letter from Military Commander to Mayor (Oct. 4, 1837), Folder 129, Document 40; Investigation by Mayor (Feb. 13, 1837), Folder 131, Document 1; Letter from Tax Administrator to Mayor (1838), Folder 137, Document 35; Letter from P. Martínez to Mayor (Feb. 25, 1841), Folder 144, Document 34; Letter from M. Lafuente to Mayor (Feb. 27, 1841), Folder 144, Document 39; Letter from M. Lafuente to Mayor (July 9, 1841), Folder 145, Document 28; Letter from Military Commander to Mayor (Mar. 16, 1843), Folder 162, Document 8; Letter from Military Commander to Mayor (Apr. 25, 1845), Folder 171, Document 15; Letter from Military Commander to Mayor (June 10, 1845), Folder 172, Document 15; Letter from Military Commander to Mayor (July 26, 1845), Folder 173, Document 156; Letter from P. Martínez to Mayor (Mar. 16, 1846), Folder 179, Document 2.


466. Año de 1845 - Estado que manifiesta el número de Muertos: Nacidos y Casados en el segundo semestre del corriente año [Year of 1845 - Census of Deaths, Births, and Marriages in the second six months of this year], microformed on Laredo Archives, supra note 106, Folder 228, Document 1.

467. Laredo Archives, supra note 106, Folders 123-77 (containing documents from 1836 to 1845).

area.\textsuperscript{469} The Somervell Expedition was organized to avenge the capture of San Antonio by General Woll in September, 1842. Laredo was captured on December 8, 1842, and sacked by the Southwestern Army of Operations.\textsuperscript{470} The Army quickly left,\textsuperscript{471} and Mexico resumed jurisdiction over Laredo.

The continuing use of Spanish in local government in Laredo after 1846 affirms the acceptance of multilingual government after Texas exercised jurisdiction over Laredo.\textsuperscript{472}

\textbf{E. Language \& the Schools}

Apparently eager to promote the learning of English among Tejanos, the act incorporating the city of San Antonio required the council “to promote by every equitable means, the establishment of a common schools [sic] . . . in which the English language shall be taught, and the children of the poor class of citizens invited and received gratis.”\textsuperscript{473} These provisions were also extended to other cities with large Tejano populations.\textsuperscript{474}

In 1840 the Republic of Texas enacted legislation to establish Common Schools. The legislation established commissioners of these common schools who were required to inspect the qualifications of teacher applicants. Teachers had to be able to teach “reading, writing, English grammar, arithmetic and geography.”\textsuperscript{475} Like the Mexican laws that required that Castilian be taught, but did not prohibit instruction in English,\textsuperscript{476} this statute did not prohibit instruction in other languages. Schools continued to teach in Spanish and, after statehood was achieved, began teaching in German, Czech, Norwegian, and Wendish.\textsuperscript{477}

\textsuperscript{469} Id. at 98. Hays returned the horses the following day, claiming the horses had been stolen to let Laredoans know that the Texas Rangers would retaliate for any crimes committed against Texans. Id. at 98-99.

\textsuperscript{470} STREETER, \textit{supra} note 229, at 162; THOMPSON, \textit{supra} note 468, at 117-27.

\textsuperscript{471} By December 21, 1842, the Army had extorted money from Guerrero, Mexico and was camped near Mier, Mexico. J.B. WILKINSON, \textit{LAREDO \& THE RIO GRANDE FRONTER} 178-79 (1975).

\textsuperscript{472} See \textit{infra} part VII.C.2.


\textsuperscript{474} See \textit{infra} text accompanying notes 439 and 440 (describing the application of the requirements of the act incorporating the city of San Antonio to Victoria, González, San Patricio, Franklin, and Refugio).


\textsuperscript{476} See \textit{infra} part IV.E.

\textsuperscript{477} See \textit{infra} part VII.D.3.
F. The Limitations of Historical Argument: Racism and the Framers During the Republic of Texas Period

While the Texian framers provided the Tejanos with access to government in Spanish, Tejanos were not treated equally by all Texians. During the Republic of Texas period, “a spirit of revenge and abandon prevailed in the young republic, and many [Anglo] ex-soldiers carried out raids that claimed the land, stock, and lives of Mexicans, ally and foe alike.”478 Tejanos were expelled from Victoria, San Patricio, Goliad (La Bahía), Refugio, and Nacogdoches.479 Tejanos “suffered from forced marches, general dispossession, and random violence” at the hands of Texians.480 Tejanos who had fought in the war for independence were denied the vote in several counties.481 Juan Seguín described graphically in his memoirs the problems faced by Tejanos who suddenly found themselves to be foreigners in their own land:

Many a noble heart grasped the sword in the defense of the liberty of Texas, cheerfully pouring out their blood for our cause, and to them everlasting public gratitude is due. But there were also many bad men, fugitives from their country who found in this land an opportunity for their criminal designs.

San Antonio claimed then, as it claims now, to be the first city of Texas. It was also the receptacle of the scum of society. My political and social situation brought me into continual contact with that class of people. At every hour of the day and night my countrymen ran to me for protection against the assaults for exactions of those adventurers. Sometimes by persuasion, I prevailed on them to desist; sometimes, also, force had to be resorted to. How could I have done otherwise? Were not the victims my own countrymen, friends, and associates? Could I leave them defenseless, exposed to the assaults of foreigners who, on the pretext that they were Mexicans, treated them worse than brutes? Sound reason and the dictates of humanity precluded any different conduct on my part.482

478. MONTEJANO, supra note 253, at 26-27.

479. Id.; DE LEÓN, supra note 16, at 77-78 (describing expulsions of Tejanos from Victoria, Goliad, and Nacogdoches); see also Act of Jan. 26, 1839, 1839 Republic Tex. Laws 146-48 (confiscating the property of Tejanos who rebelled at Nacogdoches in August 1838), reprinted in 2 Tex. Gen. Laws 146-48 (Gammel 1898). Since the titles of these individuals, descendants of the founders of Nacogdoches, were in Spanish, section 13 of the act required the land commissioner to translate the titles to determine what lands were confiscated. Id. at 148.

480. MONTEJANO, supra note 253, at 27.

481. MONTEJANO, supra note 253, at 39 (quoting Corpus Christi merchant Henry Kinney); DEBATES OF THE CONVENTION OF 1845 157 (describing denial of voting rights to Tejanos with the only objection made “that they could not be considered white persons; they were Mexicans”), quoted in LOWRE, supra note 126, at 175 (noting that “Mexicans in Texas were undoubtedly abused and mistreated”).

482. DE LA TEJA, supra note 330, at 90.
The Republic of Texas offered even less protection to African Texans. Slavery was fully protected by the Constitution.\textsuperscript{483} Jailed slaves were subject to sale as runaway slaves if not claimed by their owner.\textsuperscript{484} Texians were prohibited from emancipating their slaves unless the freed slave was removed outside of Texas.\textsuperscript{485} All “free persons of color” were expelled.\textsuperscript{486} Free persons of African descent were prohibited from emigrating and residing in the Republic, unless given special permission by Congress. Marriage between European descendants and African descendants was prohibited and deemed a high misdemeanor.\textsuperscript{487} Slave-running was, however, outlawed as piracy.\textsuperscript{488} This prohibition has been described as a concession to the anti-slavery sentiment of Tejanos.\textsuperscript{489}

VII. Language & Statehood in the Nineteenth Century

In 1845 Texas joined the United States of America. Recognizing her unique heritage and the special circumstances found in Texas throughout the nineteenth century, the State of Texas continued to extend governmental services in languages other than English.\textsuperscript{490}

\textsuperscript{483} Const. of the Republic of Tex., General Provisions § 9 (1836), reprinted in Tex. Const., supra note 2, at 491.
\textsuperscript{485} Const. of the Republic of Tex., General Provisions § 9, reprinted in Tex. Const., supra note 2, at 491. The draft of the Constitution of the Republic of Texas had an entire section devoted to slaves. The provisions described here were in section 1 of the Slave provisions. Journals of the Convention of the Free, Sovereign and Independent People of Texas, in General Convention Assembled (Mar. 9, 1836), reprinted in 1 Tex. Gen. Laws 872 (Gammel 1898).
\textsuperscript{486} Act of Feb. 5, 1840, 1840 Republic Tex. Laws 151-53, reprinted in 2 Tex. Gen. Laws 325-27 (Gammel 1898). President Sam Houston delayed the implementation of this statute for two years. Proclamation by the President of the Republic of Texas (Dec. 21, 1842), reprinted in 2 Tex. Gen. Laws 879 (Gammel 1898).
\textsuperscript{488} Const. of the Republic of Tex., General Provisions § 9, reprinted in Tex. Const., supra note 2, at 491.
\textsuperscript{489} Harrington, supra note 52, at 17.
\textsuperscript{490} See id. at 47 (noting the need to consider the demography of Texas when interpreting the Texas Constitution: “Texas had a large Mexican population, with old roots and customs, when it became a republic and then a state; it also attracted great numbers of other ethnic groups, such as the Irish and Germans, with their own customs and beliefs”).
A. Bilingual Government in Early Statehood

1. Provisions for Non-English-Speaking Government Officials

Texas was required to draft a new state constitution when it joined the Union. One Tejano served as a delegate at that convention: José Antonio Navarro of San Antonio.\textsuperscript{491} Navarro was one of only three delegates at the 1845 Convention who had also signed the Texas Declaration of Independence and had participated in the drafting of the Constitution of the Republic of Texas.\textsuperscript{492} Navarro did not speak English. One of the first items of business for the 1845 Convention was the appointment of an interpreter for Navarro.\textsuperscript{493}

José Antonio Navarro also served in the first and second state legislatures.\textsuperscript{494} Although the statutes of this period do not include any reference to the appointment of an interpreter for Navarro, an interpreter was essential since Navarro did not speak English and required an interpreter at the 1845 Constitutional Convention.\textsuperscript{495}

Public service by Texans who did not speak English verifies the acceptance of multilingualism in government in nineteenth-century Texas. Juan N. Seguin, the hero of the Texas Revolution who did not speak English,\textsuperscript{496} was elected in 1852 as justice of the peace in Bexar County. He later served as president of his election precinct.\textsuperscript{497} Seguin was one of the founders of the Democratic Party in Bexar County, served on the platform writing committee, and joined the \textit{Junta Democrática de los Ciudadanos Mejico-Tejanos}, the Democratic Council of Mexican-Texan Citizens.\textsuperscript{498} In 1869, he served as the County Judge of Wilson County.\textsuperscript{499} As late as 1874, Juan Seguin wrote to the State Comptroller in Spanish regarding

\textsuperscript{491.} \textit{Journals of the Convention Assembled at the City of Austin on the Fourth of July, 1845, for the Purpose of Framing a Constitution for the State of Texas} iv (Shoal Creek Publishers 1974) (1845) [hereinafter \textit{Journals of the 1845 Convention}].

\textsuperscript{492.} \textit{Id.} at iv-v. The others were James Power and Charles Bellinger Stewart.

\textsuperscript{493.} \textit{Id.} at 6 (July 4, 1845) (noting the Convention’s grant of permission to Navarro to engage an interpreter); \textit{id.} at 17 (July 7, 1845) (reporting that Navarro had selected George Fisher as his interpreter). \textit{See also id.} at 97 (July 23, 1845) (providing George Fisher with the same pay as members of the Convention); \textit{id.} at 335 (Aug. 27, 1845) (refusing to pay the interpreter a per diem of four dollars); \textit{id.} at 336 (Aug. 27, 1845) (refusing to pay the interpreter mileage from the city of Houston); \textit{id.} at 375 (recording expense of $168 for George Fisher’s pay as interpreter).

\textsuperscript{494.} \textit{Id.} at xv; \textit{see also supra} note 387.

\textsuperscript{495.} \textit{See supra} note 493.

\textsuperscript{496.} \textit{See supra} text accompanying note 367.

\textsuperscript{497.} \textit{De la Teja}, \textit{supra} note 330, at 50.

\textsuperscript{498.} \textit{Id.} at 51 and 102 n.49.

\textsuperscript{499.} \textit{Id.} at 53.
the incomplete lists of veterans of the war for independence from Mexico.500

2. The Provision of Multilingual Laws

The State of Texas continued the Texas tradition of providing translations of the laws to all Texans. At the Constitutional Convention of 1845, the Committee on Printing assumed Spanish-language representation and services would have to be provided to the Tejanos and to the Spanish-speaking Nuevo Mexicanos in the "Santa Fe territory" claimed by Texas:

Your committee would respectfully suggest the propriety of referring to the committee on the Legislative department, to enquire into the expediency of apportioning to the inhabitants of that part of the Santa Fe territory which, in the opinion of this Convention, is properly included in, and of right belongs to the Republic of Texas, two Representatives and one Senator, for the Legislature of the future State of Texas.

Your committee would also respectfully suggest the propriety and the necessity of translating the constitution of the future State of Texas, so soon as the same shall have been adopted; as also any ordinance that may be adopted by this Convention, into the Castilian language, and that a sufficient number of the same be printed and promulgated for the use and information of that part of the citizens of Texas inhabiting the western frontier, with the view of their re-organizing, according to the provisions of the said Constitution, from an independent national government to that of a State of the American Union.501

The Convention subsequently ordered the publication in Spanish of the Annexation Act and of the resolution inviting U.S. troops into Texas.502 One thousand copies were ordered printed.503 Publication of the new Constitution of the State of Texas in Spanish was also ordered.504

500. Letter from Juan Seguin to Comptroller of the State (Dec. 5, 1874), reprinted in id. at 190-91.
502. ACTA FEDERATIVA ENTRE LOS ESTADOS UNIDOS DE AMÉRICA Y LA REPÚBLICA DE TEJAS (1845), [Federative Act Between the United States of America and the Republic of Texas], microformed on Texas as Province & Republic, supra note 123, Item 637; JOURNALS OF THE 1845 CONVENTION (July 16, 1845), supra note 491, at 70-73 (ordering the publication in Spanish of the ordinance accepting annexation by the United States and inviting U.S. troops into Texas, and ordering Spanish translation of these documents to be "spread upon the journals in the Spanish language").
503. JOURNALS OF THE 1845 CONVENTION (July 16, 1845), supra note 491, at 73.
504. CONSTITUCIÓN DEL ESTADO DE TEJAS [CONSTITUTION OF THE STATE OF TEXAS] (1845), microformed on Texas as Province & Republic, supra note 123, Item 663; JOURNALS OF THE 1845 CONVENTION (Aug. 22, 1845), supra note 491, at 287 (ordering that 500 copies "of the Constitution of the State of Texas be printed in the Castil-
The first legislature of the State of Texas continued the practice established by the Republic of Texas by providing for the translation into Spanish of the "constitution of the State and such general enactments of the Legislature thereof, as in [the Governor's] judgment the public interest may be required." In addition, the legislature, recognizing the new presence of large numbers of German immigrants, required these materials to be translated into German as well. These translations were to be promulgated "in the counties which embrace German emigrants or Spanish citizens, in sufficient quantity for the due administration of the laws of the State." One thousand dollars was appropriated to implement this requirement.

As the State of Texas began to assert jurisdiction over the portion of South Texas that had remained a part of Mexico during the Republic of Texas period, organization of local government was required. The Legislature ordered the publication of election laws and orders in English and Spanish.

When German-Texan John O. Meusebach was elected to the state senate in 1850, his first legislative act was to seek amendment to the resolution providing for the public printing of the governor's inaugural address so that it would be published in German and Spanish, as well as English. Translation of the laws into Spanish and German was again ordered in 1856, with $3,000 appropriated for this purpose. In 1858, Norwegian was added to
the list of languages in which the laws of Texas were to be provided.511

The Texas tradition of multilingualism continued without interruption during the Confederacy. Texas continued to translate important documents. The Secession Convention ordered its address to the people of Texas and the Constitution of the Confederate States of America to be published, "and that one-fifth of the whole be in the German and Spanish languages, half in each language."512 During the Confederacy, the Governor’s message and secession convention reports were sent out in English, Spanish, and German.513

After the Civil War, laws continued to be translated. Five hundred copies in Spanish, and one thousand copies in German, of the “laws of a general nature” were authorized in 1874.514 In 1876—the year the current version of the Texas Constitution was adopted—the legislature provided standing authority for the translation of laws and other documents. The legislature directed the Board of Public Printing that:

When printing is ordered in German, Spanish, or other language than English, a separate contract may be made for the work in each of such languages; and the Printing Board shall employ on such terms as they deem best, one or more competent translators to translate the laws and such other matter as may be required, into other languages than English, when necessary.515

511. Act of Feb. 15, 1858, ch. 145, 1858 Tex. Gen. Laws 219 (appropriating $3,000 for the purpose of providing translations of Texas laws in Norwegian), reprinted in 4 Tex. Gen. Laws 1091 (Gammel 1898). The provision for printing in Norwegian is curious since relatively few Norwegians settled in Texas. Lyder L. Unstad, Norwegian Migration to Texas: A Historic Resume with Four “America Letters,” 43 S.W. Hist. Q. 176 (1939) (noting that “not many” Norwegians settled in Texas). The first Norwegian settlement was established at Normandy (now Brownsboro) in Henderson County in 1845. Id. at 177. The largest Norwegian settlement was founded in Bosque County in 1853. Id. at 181.

Although there were larger numbers of Germans, they were still a relatively small percentage of the population. Schmidt, supra note 506, at 18 (estimating that in 1860 there were 35,000 German-speakers, comprising less than five percent of the total population of Texas).


513. Francis Edward Abernethy, Deutschtum in Texas: A Look at Texas-German Folklore, in German Culture in Texas 204 (Glen E. Lich & Dona B. Reeves eds., 1980).


515. Act of June 27, 1876, ch. 38, § 1, 1876 Tex. Gen. Laws 31-32, reprinted in 8 Tex. Gen. Laws 867-68 (Gammel 1898). The 1879 revision of the civil statutes modified the language slightly:
This authorization for the translation of state laws remained in effect until 1919.516

The state legislature also enacted measures to address the continuing need for translations of land records in Spanish. As had been the practice during the Republic of Texas period, the statute establishing the General Land Office required the Land Commissioner to appoint "one Spanish clerk."517 The Spanish-language records of Nacogdoches were ordered removed and placed with the Secretary of State "for safe keeping and examination."518 Spanish-language records in the General Land Office were ordered transferred to the county clerk's office of Refugio County.519 The Spanish-language archives of Béxar County were ordered translated into English, and the translation filed with the Secretary of State.520 An appropriation of $1,500 was later made for this purpose; the archives were also ordered transferred to the Secretary of State.521

In 1871, the legislature authorized the translation of the "acts, charters, or grants" affecting lands on the east side of the Río Grande.522 In 1893, the legislature authorized county commissioners to translate any records in Spanish and gave those translations "the same force and effect as if the archives and instruments were originally made and recorded in the English language."523
3. Other Multilingual Governmental Practices

Since few Anglos resided in many areas of South Texas, local government there continued to be conducted in Spanish.\textsuperscript{524} The state legislature recognized that justices of the peace often did not speak English, and explicitly permitted the use of Spanish “in the counties West of the Guadalupe River, except the counties of Nueces, San Patricio, and Refugio . . . in all Judicial proceedings before Justices of the Peace, when neither the Justice of the Peace nor the parties are able to write or understand the English language.”\textsuperscript{525} However, special protection was provided to Anglos in these areas:

\begin{quote}
[I]n any case in which one of the parties only speaks the English language, and the Justice or either party is unable to speak the English language, the cause may be removed, on motion, to the nearest Justice of the Peace speaking that language. Provided that the English language shall be used in all cases in which any one of the parties interested shall only speak the English language.\textsuperscript{526}
\end{quote}

To the extent that this provision ensured that Anglos were provided access to the judicial system in a language they understood, it is fully consistent with the principles proclaimed by the framers of the Texas Bill of Rights. To the extent that Spanish-speaking Tejanos were forced to move to an English-language court, it is not. The availability of interpreters ameliorated this effect.\textsuperscript{527}

After the area between the Nueces River and the Río Grande came under the jurisdiction of the U.S. Army in 1846 and 1847, it became necessary to determine the status of the land titles in this area, populated overwhelmingly by Spanish-speaking Tejanos.\textsuperscript{528} The legislature created a board of two commissioners to determine the validity of land titles in the region. One of the commissioners was required to “understand and be conversant with the Spanish language.”\textsuperscript{529} The commissioners were required to post notices of their sessions in English and Spanish.\textsuperscript{530} However, the claimants were required to file a complete description of the land they claimed in English.\textsuperscript{531}

\textsuperscript{524}. See infra part VII.C.2 (describing the use of Spanish by the City of Laredo).
\textsuperscript{526}. Id. § 2, at 464.
\textsuperscript{527}. See infra part VIII.C.2.
\textsuperscript{528}. See MONTEJANO, supra note 253, at 31 (concluding that the population beyond the Nueces in 1850 “consisted approximately of 2,500 Anglos and probably 18,000 Mexicans”).
\textsuperscript{530}. Id. § 4, at 583.
\textsuperscript{531}. Id. § 6, at 584.
The plans for the University of Texas indicate that the Texas legislature recognized the value of other languages. Although the first classes at the University of Texas were not conducted until 1883, legislation to establish the institution was enacted in 1858. The first "branches of learning" required to be taught at the university were "Ancient and Modern Languages." The Civil War in Texas was a multilingual war. German immigrants who enlisted in the Confederate Army were provided with a German translation of the School of the Soldier. Entire companies consisted of German immigrants, and they fought in German. One Texas volunteer later described the dominance of the German language in these companies: "Anyone riding into their camp at night might have guessed that he had entered an encampment of the Prussian Guards, fresh off the fields of the Austro-Prussian War." Similarly, regiments of Spanish-speaking Tejanos fought for the Union and for the Confederacy.

B. Citizenship, Voting, & Language

Although an attempt was made at the Constitutional Convention of 1845 to disenfranchise Tejanos, that attempt used race rather than language as the grounds for exclusion. One proponent of the racial restriction feared the mass immigration of "hordes of Mexican Indians." Although Tejanos and Anglo-Americans often referred to Tejanos as "Spanish," almost all Tejanos were mestizos. José Antonio Navarro and several Texian allies successfully

532. II HANDBOOK OF TEXAS, supra note 114, at 821.
534. HAAS, supra note 512, at 156-57 (containing reproduction of translation provided "for benefit of the all-German Texas companies").
536. THOMPSON, supra note 468, at 197-217 (discussing the Civil War in South Texas, including the participation of the largely Mexican-American Second Regiment of Texas Cavalry, which fought for the Union, and that of the regiment of Santos Benavides of Laredo, which fought for the Confederacy).
537. Quoted in MONTEJANO, supra note 253, at 38-39.
538. See supra note 107. The legacy of Spanish colonial racism, which labeled most in the Tejano elite as "Spanish" regardless of their actual ancestry, was strengthened by the racism of many Anglo-Americans, who made careful distinctions between the "Spanish" Mexican and the "Indian" Mexican. Thus, the Tejano elite were commonly referred to as "Spanish" by Anglo-Americans, regardless of their mixed ancestry. But see Letter from Abner S. Lipscomb, Secretary of State, to Commissioners of Santa Fé (Apr. 14, 1840), reprinted in Report of the Secretary of State, 1841, reprinted in JOURNALS OF CALLED SESSION, 1842, supra note 383, at 288 (sug-
struck “white” from the qualifications for voters. The attempt to limit the suffrage of Tejanos was rejected forty-two to fourteen. Navarro’s vehement opposition to the proposal in 1845, where none was expressed in 1836, suggests that Anglo-Americans during the Republic of Texas period had made it increasingly clear to the Tejanos that they were not considered “white.”

Since few Tejanos spoke English at this time, it is noteworthy that no English language requirement for suffrage was imposed. Indeed, the Convention extended suffrage to immigrants who had resided in Texas for as little as six months. This gave voting rights to English-speaking Irish immigrants as well as to French and German immigrants who did not speak English.

suggesting that the Pueblo Indians of Nuevo México might be persuaded to accept the jurisdiction of Texas if the commissioners point out that “many of our citizens of San Antonio county are of the Indian race; but they are civilized, and enjoy equal privileges, and some of them have filled high offices, and some are now members of Congress, and in other offices of honor, trust and profit”); House Journal, 1841-1842, supra note 388, at 133-34 (recording argument by Rep. Dancy, who opposed a proposal to withdraw the Texas Navy from cooperation with the Navy of Yucatán, by asserting that the Yucatecos were largely Spanish; “the proportion of Indians and ignorant people is much larger in the States bordering on the Rio Grande than in Yucatan ... [the Yucatecos] have more intelligence and are more worthy of confidence than the northern Mexicans on the Rio Grande”).

539. Journals of the 1845 Convention (July 23, 1845), supra note 491, at 97-98; id. at 54 (July 11, 1845) (containing report of the Committee on the Legislative Department limiting suffrage to “every free white male person”).

540. Only four of the fifteen members of the Committee on General Provisions of the Constitution, the committee charged with producing the Bill of Rights, voted to limit suffrage to “white” men. Journals of the 1845 Convention (July 23, 1845), supra note 491, at 98 (recording affirmative votes of delegates Lewis, Love, McNeill, and Wood).

The willingness to extend voting rights to Tejanos did not mean the Convention was prepared to extend such rights to African Texans. See Tex. Const. of 1845, art. III, § 1 (excluding Indians not taxed, Africans, and descendants of Africans from qualifying to vote); id. art. VIII, § 1 (prohibiting the legislature from passing laws for the emancipation of slaves without the consent of their “owners”).

541. Navarro’s attack on racism in 1845 was not continued in his later political career. In 1868, during Reconstruction, he addressed voters on the “supremacy of the white race and the peace and happiness of ourselves, our wives and children.” De León, supra note 16, at 57.

542. Journals of the 1845 Convention, supra note 491, at x. The final version of Article III of the Texas Constitution of 1845 provided:

Section 1. Every free male person who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, or who is at the time of the adoption of this Constitution by the Congress of the United States, a citizen of the Republic of Texas, and shall have resided in this State one year next preceding an election, and the last six months within the district, county, city, or town, in which he offers to vote (Indians not taxed, Africans and descendants of Africans excepted), shall be deemed a qualified elector.

Sec. 2. All free male persons over the age of twenty-one years (Indians not taxed, Africans and descendants of Africans excepted), who shall have resided six months in Texas, immediately preceding the ac-
The ease with which citizenship could be attained in the nineteenth century ensured that most immigrants who wished to do so could participate in the political process. Applicants for U.S. citizenship were not required to know English until 1906. Thus one German immigrant advised his compatriots:

The acquisition of citizenship at the earliest possible date is very important. You simply declare before a justice of the peace or district judge at the place you have selected as your residence that you wish to become a citizen of the United States. After the expiration of a number of years, you are then a real citizen.

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543. Act of June 29, 1906, ch. 3592, § 8, 34 Stat. 596, 599 (1906) (providing that "no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language"). Exceptions were created for any alien who had previously filed a declaration of intent to become a citizen, and for aliens who filed a declaration of intention and made homestead entries upon the public lands of the United States. Id. The Immigration & Nationality Act of 1952 exempted persons physically unable to comply and persons over 50 years of age who have resided in the United States at least twenty years. Immigration & Nationality Act of 1952, ch. 477, tit. III, ch. 2, § 312, 66 Stat. 239 (1952). In 1990, an additional exemption was provided for persons over 55 years of age who have resided in the United States for at least 15 years. 8 U.S.C. § 1423 (1994). A challenge to the English language requirement for naturalization was rejected on justiciability grounds in Trujillo-Hernández v. Farrell, 503 F.2d 954 (5th Cir. 1974), cert. denied, 421 U.S. 977 (1975).

544. VIKTOR BRACHT, TEXAS IN 1848 141-42 (Charles Frank Schmidt trans., Naylor Printing Co. 1931) (1848). One group of Wends was "so accustomed to using German as the language of government that when they applied as a group for citizenship they made up the necessary statement in German (on this occasion they did not come up against the right clerk at Bastrop—they were told to go home and get their request translated into English)." Joseph Wilson, TEXAS GERMAN AND OTHER AMERICAN IMMIGRANT LANGUAGES: PROBLEMS AND PROSPECTS, IN EAGLE IN THE NEW WORLD: GERMAN IMMIGRATION TO TEXAS AND AMERICA 230, 232 (Theodore Gish & Richard Spuler eds., 1986).
German immigrants even said the pledge of allegiance in German at their naturalization ceremonies. The ease with which German-speaking immigrants were permitted to naturalize in their own language in the nineteenth century contrasts sharply with the recent uproar over a naturalization ceremony conducted in Spanish.

After 1869, even these minimal steps were not required. The Reconstruction Constitution of 1869 permitted non-citizens to vote as long as they had declared their intention to become a citizen of the United States. Persons of foreign birth were required to

545. SCHMIDT, supra note 506, at 3 (also noting that the first words spoken by the author's grandfather as an American citizen were "Nun sind wir wirklich Amerikaner! [Now I am a real American]") (translation by Professor Nora Demleitner). I thank Professor Demleitner for her assistance in assuring the accuracy of this translation.

546. Diane Jennings, Linguistic Debate Sets Tongues Afire; But Experts Say Spanish to Stay Secondary in U.S., DALLAS MORNING NEWS, Nov. 22, 1993, at A1 (U.S. English field director Kevin Broughton complained that "by conducting that ceremony largely in Spanish, what we said was: 'Legally you are one of us, linguistically and culturally you are not.' That is a bad, bad precedent.").


The requirement of a declaration of intention to become a citizen was instituted by the U.S. Congress in 1802. The legislation provided:

[1] Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise: —

First, That he shall have declared, on oath or affirmation, before the supreme, superior, district or circuit court of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least, before his admission, that it was, bona fide, his intention to become a citizen of the United States, and to renounce for ever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof such alien may, at the time, be a citizen or subject.

Act of Apr. 14, 1802, ch. 28, § 1, 2 Stat. 153 (1802). The three-year waiting period was shortened to two years in 1824. Act of May 26, 1824, ch. 186, § 4, 4 Stat. 69 (1824). In 1906, the declaration requirement was amended to require the non-citizen to include his "name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien." Act of June 29, 1906, ch. 3592, § 4, 34 Stat. 596-597 (1906). While federal law still permits the filing of a declaration of intent to become a citizen, since 1952 the declaration has not been required to apply for naturalization. Immigration & Nationality Act of 1952, ch. 477, tit. III, ch. 2, § 334, 66 Stat. 254 (1952). The current provisions for the declaration are codified at 8 U.S.C. § 1445(f) (1994).
“produce their citizen papers or certificate from the proper court that they have declared their intention to become citizens of the United States, or shall prove to the satisfaction [sic] of the registrar that they have taken out such papers, but have lost the same.”548 The extension of voting rights to non-citizens included persons who neither knew English nor were required to learn English in order to vote.549 In 1892, the Legislature authorized assistance to voters in larger cities who were unable to prepare their own ballots.550 The use of interpreters to assist non-English-speaking voters was explicitly authorized in 1905.551

The extension of voting rights to non-citizens has been explained as a means of attracting people to Texas.552 The State of Texas initially continued the liberal policy of the Republic of Texas towards immigration. Any alien who was a “free white person” was guaranteed the right to acquire, hold, and inherit real property as long as American citizens were given similar rights by the alien’s nation.553 In 1871, the Reconstruction legislature established a Bureau of Immigration to encourage immigration and to protect the


549. Today’s English Only proponents raise the specter that “the next American president could well be elected by people who can’t read or speak English!” Mattox Says “English First” Letter Biased, UPI, Dec. 2, 1986, available in LEXIS, Nexis Library, UPI file. These English Only proponents are unaware that it is only in the twentieth century that non-English-speaking citizens and immigrants were precluded from participating in the electoral process. See, e.g., Crawford, Hold Your Tongue, supra note 9, at x (describing the imposition of an English literacy test for voting in New York in 1921 as an attempt by Republicans “to disfranchise one million Yiddish speakers who had an annoying habit of electing Democrats”).

550. Assistance by the election judges to a voter who “is unable to prepare his ballot” was explicitly authorized in 1892 for voters residing in cities with a population greater than 10,000. Act of Apr. 12, 1892, ch. 13, § 26, 1892 Tex. Gen. Laws 13, 17-18, reprinted in 10 Tex. Gen. Laws 377, 381-82 (Gammel 1898). Section 27 of the Act permitted a voter to request assistance if “he cannot read or write” or was blind or had another physical disability. Id. § 27. See also Tex. Rev. Civ. Stat. arts. 1790 and 1791 (1895) (same). This assistance was extended to all voters throughout the state in 1903. Act of Apr. 1, 1903, ch. 101, § 50, 1903 Tex. Gen. Laws 133, 142 (permitting election judges to assist any voter who “is unable to prepare his ballot”).

551. Act of May 15, 1905, ch. 11, § 82, 1905 Tex. Gen. Laws 520, 539 (permitting an interpreter if the voter “can not both read and speak the English language” and requiring the interpreters to swear “they will not suggest by word or sign or gesture how the voter shall vote; that they shall confine their assistance to answering his questions, to naming candidates, and the political parties to which they belong, and that they will prepare his ballot as the voter himself shall direct”); Tex. Rev. Civ. Stat. Art. 3003 (1911) (same).

552. Harrington, supra note 52, at 47 (asserting that the intent of the framers of the 1876 Constitution in not requiring citizenship was to attract people to Texas).

immigrants against "fraud, chicanery and peculation." The Superintendent of Immigration was authorized to translate "into one or two of the principal languages of Europe" essays and articles describing the glories of Texas.

The economical bent of many of the delegates to the 1875 Convention is apparent in the provision of the 1876 Constitution prohibiting the state from spending money on immigration. The Legislature in 1876 responded by approving a joint resolution extending "a cordial invitation to the good and industrious immigrant to come and make his home among us, and that we will extend to him a hearty welcome," and authorizing the Texas Land and Immigration Company of St. Louis, a private company, to communicate this to potential immigrants. The xenophobia that would dominate Texas politics at the turn of the century was not a politically powerful factor in 1876, the year the current Texas Constitution was adopted.

C. Multilingual Local Government

As during the Republic of Texas period, languages other than English continued to be used in local government.

1. Multilingualism in San Antonio

Although the Tejano population of San Antonio had declined, the city after the Civil War continued to look like a Mexican village, and most business continued to be conducted in Spanish. The arrival of large numbers of German immigrants made San Antonio a trilingual city.

Reflecting the Texas tradition of providing government services in a "known tongue," the city of San Antonio provided a wide
range of services to German-speaking immigrants as well as to Spanish-speaking Tejanos. As early as 1852, the City Council regularly ordered the publication of ordinances in Spanish and in German.\(^{560}\) By 1855, the City of San Antonio was awarding city contracts for printing to three different printers, one for English, one for Spanish, and one for German.\(^{561}\) A German printer proposed publishing the proceedings of the City Council in German "because at least one-third of the tax payers of our City are Germans who only in part read English, but almost all of whom would prefer to read your proceedings in the German language."\(^{562}\) One year later, bids from printers to print city ordinances and notices began to include prices for printing in other languages.\(^{563}\) In 1875, a City Council resolution required that "all Ordinances, resolutions or notices, required by law or authority of the Council to be published, be printed in the German language, in the 'Tri-Weekly Freie Presse' provided the charge for the same shall not exceed the price paid the official Journal for the publication of the same."\(^{564}\) In 1885, the mayor was authorized by the City Council to give the Ger-

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560. See, e.g., CITY OF SAN ANTONIO, JOURNAL OF CITY COUNCIL B 166 (noting adoption of Ordinance No. JB 57.3, an "Ordinance Touching Slaves," on Apr. 12, 1852, and ordering it "be published in the English[,] Spanish and German languages") [hereinafter SAN ANTONIO CITY COUNCIL JOURNAL B]; CITY OF SAN ANTONIO, JOURNAL OF CITY COUNCIL C 290 (recording adoption of Ordinance No. JC-289, on Jan. 24, 1861, requiring registration of all citizens because of "present unsettled state of affairs," and providing that "[s]aid preamble and resolution be printed in English, Spanish, and German forthwith") [hereinafter SAN ANTONIO CITY COUNCIL JOURNAL C]; id. at 507 (recording that on Nov. 8, 1865, an ordinance on streets, ditches, and public exhibitions was adopted and "ordered to be printed in English, German, and Spanish"); id. at 516 (recording that on Jan. 1, 1866 an ordinance requiring the water tax to be paid to the city collector was ordered printed in English, German, and Spanish). 561. SAN ANTONIO CITY COUNCIL JOURNAL B, supra note 560, at 369 (noting adoption of Ordinance No. JB-74.3, Feb. 9, 1855 providing that the "printing of all ordinances in English be given to the Ledger, those in Spanish to the Bejareflo and those in German to the Zeitung"). 562. SAN ANTONIO CITY COUNCIL JOURNAL B, supra note 560, at 466 (containing proposal of Apr. 10, 1856 from H.Y. Oswald). 563. X. Debray proposed to publish notices, advertisements, and ordinances, but not handbills, in Spanish in the Spanish-language newspaper, El Bejarefo. A. D. Douai of the San Antonio Zeitung proposed to do "City printing in German." E. G. Ibuston [?] proposed a 25% increase above basic rates for "[b]ills and advertisements in other than the English language" and M. Bourke proposed the same increase for "Foreign Languages." SAN ANTONIO CITY COUNCIL JOURNAL B, supra note 560, at 464 (1856). The 25% supplement for printing in other languages was the standard price offered by the three bidders in 1857. M. Y. Oswald specified that rate for "printing in the Spanish language," while M. Bourke offered that rate for "Foreign languages" and the Texan for "other languages." SAN ANTONIO CITY COUNCIL JOURNAL C, supra note 560, at 54 (recording acceptance of all three proposals on April 6, 1857). 564. CITY OF SAN ANTONIO, JOURNAL OF CITY COUNCIL D 171 (Resolution No. JD-519, June 1, 1875) [hereinafter SAN ANTONIO CITY COUNCIL JOURNAL D].
man-language newspaper Freie Presse für Texas "such important notices, as in his judgement is necessary for the public service" to be printed in German.565 By the 1890s, printing in Spanish was no longer provided,566 but printing in German continued.567

Nor was publication of the laws the only governmental service offered in other languages in San Antonio. By the 1850s, San Antonio had such a large German population that its street signs were written in Spanish, German, and English.568 City officials were hired to interpret for those members of the community who did not speak English. From 1852 to 1855, the City Secretary was required to "[t]ranslate all ordinances and matters required by the Board to be Translated, and act as Interpreter in the French and Spanish Languages."569 In 1875, the Assistant City Clerk was required to "act as Clerk and Interpreter of the Recorders Court."570 In 1877, P.H. Marx was hired to fill this position.571 As late as 1892, court proceedings were conducted in Spanish.572

565. CITY OF SAN ANTONIO, JOURNAL OF CITY COUNCIL F, 348 (Apr. 20, 1885) [hereinafter SAN ANTONIO CITY COUNCIL JOURNAL F]. The action was in response to a request from A. Hanschke, the proprietor of the Freie Presse, that "all ordinances of the City, Resolutions, etc., be published in the German paper." Id. at 323 (Apr. 6, 1885). The mayor's authorization was reaffirmed in 1887. CITY OF SAN ANTONIO, JOURNAL OF CITY COUNCIL G 291 (adopting on Apr. 4, 1887 the Finance Committee's report that the mayor give the Freie Presse "such City work as he may deem required for the best interests of the City") [hereinafter SAN ANTONIO CITY COUNCIL JOURNAL G].

566. The population of San Antonio grew steadily throughout the nineteenth century, but this growth was due largely to migration from other parts of the United States and to German immigration. As a result, the proportion of San Antonio's population that was Tejano declined through the nineteenth century. MONTEJANO, supra note 253, at 40. The growth of the Tejano population occurred in the early twentieth century. See infra text accompanying note 838 (discussing increase in immigration from Mexico).

567. CITY OF SAN ANTONIO, JOURNAL OF CITY COUNCIL J 745 (ordering that Mayor George Paschal's report of July 6, 1893 on city finances be "printed in English and German, and circulated") [hereinafter SAN ANTONIO CITY COUNCIL JOURNAL J].


569. SAN ANTONIO CITY COUNCIL JOURNAL B, supra note 560, at 157 (Ordinance No. JB-55.3, Jan. 26, 1852). This requirement was repealed three years later. Id. at 306 (Ordinance No. JB-65.7, Jan. 4, 1855).

570. SAN ANTONIO CITY COUNCIL JOURNAL D, supra note 564, at 185 (Ordinance No. JD-560, Aug. 17, 1875).

571. SAN ANTONIO CITY COUNCIL JOURNAL B, supra note 560, at 271 (Ordinance No. JD-758, Jan. 31, 1877) (appointing Marx as "ass't Clerk and Interpreter in Recorders Court").

572. ARNOLDO DE LEON, THE MEXICAN IMAGE IN NINETEENTH CENTURY TEXAS 36 (1983) (stating that a visitor complaining of the inability of Tejanos to speak English "allud[ed] to the fact that courts were held in Spanish").
2. Laredo: The Continued Use of Spanish in Local Government

Although the Republic of Texas claimed Laredo, the city remained under Mexican control until November, 1846. With one exception, there are no documents in the Laredo Archives from officials of the State of Texas prior to the arrival of the U.S. Army in November, 1846. The one exception is a letter in Spanish from Alcalde Pascal Buquor of San Antonio de Béxar. The March, 1846 letter requested the return of an animal allegedly taken by a Laredoan.

One writer has summarized the status of Laredo during the Republic of Texas period and the challenges it faced after annexation by the United States:

But Laredo, though it had been claimed by Texas since 1836, had remained Mexican in fact, garrisoned by Mexican soldiers, subject to the laws and taxes of the Mexican Republic, voting for Mexican officials when permitted to do so, and responsible to Mexican authority. Now the people of Laredo were to become residents of an alien land under laws they did not understand in a language few of them could read.

As shown below, the challenges Laredoans faced during this period were eased by the conduct of a local government almost entirely in Spanish.

Under orders from U.S. Army General Zachary Taylor, Captain Mirabeau B. Lamar (the ex-president of the Republic of Texas) led remnants of the Texas Volunteers from Camargo, Mexico, took Laredo on November 8, 1846, and successfully asserted permanent control over the city for Texas and the United States. Lamar commanded Laredo until the summer of 1848. Lamar, however, did not write the first document in English in the Laredo Archives. That distinction belongs to William G. Crump, of the United States Army, who on the first day of the U.S. Army's arrival addressed a letter to "Citizens of Laredo." In an apparent attempt to win support from the citizenry, the letter advised Laredoans that Crump would compensate the "Lippans" (Apache Indians) if they found the

573. See discussion supra part VI.D.2.
574. Letter from Alcalde Pascal Buquor to the social authorities of the City of Laredo (Mar. 18, 1846) (requesting that Gregorio García return an animal belonging to Maximiliano Bernal), microformed on Laredo Archives, supra note 106, Folder 179, Document 2.
575. WILKINSON, supra note 471, at 222.
576. THOMPSON, supra note 468, at 145. A steamship, the Major Brown, had anchored in the Río Grande at Laredo on Oct. 24, 1846 with about 20 soldiers. Id. at 146.
577. Id. at 150.
prisoners recently taken from Laredo by Native Americans.\footnote{578} Presumably the letter was translated orally since no Spanish translation of the document exists in the Archives.

Four days later, Captain Mirabeau B. Lamar ordered Alcalde Andrés Martínez to have strangers report to the military commandant. This letter was translated into Spanish.\footnote{579}

After Texas exercised jurisdiction over Laredo, the city received few Anglo immigrants.\footnote{580} Anglos who moved to Laredo became Mexicanized.\footnote{581} Thus, almost all of the population was Spanish-speaking. As a result, government in Laredo continued to be conducted in Spanish until at least 1872.\footnote{582}

\footnote{578. Letter from Wm. G. Crump to Citizens of Laredo (Nov. 6, 1846), \textit{microformed on} Laredo Archives, \textit{supra} note 106, Folder 180, Document 1.}

\footnote{579. Order from Captain Mirabeau B. Lamar to Alcalde Andrés Martínez (Nov. 12, 1846), \textit{microformed on} Laredo Archives, \textit{supra} note 106, Folder 180, Document 2.}

\footnote{580. \textit{MONTEJANO}, \textit{supra} note 253, at 25 (asserting that the perception of the land beyond the Nueces as a "wild horse desert" spared these [Río Grande] settlements the tragic experience of independence").}

\footnote{581. Id. at 37 (describing "Mexicanization" of Anglos in South Texas).}

\footnote{582. \textit{Spanish continues to be used in daily business in Laredo even today. I have no doubt that the use of Spanish in official government business in Laredo continued well beyond 1872, but I have not had an opportunity to review records for that period. For purposes of my argument in this article, I limit myself only to what is clearly established: Spanish was the language of government in Laredo through at least 1872.}}
The entire range of municipal business in Laredo was conducted in Spanish. Ordinances were enacted in Spanish, and summarized in Spanish. Correspondence was in Spanish. Municipal documents were inventoried in Spanish. Elections were conducted in Spanish. Oaths of office for city officials were taken in Spanish. Bonds were also in Spanish. Registers of animals and brands, a critical government function in the ranch-based economy of South Texas, were maintained in Spanish.

583. Ordenanza Municipal Año de 1850—Capítulo primero de la Salud [Municipal Ordinance of 1850—Chapter One of Health Code], microformed on Laredo Archives, supra note 106, Folder 184, Document 3. One writer noted that in the 1850s, "all the ordinances were recorded in Spanish, so that they were reminiscent in form as well as content of bandos [edicts] issued under the authority of the laws of Spain and Mexico." Wilkinson, supra, note 471, at 244.


586. Inventory (June 28, 1860), microformed on Laredo Archives, supra note 106, Folder 198, Document 10.

587. Person eligible to vote in section 6A (Dec. 12, 1853), microformed on Laredo Archives, supra note 106, Folder 187, Document 1; Election Results (Dec. 12, 1853), microformed on Laredo Archives, supra note 106, Folder 187, Document 2; Election Results (Dec. 11, 1854), microformed on Laredo Archives, supra note 106, Folder 188, Document 4; Election Results (1855), microformed on Laredo Archives, supra note 106, Folder 189, Document 2; Election Results (1857), microformed on Laredo Archives, supra note 106, Folder 191, Document 2; Election Results (Jan. 20, 1860), microformed on Laredo Archives, supra note 106, Folder 198, Document 3; Election Results (Aug. 15, 1860), microformed on Laredo Archives, supra note 106, Folder 200, Documents 7, 8, and 11; Election Results (Dec. 10, 1860), microformed on Laredo Archives, supra note 106, Folder 202, Documents 3-7; Election Results (Dec. 10, 1861), microformed on Laredo Archives, supra note 106, Folder 204, Document 17 [this folder is identified as Folder 208 on the microform, but appears immediately after Folder 203]; Election Results (Dec. 8, 1862), microformed on Laredo Archives, supra note 106, Folder 205, Documents 9 and 10; Election Results (Dec. 24, 1866), microformed on Laredo Archives, supra note 106, Folder 211, Documents 3-8.

588. Oath (Aug. 21, 1860), microformed on Laredo Archives, supra note 106, Folder 200, Document 12; Oath of Cesilio López (Oct. 29, 1866), microformed on Laredo Archives, supra note 106, Folder 210, Document 1. The oaths of office for 1861 are in English. Oaths (1861), microformed on Laredo Archives, supra note 106, Folder 203, Document 5; Oaths (1861), microformed on Laredo Archives, supra note 106, Folder 204, Documents 4, 5, 7, 10, 12, and 13 [this folder is marked as Folder 208 on the microform, but appears immediately after Folder 203].

The censuses of children were taken in Spanish. Notices of bids were in Spanish.

While the American military authorities wrote to the city in English, the city of Laredo wrote to these authorities in Spanish. In 1866, a letter in Spanish asking for the use of a military building was returned to the Mayor with the following notation:

Respectfully returned to the Honorable Mayor of the City of Laredo, Texas.

With the information that it is very necessary for your Communications to be in the English language.

The fact that the Mayor of Laredo attempted to transact business with the United States Army in Spanish says much about the ubiquitous use of Spanish in official business in Laredo. Anglos outside the military corresponded with the city government in Spanish.

Few English-language documents are contained in the Laredo Archives. After Captain Lamar's order of November, 1846, no other documents in English are found in the Archives until June, 1850, when a list of voters in Ward No. 1 was written in English. A more accurate description of the document is that it is bilingual: the headings at the top of the list are in Spanish. An 1850 subpoena by Sheriff W. Alexander is the first post-1846 document written entirely in English. As the only Anglo mayor of Laredo during this period, Mr. Alexander prepared the only English-lan-

590. Register of animals (1854), microformed on Laredo Archives, supra note 106, Folder 188, Document 2; Registry of brands (1867), microformed on Laredo Archives, supra note 106, Folder 213, Document 1.

591. Census of children (Sept. 9, 1855), microformed on Laredo Archives, supra note 106, Folder 189, Document 5; Census of children (May 1, 1862), microformed on Laredo Archives, supra note 106, Folder 205, Document 2.


593. Letter from First Lieutenant Geo. A. Williams to Mayor (June 14, 1858), microformed on Laredo Archives, supra note 106, Folder 192, Document 7.


596. Letter from William Johnston (Jan. 5, 1858) (offering to serve as sheriff), microformed on Laredo Archives, supra note 106, Folder 192, Document 3.

597. See supra text accompanying note 579.

598. List of votes polled at an election held in city of Laredo on the 21st of June, 1850 in Ward No. 1 for mayor and alderman, microformed on Laredo Archives, supra note 106, Folder 184, Documents 1 and 2. The only other English-language election records are the election results from Precinct 6 in 1858. Election Results - Precinct 6 (Dec. 13, 1858), microformed on Laredo Archives, supra note 106, Folder 193, Document 11. All other documents for this election are in Spanish. Id. (Folder 193, Documents 8-10).

599. "Nombres," "Presidente," and "Regidor". Id.

language compilation of city ordinances in 1852.601 Four letters are written in a language other than Spanish: three in English,602 and one in German.603 The only documents always prepared in English were the bonds required under a city ordinance for stray animals.604 Two English-language petitions from citizens were presented in the late 1850s.605 Three documents pertaining to city property are in English; all were written between July, 1860, and September, 1860.606

The most numerous English-language documents in the Laredo Archives are those from judicial proceedings. The implementation of an English-language legal system, dominated by English-speaking lawyers and law enforcement officials, no doubt accounts for this. While Tejanos continued to run the City of Laredo, Anglos ran the county government.607 To the extent that subpoenas were served by the Anglo county sheriff, this may explain the frequency of English-language subpoenas. Subpoenas were often written in English,608 although it is probable that many

601. Compilation of Ordinances Issued Between 1852-1862, microformed on Laredo Archives, supra note 106, Folder 186, Document 2. The compilation is in Spanish except for the year 1852. See also Montejano, supra note 253, at 36 (noting that ordinances in Laredo were published in both English and Spanish).


605. Petition of John Z. Leyendecker et al. (July 10, 1858) (complaining about the condition of city streets), microformed on Laredo Archives, supra note 106, Folder 193, Document 1; Petition of Guadalupe García (Oct. 23, 1859) (request by ferry operator for a decrease in rent), microformed on Laredo Archives, supra note 106, Folder 195, Document 6. This petition was addressed at the bottom in Spanish to “Sr. Presidente de la Corporación en Laredo, Tejas [Mr. President of the Corporation in Laredo, Texas].”

606. Evaluation (July 11, 1860) (by J.E. Slaughter of the value of houses to be purchased by the city), microformed on Laredo Archives, supra note 106, Folder 199, Document 7; Agreement between City of Laredo & Lázaro de la Garza (July 1860) (agreement for the sale of a house), microformed on Laredo Archives, supra note 106, Folder 198, Document 1; Promissory Note (Sept. 7, 1860) (regarding the sale of houses at Fort McIntosh), microformed on Laredo Archives, supra note 106, Folder 201, Document 3.

607. Montejano, supra note 253, at 36.

608. Subpoena of Edmond Lidwill (July 18, 1856), microformed on Laredo Archives, supra note 106, Folder 190, Document 1; Subpoena of Nepomuceno Garza (July 17, 1856), microformed on Laredo Archives, supra note 106, Folder 190, Docu-
of these subpoenas were prepared by others and then signed by the city officials.\textsuperscript{609} Two complaints were filed in English in 1860.\textsuperscript{610} A warrant from Río Grande City is in English.\textsuperscript{611} A jury verdict is in English.\textsuperscript{612} The first document, other than a subpoena, prepared in English by a Tejano mayor of Laredo is a finding in 1860 by Mayor Tomás Treviño that Juan José Salinas was guilty, and fining him $1.01.\textsuperscript{613} A complaint by George Staack is in English, although the cover sheet is in Spanish, as is the return by Marshall Jose Maria García.\textsuperscript{614} A peace bond against F. Martínez is in English.\textsuperscript{615} Several sworn statements are in English.\textsuperscript{616}

Although most of the English-language documents pertain to judicial proceedings, judicial business was conducted in Spanish as well. Subpoenas were often written in Spanish.\textsuperscript{617} Subpoenas of
Anglos were sometimes written in English, with the return completed in Spanish.\textsuperscript{618} The declarations of witnesses in criminal cases were prepared in Spanish.\textsuperscript{619} An arrest warrant was issued in Spanish in 1860.\textsuperscript{620} A complaint was filed by Tereza Bustamente in Spanish in 1860.\textsuperscript{621} As late as 1896, a petition was filed in the state court in Spanish.\textsuperscript{622}

The Laredo Archives demonstrate that long after the State of Texas asserted jurisdiction over Laredo Spanish continued to be the daily language of official government.

Nor was Laredo unique. In El Paso, for example, county business was conducted in Spanish.\textsuperscript{623} This, of course, was fully consistent with the views of the Anglo-American immigrants to Texas, who conducted their local government in English when Spanish was the language of the national government.

The continued use of Spanish in local government in Laredo and other parts of South Texas and West Texas could be viewed as an integral part of the "peace structure" established by the victorious Anglos and the defeated Mexican elite after the conquest of these regions in the mid to late 1840s. Professor David Montejano has described the peace structure as "a general postwar arrangement that allows the victors to maintain law and order without the constant use of force. The concept focuses on the manner in which victors are able to exercise and establish authority over the de-

\textsuperscript{618} Subpoena of Finegan (July 17, 1860) (subpoena in English, with return on cover page stating "y ejecutado el 17 de Julio de 1860" [and executed on July 17, 1860]), microformed on Laredo Archives, supra note 106, Folder 199, Document 6.

\textsuperscript{619} Declarations by witnesses against Finigan (July 17, 1860), microformed on Laredo Archives, supra note 106, Folder 199, Document 20; Sworn Statements (Sept. 24, 1860), microformed on Laredo Archives, supra note 106, Folder 201, Document 4; Sworn Statements (Nov. 30, 1860) (shooting of Manuel Aguilar by Cesario Benavides), microformed on Laredo Archives, supra note 106, Folder 201, Document 18; Sworn Declaration (May 13, 1861), microformed on Laredo Archives, supra note 106, Folder 204, Document 8.

\textsuperscript{620} Arrest Warrant of José Ma[ñá] García (Sept. 24, 1860), microformed on Laredo Archives, supra note 106, Folder 201, Document 5.

\textsuperscript{621} Complaint (Sept. 29, 1860), microformed on Laredo Archives, supra note 106, Folder 201, Document 9.

\textsuperscript{622} John A. Houghton v. Felipe Ramírez (Petition No. 2534) (Nueces County District Court), microformed on Laredo Archives, supra note 106, Folder 219.

\textsuperscript{623} W. H. TIMMONS, EL PASO: A BORDERLANDS HISTORY 157 (1990) (noting that in the late 1860s, the Mills group found ways to bring the important Mexican-American vote under control, which included "to speak and conduct county business in Spanish").
feated."624 Given the small Anglo-American population in Laredo, the peace structure there may have arguably required the continued use of Spanish in local government. Even if this sociological framework explains the phenomenon of multilingual government in Laredo after 1845, it should have no bearing on the relevance of the Laredo experience to interpretations of language rights under the Texas Bill of Rights. If Spanish-language government was an attempt by an Anglo minority to assert control over a Tejano majority in South Texas, it mirrors the Mexican government's authorization of English-language local government to assert control over an Anglo-American majority in Mexican East Texas.

3. The Use of German in Local Government

The widespread mythology of the American melting pot claims that the European immigrants of the nineteenth century broke their ties with their native countries and came to the United States to forget their native languages, learn English, and assimilate into the English-speaking American mainstream as quickly as possible. The mythical nature of this claim is evident when one examines European immigration to Texas in the nineteenth century.

The largest group of European immigrants to Texas came from Germany. Germans, or Americans with German surnames, arrived in Texas in the 1820s and 1830s.625 Large numbers of German immigrants, however, did not arrive in Texas until the 1840s, when Prince Carl von Solms-Braunfels brought the German immigrants who would found New Braunfels and establish themselves throughout much of the Texas Hill Country. While some Germans encouraged the immigrants to learn English,626 many emphasized retaining the German language and culture in Texas.627 German-

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624. Montejano, supra note 253, at 34. See also Harrington, supra note 52, at 45 (stating that although there was racial and ethnic polarization, Texans "recognized the need to structure a modus vivendi for stability purposes").
625. Schmidt, supra note 506, at 11-12; German Culture in Texas, supra note 513, at 17.
626. Bracht, supra note 544, at 141 (German immigrant to Texas advising potential immigrants in Germany that "A knowledge of the English language is very useful in all parts of America, and, while one could get along without it more easily in Texas than in the other Southern and most of the Eastern States, yet I would earnestly recommend the acquisition of the same.").
627. Hermann Seele, The Cypress and Other Writings of a German Pioneer in Texas 35 (Edward C. Breitenkamp trans., Univ. of Texas Press 1979) (1936) (noting that "the German Texan still loves and esteems his mother tongue"); Bracht, supra note 544, at 68 (stating that the "Germans of Texas, like those of Pennsylvania, cling to the customs and language of their native land"); Krueger, supra note 559, at 131 (describing how, after financial reversals forced him to sell his ranch in 1896, he decided "to move to one of the small German settlements where I could give my smaller children an opportunity to learn in a German school how to read and
Texan leaders "believed that the physical survival of the German immigrants depended on their being bound together by their language, customs, and traditions . . . ."628 Prince Carl von Solms-Braunfels later despaired at the German-Texans' "bastardization of Germanic traditions of language."629

Once they arrived in Texas, these German immigrants established their own German-language communities. These German immigrants, like the Anglo-American immigrants before them, did not expect to delay their participation in government until such time as they learned the language principally used by the state and national governments. German was used in Galveston for political reports.630 The immigrants at New Braunfels elected fellow immigrants as Béxar County commissioner and as justice of the peace in 1846.631 When Comal County was organized later that year, almost all of the county offices were held by German immigrants.632 Similarly, German immigrants were elected to all of the city offices after New Braunfels was incorporated in 1847.633 Newly-arrived immigrants were elected to office in Gillespie County in 1848,634 and in Medina County in 1848.635 Court proceedings and discussions of municipal affairs in Calhoun, Comal, Gillespie, and Medina counties took place in German.636 In counties where the population

write the German language. And I strictly saw to it that our children used the German language in our home."); C. F. Schmidt, Viktor Friederich Bracht, A Texas Pioneer, 35 Sw. Hist. Q. 279, 281 (1932) (quoting Bracht: "Within a few years the German population will have a large majority throughout the western portion. Even now many of my acquaintances are joyfully looking forward to the time when one must be able to speak German in order to travel there and be understood by the people."); SCHMIDT, supra note 506, at 4 (stating that "Oma and Opa [Grandmother and Grandfather] wanted to learn English and they wanted their children to be able to speak German").

628. Abernathy, supra note 513, at 213.
629. Id. See also GLEN E. LICH, THE GERMAN TEXANS 137 (1981) (noting that in his poems Ferdinand Lohmann of Comfort, Texas "lamented the gradual loss of German language").

630. DEMOCRATEN ACHTUNG! (Dec. 10, 1845) (reporting a meeting in which Col. John Warren was chosen as candidate for State Senator), microformed on Province & Republic, supra note 123, Item 618. Galveston was an early center of German settlement. Gilbert J. Jordan, W. Steinert's View of Texas in 1849, May 22 to June 5, 80 Sw. Hist. Q. 57, 61 (1976) ("Of the four to five thousand people living here, one-third are German. For this reason one can get along very well here with the German language . . . .") (quoting Steinert).

632. Id. See infra text accompanying note 669.
633. BIESELE, supra note 631, at 133.
634. Id. at 147.
635. BOBBY D. WEAVER, CASTRO'S COLONY: EMPRESARIO DEVELOPMENT IN TEXAS, 1842-1865 128 (1985) (reporting that immigrants held all elective offices in Medina County from 1848 until 1852).
636. BRACHT, supra note 544, at 141.
was not largely German, interpreters were used.637 Interpreters were also used when English-speakers addressed the German-dominated counties.638 Bilingual attorneys facilitated the interaction of German immigrants with the legal system.639

When a meeting of Texas Germans was called in May, 1854 to discuss the upcoming presidential election, “the first opportunity for a test of our strength,” the call for the meeting was in German.640 The platform from the meeting was careful to explain its purpose: “[W]e disavow every intention to form a German party and declare that our association as Germans is induced by the consideration of language alone.”641

German-language newspapers published throughout Texas in the nineteenth and early twentieth centuries provided their readers with the information needed to participate in the political process. The first of these was the Galveston Zeitung, founded in 1846.642 In 1852, the Neu Braunfelser Zeitung began publication, while the San Antonio Zeitung was inaugurated in 1853.643 A year later, the Texas Staats Zeitung began publication in San Antonio as well.644 Other German language newspapers include Der Pilger im Sueden der Union,645 and Der Bettelsack, a hand-written newspaper circulated in Comfort, Texas.646 The Austin Vorwärts even advertised itself in 1871 as the “Official Organ of Legislature, State of

637. Id.
638. BIESELE, supra note 631, at 205 (describing an address by N.M. Dennis to a mass meeting on the secession question in Gillespie County on January 1, 1861, which was translated by Father Wrede “for the benefit of those who could not understand English”).
639. Landa v. Obert, 14 S.W. 297, 298 (Tex. 1890) (describing the problem created when a German immigrant was forced to sign an English-language document without counsel because New Braunfels attorney Herman Seele “could take counsel in his own [the German] language, but ... was temporarily absent”).
641. Id. at 252.
642. GERMAN CULTURE IN TEXAS, supra note 513, at 18.
643. Id. at 20.
644. SEELE, supra note 627, at 33 (listing German-language newspapers in Galveston, New Braunfels, and San Antonio).
645. BIESELE, supra note 631, at 225 (describing this newspaper as probably published at Galveston to generate interest in a Lutheran seminary).
646. Id. See generally GILBERT GIDDINGS BENJAMIN, THE GERMANS IN TEXAS: A STUDY IN IMMIGRATION 114-15 (R & E Research Associates 1970) (1910) (listing German newspapers); BIESELE, supra note 631, at 223-25 (discussing German newspapers); Hubert P. Heinen, The Function of the German Literary Heritage, in GERMAN CULTURE IN TEXAS, supra note 513, at 169 (describing Frei Presse für Texas, a German weekly published in San Antonio); id. at 173 (noting Texas Vorwärts and the Friedrichsburger Wochenblatt); Selma Metzenthin Raunick, A Survey of German Literature in Texas, 33 Sw. Hist. Q. 134, 149-53 (1929) (describing German newspapers and periodicals in Texas).
Texas."\(^\text{647}\) Over thirty-five German-language newspapers were published in Texas; about twenty-nine were available in the early 1900s,\(^\text{648}\) and four were published as late as 1950.\(^\text{649}\)

German was so dominant in the German settlements that a German immigrant who arrived in Texas in the late 1860s reminisced that "as the medium of communication was the German language, the newcomer felt as much at home in "New Germany" as in the Fatherland."\(^\text{650}\) In San Antonio, membership in the prestigious Casino Club was restricted to those who spoke German, with an exception made for officers of the United States Army.\(^\text{651}\) The dominance of German in the German communities of Texas throughout the nineteenth century and into the early twentieth century is unknown to many Texans today, even to many German-Texans:

Most Texans are now unaware that many thousands of Texans, several generations of them, lived their entire lives as Germans, using German for almost all purposes. German was extensively used even for many "official" purposes. The churches, the communities, the schools, the social clubs operated in German; all correspondence was in German; all documents and periodicals were in German.... This exclusive use of German for such purposes continued into the 1930s and sometimes even later.\(^\text{652}\)

The records of the City of New Braunfels and of Comal County verify that the German immigrants were provided with a wide range of multilingual governmental services.

\subsection*{City of New Braunfels}

The city of New Braunfels was organized in 1846.\(^\text{653}\) Reflecting the needs of its German immigrant population, the minutes of the City of New Braunfels were maintained almost entirely in Ger-

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\(^{648}\) Raunick, *supra* note 646, at 152.

\(^{649}\) Wilson, *supra* note 544, at 231; Etzler, *supra* note 647, at 428 (describing the number of German newspapers in Texas as ranging from 18 in 1892 to a peak of 29 in 1907, to only 1 in 1952).


\(^{651}\) Kent Keeth, *Sankt Antonius: Germans in the Alamo City in the 1850's*, 76 Sw. Hist. Q. 183, 196 (1972). See also Schutze v. Austin Saengerrunde, 244 S.W.2d 341 (Tex. Civ. App. 1951) (approving as valid the German-language by-laws of a private corporation which conducted its meetings in German and kept minutes in German).

\(^{652}\) Wilson, *supra* note 544, at 231. See also Lich, *supra* note 629, at 180 (observing that "many Americans are unaware that generations of Texans, though native born, lived out their entire lives as Germans").

\(^{653}\) II *HANDBOOK OF TEXAS*, *supra* note 114, at 272.
man until June, 1861. The oaths of office and bonds for city officers were recorded in English. The jurats for affidavits were prepared in English, but the affidavits themselves were in German. All other city records were in German.

Beginning with the minutes for June 18, 1861, the entries became bilingual. Following the example set earlier by the Anglo-American immigrants in the 1820s, and by the Tejanos at San Antonio in the late 1830s, English-language minutes were maintained, usually on the left-hand side of the ledger, while German-language entries were usually entered on the right-hand side. Even though bilingual entries were made after 1861, it is clear that the German entries were the principal entries: the German entries were signed by the members of the city council; the English entries were not.

Even after the initiation of bilingual entries, the City of New Braunfels regularly returned to German-only records. City minutes were recorded in German alone from September, 1867 until February, 1870, and then again in March, 1870. German-language entries were recorded in English. The records of the City of New Braunfels for this period are contained in six minute books. All references to these records hereinafter will be to the volume of the New Braunfels Minute Book in which the document can be found. The minute books have been microformed on City of New Braunfels Minutes of City Council (no publisher) (available at Sophienburg Museum & Archives in New Braunfels, Texas). The first English-language entry in the minutes is an entry recording the election of C. Seabaugh as mayor in June, 1848. A German translation is on the next page. This is the only bilingual entry of 1848; all other entries for that year are in German. The next English-language entry is the text of a petition to District Court Judge William E. Jones requesting the suspension of Mayor L. Vogel. A letter from the Mayor’s office is in English, id. (Mar. 10, 1851), as is a contract for the lease of land. A tax ordinance was prepared in German and then translated into English. 2 New Braunfels Minute Book, supra, (May 15, 1858).

654. 1 & 2 New Braunfels, Tex., Minute Books. The records of the City of New Braunfels for this period are contained in six minute books. All references to these records hereinafter will be to the volume of the New Braunfels Minute Book in which the document can be found. The minute books have been microformed on City of New Braunfels Minutes of City Council (no publisher) (available at Sophienburg Museum & Archives in New Braunfels, Texas). The first English-language entry in the minutes is an entry recording the election of C. Seabaugh as mayor in June, 1848. 1 New Braunfels Minute Book, supra, (June 19, 1848). A German translation is on the next page. This is the only bilingual entry of 1848; all other entries for that year are in German. The next English-language entry is the text of a petition to District Court Judge William E. Jones requesting the suspension of Mayor L. Vogel. 1 New Braunfels Minute Book, supra, (May 17, 1849). One bilingual entry occurs in July, 1849, with English on the left and German on the right. Id. (July 13, 1849). A letter from the Mayor’s office is in English, id. (Mar. 10, 1851), as is a contract for the lease of land. Id. (May 9, 1851). A tax ordinance was prepared in German and then translated into English. 2 New Braunfels Minute Book, supra, (May 15, 1858).

655. 1 New Braunfels Minute Book, supra note 654 (Minutes of June 1, 1849; July 27, 1849; Sept. 4, 1850; Feb. 3, 1851; Mar. 17, 1851; July 7, 1851; Nov. 24, 1851; Aug. 26, 1852; Aug. 27, 1852; Oct. 25, 1852; Oct. 26, 1852; Aug. 3, 1853; Aug. 21, 1854; and Aug. 22, 1854); 2 New Braunfels Minute Book, supra note 654 (Minutes of Feb. 3, 1858; Aug. 7, 1858; July 23, 1859; Aug. 1, 1859; and July 30, 1860).

656. 2 New Braunfels Minute Book, supra note 654 (Minutes of Mar. 5, 1855; July 2, 1855; July 7, 1856).

657. Occasionally, the German-language entries are on the left-hand side, and the English-language on the right side. See 2 New Braunfels Minute Book, supra note 654, at 233-34 (n.d.); 3 New Braunfels Minute Book, supra note 654, at 23-58 (Oct. 2, 1865 to Aug. 1866); id. at 73 (Sept. 21, 1866); id. at 290-91 (Feb. 7, 1870); id. at 296-303 (Apr. 8, 1870 to June 1870).

658. 3 New Braunfels Minute Book, supra note 654, at 207-90. Bilingual entries were briefly resumed in February, 1870. Id. at 290-92 (Feb. 7, 1870).

659. Id. at 292-95 (Mar. 3, 1870). Bilingual entries were maintained in Apr., 1870 and May, 1870. Id. at 296-303.
only records were again maintained from June, 1870 to November, 1872. The first part of the minutes for the July 18, 1873 meeting is in German only; the last part is bilingual. Bilingual entries were maintained thereafter until March 1875, when records were once again maintained in German only.

All city minutes continued to be maintained in German only from March, 1875 until February 1878. Beginning in August, 1875, however, ordinances, resolutions, and contracts were sometimes translated into English.

Minutes prepared solely in English did not appear until February 9, 1878. The change to English-language records was sudden and dramatic; the minutes for the meeting of February 4, 1878, like all other minutes since March, 1875, were in German only.

b. Comal County

New Braunfels is located in Comal County. Comal County was organized on March 24, 1846. The first Comal County officials included County Clerk Conrad Seabaugh and Chief Justice M.A. Dooley, two Pennsylvania Germans who knew both German and English. Their election “was of course almost imperative... since among the immigrated Germans very few had the necessary knowledge of the English language and even less of the laws and order of business.” Mr. Seabaugh maintained all of the minutes of the County in English from the first entry on August 7, 1846.
Unlike the minutes of the City of New Braunfels, the Comal County minutes were maintained regularly in English.671

Nonetheless, German was regularly used in the County's proceedings. English-language presentations at public meetings were translated into German.672 German-language petitions were regularly accepted by the County Court and reproduced in the minutes without an English-language translation.673 Some County contracts were also in German.674 One of the most important responsibilities for Texas counties has always been the maintenance of county roads.675 Comal County regularly accepted petitions regarding county roads in German.676

All of the Comal County “road reviewers” were German immigrants. These county employees often provided their reports in German.677 Translations of applicable laws were provided to these which the document can be found. All records for Comal County are available in the office of the County Clerk in the Comal County Courthouse in New Braunfels, Texas.

671. There are rare exceptions. See, e.g., COMAL COUNTY COMMISSIONERS COURT MINUTES D, supra note 670, at 144-45 (English-language minutes of Nov. 20, 1869 suddenly switch to German, and just as suddenly revert to English).

672. See, e.g., NEU BRAUNFELS ZEITUNG, Dec. 10, 1852, at 1 (noting that the report of a committee on railroads at a public meeting on Nov. 29, 1852 “was afterwards reported in the German language by Dr. William Remer[,] Chairman of said committee”).

673. COMAL COUNTY COMMISSIONERS COURT MINUTES B, supra note 670, at 240 (petition in German from Julius Harms on Sept. 18, 1856); id. at 241 (German-language petition on same date from Jacob Be[,]cher regarding the building of a new courthouse); COMAL COUNTY COMMISSIONERS COURT MINUTES C, supra note 670, at 199-200 (German-language “Memorial or Petition” considered on Aug. 19, 1861); id. at 220 (granting on Feb. 17, 1862 a petition published twice in the Zeitung for the support of several Confederate soldiers’ families); COMAL COUNTY COMMISSIONERS COURT MINUTES D, supra note 670, at 188 (petition of Nov. 28, 1870); id. at 194 (petition of Nov. 29, 1870); COMAL COUNTY COMMISSIONERS COURT MINUTES E, supra note 670, at 197 (ordering on July 29, 1875 “spread upon the minutes” a communication in German from the Board of Trustees of the New Braunfels Academy).

674. COMAL COUNTY COMMISSIONERS COURT MINUTES B, supra note 670, at 263-64 (approving German-language proposal on Jan. 19, 1857 from W.C. Thielessasse for superintendence of courthouse building); COMAL COUNTY COMMISSIONERS COURT MINUTES D, supra note 670, at 104 (recording German-language agreement on waterway on Feb. 15, 1869).

675. I HANDBOOK OF TEXAS, supra note 113, at 425 (stating that the duties of the County Commissioners Court include the building and maintenance of roads and bridges).

676. COMAL COUNTY COMMISSIONERS COURT MINUTES C, supra note 670, at 101 (German-language petition of Feb. 21, 1859 requesting alteration in Fredricksburg Road); id. at 214-15 (petition approved on Feb. 17, 1862); COMAL COUNTY COMMISSIONERS COURT MINUTES D, supra note 670, at 94 (petition of Nov. 16, 1868 for change in New Braunfels-San Antonio road).

677. COMAL COUNTY COMMISSIONERS COURT MINUTES C, supra note 670, at 77-78 (approving on Nov. 15, 1858 the German-language report of county road reviewers); id. at 112 (accepting on May 16, 1859 without translation a German-language report from commissioners previously appointed to investigate a road); id. at 113 (same); id. at 198-99 (accepting German-language report from road reviewers on Aug. 19,
German-speaking county employees. When the Texas Legislature enacted a new statute regulating county roads, the Comal County Court ordered the Zeitung editor to print

a copy of the new Road Law in the german [sic] language and that he will let have the Co[unty] Court 100 copies of said paper for the sum of $3.50.

The Court orders that the C[ounty] Clerk is authorized to procure 100 copies of said Paper containing the above mentioned Road law at the expense of the Co[unty], as soon as possible, and to take care, that each Road overseer, who is not well acquainted with the english [sic] language, be supplied with one copy of said paper.678

Similarly, election officers were provided with translations of the County Court's orders regarding the holding of elections.679

Because most of the county’s employees were German-speaking immigrants, county services were readily available to the county’s predominantly German-speaking population. Where business was conducted primarily in English, as in the court system, interpreters were provided.680 While English was the language used primarily for the county minutes, German was regularly used in other county records. The first marriage license in Comal County was issued in English by County Clerk Seabaugh, but returned by the officiating minister, Rev. L.C. Evrendberg, in German.681 The second license was issued entirely in Eng-

1861); id. at 222 (report of May 19, 1862); id. at 253 (report of Feb. 16, 1863); id. at 262 (report of May 18, 1863); Comal County Commissioners Court Minutes D, supra note 670, at 113-14 (report of May 17, 1869); id. at 115 (same); id. at 121-22 (report of Aug. 16, 1869).

678. Comal County Commissioners Court Minutes B, supra note 670, at 335 (Aug. 22, 1856).

679. Comal County Commissioners Court Minutes C, supra note 670, at 42 (requiring on May 17, 1858 that the Zeitung provide the Chief Justice with 20 copies of proceedings of the Court previously ordered published in German and English "relative to the creation of Precincts, selection of places for holding Elections, and the appointment of Presiding Officers"; copies are "to be distributed among the different Presiding Officers with the Election Notices for the ensuing August election").

680. Comal County Commissioners Court Minutes B, supra note 670, at 68 (approving payment on Nov. 22, 1854 of $6.00 to Hermann Seele for "day services as Interpreter at last District Court Term $1.50 per day"); id. at 165 (approving on Nov. 21, 1855 payment of $4.00 to H. Seele as interpreter for the fall 1855 term of the District Court); id. (approving payment of $10.00 to Alex Rossy for same services); Comal County Commissioners Court Minutes C, supra note 670, at 89 (approving on Nov. 17, 1858 payment of $10 to H. Seele for services as interpreter in District Court); id. at 137 (approving payment of $10 to H. Seele as District Court interpreter on Nov. 21, 1859); cf. id. at 183 (noting on Nov. 19, 1860 that costs accruing to Comal County from the Fall 1860 term of the District Court includes $12 for interpreters).

681. Comal County, Marriage Licenses A (License No. 1) (marriage of Henry Metzing & Catherine Dorothea Klingeman on Oct. 6, 1846). The marriage license records for this period are maintained in six minute books. Each volume has a letter
lish, but bilingual licenses comprise about one-sixth of the first licenses issued in Comal County. One Comal County justice of the peace returned the marriage license in German. German was even used by one priest to record the marriage of two Tejanos. By the mid-1850s, only one-eighth of the marriage licenses were bilingual. While almost all licenses after 1857 were returned in English, German licenses were recorded as late as 1869. After 1877, English-language marriage license forms were printed. Even after the ministers learned to complete the relatively short return of the marriage license in English, however, residents of Comal County almost always used German to acknowledge the consent of a parent or guardian to the marriage of a minor.

identifying it (A, B, C, D, E, or F), and each is entitled either “Marriage Licenses” or “Marriage Record.” All Comal County marriage license records referenced here are available at the County Clerk’s Office in the Comal County Courthouse in New Braunfels, Texas.

682. Id. (License No.2) (marriage of Valentine Horne & Elizabeth Zerbach on Oct. 7, 1846).

683. COMAL COUNTY MARRIAGE LICENSES A, supra note 681. This volume contains 320 licenses. Not all of the licenses issued to couples were returned to validate a marriage. See, e.g., Licenses Nos. 101 and 124. Of the fewer than 320 licenses, 51 were bilingual. See Licenses Nos. 1, 3-5, 9, 11, 13, 18, 27, 31, 37, 41, 44, 48, 52, 55, 57, 63, 69, 71, 73, 78, 84, 91, 95, 99, 103, 107, 109, 111, 113, 116, 118, 122, 128, 132, 135, 143, 147, 154, 164, 175, 177, 179, 185, 269, 279, 294, 299, 307, and 315. The last bilingual marriage license in Book A, No. 315, was issued on June 5, 1853.

684. Id.; License No. 55 (recorded in German by Precinct No. 2 Justice of the Peace Ludwig Vogel on May 12, 1847).

685. COMAL COUNTY MARRIAGE LICENSES B, supra note 681, License No. 59 (Father Dominicus Meseus recording in German the marriage of Celso Navarro and Agapita Garcia on June 12, 1854).

686. COMAL COUNTY MARRIAGE LICENSES B, supra note 681. Of the 155 licenses recorded here and issued between June, 1853 and March, 1856, 21 are bilingual. Id. Licenses Nos. 2, 5, 15, 17, 20, 26, 48, 51, 57, 59, 60, 68, 70, 86, 87, 105, 106, 115, 142, 150, and 153.

687. Twelve of the 310 licenses issued between April, 1856 and 1864 are bilingual. COMAL COUNTY, MARRIAGE RECORD C, 1856-1864, supra note 681 (Licenses Nos. 8, 9, 18, 22, 28, 32, 33, 56, 67, 68, 86, & 99).

688. COMAL COUNTY MARRIAGE LICENSES D, 1864-1871, supra note 681, License No. 265 (May 15, 1869).

689. COMAL COUNTY MARRIAGE RECORD F, 1877-1888, supra note 681.

690. COMAL COUNTY MARRIAGE RECORD C, supra note 681, Licenses Nos. 105, 158, 212, and 310; COMAL COUNTY MARRIAGE LICENSE D, 1864-1871, supra note 681, Licenses Nos. 274, 299, 306; COMAL COUNTY MARRIAGE RECORD E, 1871-1877, supra note 681, Licenses Nos. 10, 16, 39, 40, 51, 77, 127, 128, 177, 182, and 370. The last German-language consent is dated July 8, 1876. Id., License No. 370. Beginning in 1877, all marriage licenses were issued on printed English-language forms. See COMAL COUNTY MARRIAGE RECORD F, 1877-1888, supra note 681.

Only two of these German-language consents were translated into English. COMAL COUNTY MARRIAGE RECORD C, 1856-1864, supra note 681, License No. 310 (translated on reverse by Clerk of Comal County Court Groos); COMAL COUNTY MARRIAGE LICENSES D, 1864-1871, supra note 681, License No. 274 (unknown translator).
Deed records were also prepared in German. Ironically, many of the first English-language documents in the deed records of Comal County are those reflecting land transactions by native Tejanos.\(^{691}\) Other transactions by Tejanos were in Spanish.\(^{692}\) The German immigrants, on the other hand, used German for their deeds,\(^{693}\) contracts,\(^{694}\) leases,\(^{695}\) and other recorded documents.\(^{696}\) German was so commonly used in these early records that a typed transcript prepared in 1917 was certified to be accurate "in as much . . . some of the instruments written in the German and Spanish language [sic] are so carelessly written, that in a few

The few English-language consents appear to have been prepared by someone other than the parent or guardian giving consent. See, e.g., COMAL COUNTY MARRIAGE LICENSES D, 1864-1871, supra note 681, License No. 296 (appearing to have been prepared by the county clerk); id., Licenses Nos. 346 and 422 (same).

691. COMAL COUNTY DEED RECORD A at 3, 10, 11, 13-14, 16, 20, 23-24, 24-25, 26, 27, and 29 (deeds recorded in 1847 by M. A. Veramendi Garza); id. at 97 (deed dated July 15, 1837 by Ignacio Guerra for land received for service in the Texas Army; originally filed in Bexar County). The deed records for this period are in three volumes. Each volume is entitled COMAL COUNTY DEED RECORD and is identified by a letter (A, B, or C). The deed records are available in the County Clerk's Office in the Comal County Courthouse in New Braunfels, Texas.

The land encompassing New Braunfels had been owned by Baron de Bastrop under Spanish rule, and by Mexican Governor Juan Martin de Veramendi under Mexican rule. Maria Antonia Veramendi Garza was the Governor's heir. She and her husband, Rafael C. Garza, deeded the Comal Tract to Prince Carl Solms-Braunfels. ROGER NUHN, NEW BRAUNFELS, COMAL COUNTY, TEXAS: A PICTORIAL HISTORY 21 (1993).

692. COMAL COUNTY DEED RECORD A, supra note 691, at 254-57 (declaration in Spanish by Jose Antonio Navarro originally made in 1831 and acknowledged on June 12, 1848).

693. COMAL COUNTY DEED RECORD A, supra note 691, at 36, 37, 38-48, 50-65, 73, 89, 99, 138, 144-145, 159, 161, 169-170, 171, 181, 229-236, 281-282, 293, 294, 315-316, 342-357, 368-370, 381, 392, 412-413, 413-414, 423, 440, 461, 463, 480-481, 499-500, 511-512, 545-546, 553-555, and 555-556. These deeds in Volume A were recorded between Oct. 27, 1846 and Aug. 20, 1849. See also COMAL COUNTY DEED RECORD B, supra note 691, at 18-21, 45, 56, 57, 69-70, 131, 218-219, and 312-313. These deeds in Volume B were recorded between Jan. 25, 1850 and Dec. 11, 1850. See also COMAL CO. DEED RECORD C, supra note 691, at 26, 175, 260, 433, 456, 523, 532-533, 579, and 614. These deeds in Volume C were recorded between Jan. 30, 1851 and Jan. 12, 1853.

Almost all of these documents were recorded in German without any translation into English. For an example of a rare translation, see COMAL COUNTY DEED RECORD A, supra note 691, at 358-67 (English translation of deed in German recorded on Nov. 24, 1848).

Because I do not read German, my classification of the German-language records is based on the recording statement by County Clerk Seabaugh, which usually includes an English-language description of the document.

694. COMAL COUNTY DEED RECORD A, supra note 691, at 50-65 (contract between George Benfes and Joh. Phil. Meckel recorded on Oct. 19, 1846).

695. See, e.g., COMAL COUNTY DEED RECORD C, supra note 691, at 177 (lease recorded on Aug. 27, 1851).

696. Some of the deeds recorded in English were accompanied by maps in German. See, e.g., COMAL COUNTY DEED RECORD A, supra note 691, at 443-44 (recorded on Oct. 7, 1848).
instances it was utterly impossible to copy every word with accuracy." 697

As lawyers took over the business of deed preparation in Comal County, English-language deeds became the norm relatively quickly. Nonetheless, German-language documents continued to be recorded occasionally. 698

German was also used regularly in the probate courts and records of Comal County. Prior to the mid-1850s, German was the language used most often in probate proceedings. The probate of the estate of Ernst Schmidt in 1850-51 is typical. The estate administrator filed an accounting of the estate in German, with the jurat in English. 699 A second accounting in German was filed a few months later, again with the jurat in English. 700 This accounting was approved on March 31, 1851 by Theodore Koester, the Chief Justice of Comal County, with no translation of the German-language documents recorded. 701 Even the county's law enforcement officials fulfilled their official duties regarding probate in German. 702 English-language proceedings in the Comal County probate court appear to have been limited to those in which an attorney, such as the bilingual Hermann Seele, was involved. 703 Most of the proceedings during this early period were conducted

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697. Comal County Deed Record A, supra note 691, at 640 (Clerk’s and Deputy Clerk’s Certificate dated Jan. 20, 1917).
698. See supra note 693.
699. Comal County Probate Journal C at 41-42 (Nov. 25, 1850) (accounting by Heinrich Knibbe). The probate records for this period are in five volumes. Each volume is entitled Comal County Probate Journal, and each is identified by a letter (A, B, C, D, or E). Volumes A and E of the Comal County Probate Journal were not available at the time this article was written. The Comal County Probate Journals are located in the County Clerk’s Office in the Comal County Courthouse in New Braunfels, Texas.
700. Id. at 45-47 (Mar. 1, 1851).
701. Id. at 47.
702. Id. at 372-73 (statement in German by Deputy Sheriff Henry Roser filed on Feb. 10, 1851).
703. See, e.g., Comal County Probate Journal B, supra note 699, at 79-80 (estate of John Jacob Schmidt probated on Nov. 16, 1847, entirely in English; estate administrator is Hermann Seele).
predominantly in German;\textsuperscript{704} a few were conducted entirely in Germany.\textsuperscript{705}

By 1854, all probate proceedings were recorded in English.\textsuperscript{706} This, of course, does not tell us the language used to conduct probate hearings. It is quite likely that German continued to be regularly used even after the proceedings began to be recorded only in English.

It is also quite likely that many of the other proceedings reported in English in the county records actually took place in German, but were recorded in English. For example, reference is made in English in the county's minutes to communications from the City of New Braunfels.\textsuperscript{707} However, during this period the City of New Braunfels was conducting all of its business in German only.\textsuperscript{708} Similarly, references in the county's English-language minutes to communications with the City of New Braunfels are not corroborated by any English-language records in the city minutes.\textsuperscript{709} Thus even the extensive documentation regarding the use of German in

\textsuperscript{704}. There are 427 pages in Volume B of the \textit{Comal County Probate Journal}. The only proceedings which are entirely in English are Cases Nos. 8 (pp. 123 and 158); 16 (p. 162); 23 (pp. 237-38); 27 (p. 240); 29 (p. 241); 30 (p. 243); 36 (p. 176); 52 (pp. 333-34); 53 (pp. 335-36); 58 (pp. 349-50); 59 (p. 351); 61 and 62 (pp. 365-79, 384); 65 (pp. 385-82); 67 (pp. 280-84); 69 (pp. 409-10); 73 (p. 420); 78 (pp. 222-23); and 80 (pp. 224 and 421). These proceedings were held between Jan. 16, 1848 and March 26, 1850.

The only proceedings entirely in English in Volume C of the \textit{Comal County Probate Journal} are Cases Nos. 5 (pp. 86-87); 41 (p. 100); 51 (pp. 111-12); 53 (pp. 113-14); 61 and 62 (pp. 123-46); 65 (pp. 154-56); 67 (pp. 157-60); 70 (pp. 161-62); 79 (p. 181); 83 (p. 186); 87 (p. 189); 89 (p. 190); 95 (p. 231); 96 and 97 (pp. 232-38); 98 (pp. 339-40); 100 (p. 81); 101 (pp. 342-44); 103 (pp. 358-61); 106 (p. 85); and 107 (p. 83). These proceedings were held between Jan. 2, 1849 and Oct. 20, 1853.

\textsuperscript{705}. See, e.g., \textit{Comal County Probate Journal} B, supra note 699, at 159-61 (probate of estate of A. Sickel recorded entirely in German); \textit{Comal County Probate Journal} C, supra note 699, at 163 (Case No. 71, Sept. 21, 1850).

\textsuperscript{706}. \textit{Comal County Probate Journal} E, 1854-1858, supra note 699, is entirely in English. At the time this article was written, \textit{Probate Journals} A and D were not available, so it was not possible to determine exactly when all proceedings began to be recorded only in English.

\textsuperscript{707}. \textit{Comal County Commissioners Court Minutes} E, supra note 670, at 205 (reporting in August 1875 a communication from the Mayor of New Braunfels requesting the use of a room); \textit{id.} at 331 (reporting on Feb. 12, 1877 a petition from the Mayor regarding the building of a gallery to place a fire engine).

\textsuperscript{708}. See supra text accompanying note 664.

\textsuperscript{709}. For example, in January, 1855 the county minutes record in English that a letter was sent to the city regarding payment for a bridge. \textit{Comal County Commissioners Court Minutes} B, supra note 670, at 78-79. No English-language letters are reported in the City's minutes for January, February or March, 1855. \textit{2 New Braunfels Minute Book}, supra note 654.

Similarly, in May, 1866 the county minutes record in English that a resolution on a ditch was sent to the city. \textit{Comal County Commissioners Court Minutes} B, supra note 670, at 192 (May 30, 1856). No English-language resolution is recorded in the City's minutes for May, June, or July, 1856. \textit{2 New Braunfels Minute Book}, supra note 654.
Comal County business likely under-reports the dominance of German in county business during this period.

The inauguration of a German language newspaper, the *Neu Braunfelser Zeitung*, in November 1852 provided the County with an important means of communication with the predominantly German-speaking residents. The first issue of the *Zeitung* appeared on November 12, 1852.\(^710\) Four days later, the County Court ordered that “all Election notices for Comal County shall be published in the New Braunfels News Paper [sic] in the German language.”\(^711\) Six months later, the County Court ordered that “all proceedings had in County Court as the same are entered on the Minutes of this Court be published in the New Braunfelser Zeitung, as the Editor Mr. von Ross made the offer to this Court to publish the same gratuitously.”\(^712\) The Court also ordered the Chief Justice to again “make an agreement with the Editors of the New [sic] Braunfelser Zeitung for the advertising of all election notices.”\(^713\) Three months later, the *Zeitung* presented a statement of the prices they intended to charge the County “for all the publications to be printed by order of the Co[unty] Court of Comal Co[unty].” This statement was accepted by the Court.\(^714\) While the County Court sometimes specifically provided for the publication of county documents in German in the *Zeitung*,\(^715\) the newspaper regularly pro-

\(^710\). *NEU BRAUNFELSER ZEITUNG*, Nov. 12, 1852, *microformed on New Braunfels Zeitung Weekly Newspaper*, New Braunfels, Texas: Nov. 12, 1852 to Sept. 3, 1875 (no publisher) (available at Sophienburg Museum & Archives in New Braunfels, Texas). An English-language newspaper was not available in New Braunfels until the *New Braunfels Herald* began publishing in 1892. NUHN, supra note 691, at 63.

\(^711\). COMAL COUNTY COMMISSIONERS COURT MINUTES A, supra note 670, at 207 (Nov. 16, 1852). The Court also ordered the Chief Justice to “give the requisite notice in the English language of all Elections requiring lawful notice in the County.” Id. Election notices were published in the *Zeitung* in both German and English. See, e.g., *NEU BRAUNFELS ZEITUNG*, Aug. 22, 1856, at 3 (election of school trustees); id. (May 29, 1857) (city council election).

\(^712\). COMAL COUNTY COMMISSIONERS COURT MINUTES A, supra note 670, at 224 (May 19, 1853). The County Court ordered the Clerk to provide the *Zeitung* editors with a copy of the minutes, and provided payment for the Clerk’s work at a rate of 15 cents for every 100 words. Id.

\(^713\). Id. at 226 (May 19, 1853).

\(^714\). Id. at 245 (Aug. 17, 1853).

\(^715\). COMAL COUNTY COMMISSIONERS COURT MINUTES B, supra note 670, at 168 (requiring on Mar. 25, 1856 that a copy of a resolution on a grand jury report on building a courthouse “be translated and published in the New [sic] Braunfels Zeitung”); id. at 345 (ordering on Sept. 18, 1856 the publication of a resolution regarding the building of a courthouse, but not specifying the language); id. at 381 (ordering payment on May 19, 1857 for advertisement of courthouse plans and contracts that were ordered on March 16, 1857, but not specifying the language); COMAL COUNTY COMMISSIONERS COURT MINUTES C, supra note 670, at 42 (ordering on May 17, 1858 that “proceedings of the Court relative to the creation of Precincts, selection of places for holding Elections, and the appointment of Presiding Officers shall be published in the New [sic] Braunfels Zeitung in the German and English lan-
vided complete reports in German for the meetings of both the Comal County Court and the New Braunfels City Council. The only county business published in English alone were legal notices not related to elections.

While the county minutes do not always specify that the items to be published were to be published in German, the practice was to publish the items only in German. Thus, when the County Court ordered the publication of a resolution on the building of a courthouse, Comal County Commissioners Court Minutes B, supra note 670, at 244-45 (Sept. 18, 1856), the resolution was published only in German.

The vagrant law, Comal County Commissioners Court Minutes B, supra note 670, at 281 (ordered on Mar. 16, 1857), appeared in German only.

The order from Brigadier General Pace on Confederate money, Comal County Commissioners Court Minutes C, supra note 670, at 222 (May 19, 1862), appeared only in German.

The vagrant law, Comal County Commissioners Court Minutes C, supra note 670, at 336-37 (July 3, 1865), appeared solely in German.

Interview with Carl Saur and Ethel Saur, Sophienburg Museum & Archives, in New Braunfels, Tex. (July 21, 1994). Mr. and Mrs. Saur have been preparing an English-language index to the Zeitung since 1985 and are thus familiar with the contents of the newspaper from 1852 through the 1880s. One of the earliest issues of the newspaper published an English-language translation of a German-language report on a railroad meeting published the week before. New Braunfels Zeitung, Dec. 10, 1852, at 1. This practice was not maintained thereafter.

The Zeitung was published entirely in German thereafter except for some English-language advertisements and the legal notices described infra, note 717. See also Comal County Commissioners Court Minutes B, supra note 670, at 208 (appointing County Commissioner C.W. Thomac on Aug. 19, 1856 to ask the Zeitung to publish "all yearly accounts of the County, and other public matters . . . without taking pay for"); id. at 235 (containing report from Commissioner Thomac on Aug. 22, 1856 that the Zeitung is willing to publish "gratis all Co[unty] accounts and other important County matters, which the Co[unty] Court may require to have published").

See, e.g., New Braunfels Zeitung, Dec. 3, 1852, at 3 (containing administrator's English-language notice regarding the estate of Mrs. Helene Klemm without a
The attempt to build a county courthouse consumed much of the attention of the Comal County Court in the 1850s. When the court ordered the printing of resolutions regarding the building of the courthouse, it ordered them published in the English-language San Antonio Ledger and Austin State Gazette, and in the Neu Braunfelser Zeitung and the (San Antonio) Texas Staats Zeitung as well. Notices of the contract for building the courthouse were placed in one English-language newspaper (the Austin State Gazette) and two German-language newspapers (the Neu Braunfelser Zeitung and the Texas Staats Zeitung).

4. Bilingualism Among Other European Immigrants: The Czechs, the Poles, the Wends and the Danes

The Germans were not the only European immigrants who established themselves in settlements in Texas and continued to use their native languages in local government. Immigrants from Czechoslovakia, Poland, and Denmark, following the pattern set by Anglo-American and German immigrants, established their own settlements where they continued to use their native languages.

The first Czech immigrant, Anthony Michael Dignowity, arrived in Texas in 1833. Large groups followed in the 1850s, and like the German immigrants, the Czechs established communities in which their own language, often called “Moravian” during this period, was the principal language. Freedom to speak the Czech language motivated these immigrants, who came to Texas “to escape the repression of the Austro-Hungarian Empire, which had suppressed the Czech language in favor of German.” They established communities where they enjoyed the freedom to speak their own language, a freedom denied them in their homeland. One Czech immigrant described Fayetteville, Texas as “so Moravian that one almost couldn’t converse in any other language.”

German translation). A notice of the sale of land ordered by the County Court, Comal County Commissioners Court Minutes B, supra note 670, at 234 (Aug. 21, 1856), was published in English only. Neu Braunfels Zeitung, Sept. 19, 1856, at 3. Estray notices were published only in English. Interview with Carl Saur & Ethel Saur, Sophienburg Museum & Archives, in New Braunfels, Tex. (July 21, 1994).

718. Comal County Commissioners Court Minutes B, supra note 670, at 244-45 (Sept. 18, 1856).
719. Id. at 273 (Mar. 16, 1857).
721. Id. at 27.
African-American porter at Fayetteville in 1894 spoke Moravian. As late as 1924, a Czech immigrant could write, “Our people in Texas, even the second and third generation, read and write Moravian, they take Moravian newspapers, and they attend Moravian churches where a Moravian priest gives a Moravian sermon.”

The persistence of a Czech-language culture in Texas was made possible by the establishment of Czech-language schools, and later, bilingual schools.

Like the German-language newspapers, the Czech-language newspapers played an important role in providing the immigrants with information about their homeland and about their new home. The first Czech newspaper, Texan (later Slovan), was established at La Grange in 1879. Svoboda was founded in 1885. By 1915 there were seven Czech newspapers. As of 1972, four Czech newspapers remained, with only one still published entirely in Czech.

While fewer Poles immigrated to Texas than either Germans or Czechs, many Polish immigrants were concentrated in Panna Maria, Texas. Here too, schools were conducted bilingually.

The Wends, an ethnic minority from Germany who speak a Slavic language, established the community of Serbin in 1855. Most of these immigrants spoke Wendish and German. One newspaper, the Giddings Deutsches Volksblatt, was published in German, English, and Wendish from 1899 to 1938. The Wends also operated a school in Wendish.

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723. Czech Voices: Stories from Texas in the Amerikan Národní Kalendár 79 (Clinton Machann & James W. Mendl, Jr. trans. & eds., 1991) (quoting L.W. Dongres) [hereinafter Czech Voices]. Similarly, it is reported that in 1904, when San Antonio was about one-third German, many Tejanos and African Americans “understood German.” Benjamin, supra note 646, at 65.


725. See infra part VII.D.3. The Czech language survives in Texas even today. Cowick, supra note 722, at *3 (noting that most churches in Fayette County hold services in German or Czech once a month, radio stations broadcast these services, and KVLG-AM radio in La Grange has a “Czech Hour” three days a week offering local news, polka music, and commercials in Czech).

726. University of Texas Institute of Texan Cultures, The Czech Texans 17 (1972)[hereinafter The Czech Texans].

727. Id.

728. Hudson & Mareš, supra note 720, at 190.

729. The Czech Texans, supra note 726, at 17.


731. See infra part VII.D.3.


733. Id. at 49.

734. Id. at 55.

735. See infra part VII.D.3.
The small Danish community in Danevang, Texas was established to preserve Danish culture. Danish was used in business, at home, and in the church. However, by 1894, when Danevang was established, Texas already required that all schools be operated in English. The ministers of the community, however, were expected to teach Danish to the children on Saturdays and at vacation school. A writer in 1928 observed that parents in Danevang "were anxious to perpetuate the Danish language and so far their hopes in this respect have been realized." In contrast, Danish Texans in Fredricksburg, a largely German community, learned German instead of Danish.

D. Multilingual Schools: Law and Practice

1. Early Statehood Laws Permitting Multilingual Schools

A proposal to limit state funds to those "who are, themselves, unable to bestow upon their children, the rudiments of an English education," was rejected by the Constitutional Convention of 1845. Nothing in the language actually adopted in the Constitution of 1845 required that education in Texas public schools be conducted in English.

It was not until 1856 that the Legislature specifically required that English be one of the subjects taught in the public schools of Texas. In 1858, the requirement was strengthened by prohibiting funding to a public school "unless the English language is principally taught therein." This requirement, however, permitted

737. Id. at 60.
738. See infra text accompanying note 812.
739. Thomas P. Christensen, Danevang, Texas, 32 Sw. Hist. Q. 67, 71 (1928) (noting this was the practice "until recently").
740. Id.
741. Davis, supra note 736, at 41.
742. Journals of the 1845 Convention, supra note 491, at 290 (Aug. 22, 1845). The proposal was made by Delegate Lewis, who had earlier voted to limit suffrage to "white" voters. Id. at 97-98 (July 23, 1845). See supra text accompanying notes 538-42.
743. Tex. Const. of 1845, art. X, reprinted in 2 Tex. Gen. Laws 1297 (Gammel 1898); see also Czech Voices, supra note 723, at 127-28 (noting that Texas law "did not require any particular language as the medium of instruction in either the community or state schools").
the teaching of other languages, and other languages continued to be widely taught in the public schools of Texas.\footnote{746} Because schools continued to be controlled locally, rather than by a centralized state bureaucracy, schools in immigrant communities and in Tejano communities purported to comply with this statutory requirement even though teachers who knew little English continued to teach in the schools.\footnote{747}

2. The Opposition to the Reconstruction Attempt to Impose English-Only Schools in Texas

As in other states that seceded to join the Confederacy, many Anglos in Texas traditionally viewed Reconstruction as a period in which Northern carpetbaggers imposed governmental practices foreign to Texas against the will of a majority of the population. The opposition of the people of Texas to the centralized system of education imposed during Reconstruction is well-established.\footnote{748} Traditional analyses of this opposition have focused on the reaction against the radical Republicans. But an important part of this opposition was based on the restrictions the radical Republicans sought to impose on local communities that spoke languages other than English. Given the freedom which each community had enjoyed in the past with respect to the language(s) used in the local

\footnote{746. See infra part VII.D.3.}

\footnote{747. One history of Castroville, for example, notes that "[t]he language used in [Castroville schools in] those first years [after 1857] is a question, for this young man [the teacher, Joe Courand] had come over from Lachapelle-sous-Rougemont (Haut Rhin) only the preceding summer, and during those few months he could not have acquired much English." WAUGH, supra note 432, at 42. The Board of Examiners of Medina County in 1858 certified that Mr. Courand, was "duly qualified to teach the following branches, to-wit: spelling, reading, writing, arithmetic, Grammar [sic] and Geography in the English language." Id. (emphasis added). Since Mr. Courand, and virtually everyone in Medina County was a recent immigrant, the veracity of this statement is doubtful.}

\footnote{748. Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 394 (Tex. 1989) (noting that the Reconstruction Constitution of 1869 created "a militaristic school system with the state exercising absolute authority over the training of children"); Tex. Const. art. VII, § 1, interp. cmt. (West 1993); cf. John Walker Mauer, State Constitutions in a Time of Crisis: The Case of the Texas Constitution of 1876, 68 TEx. L. REV. 1615, 1616 (1990) (noting that traditional studies have "overemphasized the impact of Reconstruction" and that "reaction against Reconstruction was neither the sole nor even the primary reason that some southern states created restrictive constitutions in the mid-1870s"); HARRINGTON, supra note 52, at 46 (noting that framers of 1876 rejected Reconstruction, but also reflected the reaction of the times "to rule by a strong central government, often allied with large money interests, and an executive with broad powers of appointment which overrode local autonomy") (footnote omitted). See generally Harold H. Bruff, Separation of Powers Under the Texas Constitution, 68 TEx. L. REV. 1337, 1338-39 (1990) (describing circumstances surrounding adoption of the 1876 Constitution).}
schools, the description of the Reconstruction system as “tyrannical” certainly seems justified.749

The Reconstruction attempt to impose English-only schools began in 1870, when the Reconstruction Legislature decreed that the “English branches of education shall be taught in the public free schools of this state,” but permitted, “in connection with the English branches of education, any foreign language may be taught.”750 The highly centralized Reconstruction bureaucracy limited the teaching of Spanish, French or German to not more than two hours per day.751 The statute also prohibited the local school examiners from recommending “any person as a teacher who is not competent and well qualified to teach said [English] branches.”752 The Reconstruction bureaucracy therefore limited certification of teachers to those who could speak English. Many immigrant teachers who taught in the schools of immigrant communities knew little English. The impact of the statute was therefore felt immediately.753

Although the centralized Reconstruction bureaucracy sought to eliminate multilingual schools, the attempt was unsuccessful. Some local authorities ignored the requirement for several years. For example, Fayette County Judge Augustine Haiduskek, a Czech Texan, did not require that all teachers be certified in English until 1875. The ruling “threatened the school’s teachers, many of whom spoke little English.”754 Other localities circumvented the requirement by interpreting the statute to require that one teacher speak English. The Czech teacher at Praha, Texas, Mr. Pešek, could not pass the test in English. His request to take it in Czech or in German was denied. The local authorities nonetheless permitted him to continue teaching since his assistant in the school “was an American, and capable of teaching English.”755 Since local authorities were responsible for the testing of teachers in English, immigrant teachers who knew no English were able to pass the examination after studying English for very short periods of time; their fluency in English must have been questionable.756

749. See EBY, supra note 201, at 162 (describing stigmatization of system as “tyrannical”).
751. EBY, supra note 201, at 162.
753. See HUDSON & MARESH, supra note 720, at 177 (describing the effect of 1871 English-language requirement on Czech teachers).
754. Cowick, supra note 722, at *2.
755. HUDSON & MARESH, supra note 720, at 177.
756. At Praha, Mr. Pešek passed the examination in English in 1872—one year after requesting to take the examination in Czech or German. Id. at 177. In Fayette
Even with these broad interpretations of the English-language requirements by local authorities, Texans who did not speak English continued to object to the Reconstruction effort to impose English-only schools. The strong support that German immigrants had always provided to the public school system suddenly disappeared. The Germans came to believe school leaders wanted to use the schools to “Americanize” their children. Some Republican leaders gave them a basis for their fears. Julius Van Slyck of San Antonio, in the heart of the state’s German area, said he wanted public schools so that minorities could be assimilated “linguistically and characterologically [sic].” The editor of the San Antonio Freie Presse explained the lukewarm attitude toward the schools among Germans when he asked, “Is the hope entertained that we can be de-germanized through the instrumentality of the public schools?”

The objections to English-only schools were addressed at the end of Reconstruction. While the 1874 Legislature required the examination of teachers in “orthography, reading in English, writing, arithmetic, geography, English grammar, history of the United States, and English composition[,]” in 1876—the year the current Texas Constitution was adopted—English-language requirements were limited to the teaching of English grammar. Teachers were authorized to determine the books of instruction, subject only to the approval of their community trustees. This permitted a teacher to select textbooks in a language other than English. When the 1876 Constitution was adopted, Texans who did not speak English might have assumed the traditional Texas practice of multilingual schools, temporarily suspended during the hated Reconstruction, was now secure.

3. The Practice of Multilingual Schools

In considering the practice of multilingual schools in nineteenth century Texas, state practices regarding the funding of local schools must be noted. Most “public schools” in much of Texas dur-

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County, the Czech teachers learned “enough English to pass the certification exam” in a year as well. Cowick, supra note 722, at *2.


760. Id. § 48, at 1043.

761. See infra text accompanying notes 773 and 788 (describing the use of German-language and Czech-language texts).
ing the nineteenth century were private schools that received state funds.762 Under the practice of the period, “private” schools conducted in languages other than English often received state funds.763 Whether they were “public schools” or private schools receiving state funding, multilingual schools were the norm in communities where the local population did not speak English. Thus, the public schools in Laredo were conducted in Spanish. A letter from teacher Jesus Prado in 1866 to the Laredo City Council asked in Spanish for his overdue pay, and informed the Council that he would have to close the school if he did not receive it.764 Spanish was also used when the first public school in Brownsville opened in 1889, although the goal seems to have been to prepare for a transition for the students to English as soon as possible. “Since the majority of beginning pupils could neither speak nor understand English, the first three grades were devoted to teaching them to read English; they were required to speak it starting only in the 4th grade.”765 Beginning in 1878, the Presbyterian Mission School in Brownsville taught up to sixty Spanish-speaking girls in Spanish, with English taught as a second language.766

The German immigrants were enticed to Texas with the promise of bilingual schools.767 The first private school in New Braunfels was established in 1845 to instruct the children in German and in English.768 New Braunfels also established the first public schools that operated in the way we think of public schools to-

762. See Eby, supra note 201, at 120-21 (asserting that “after the Act of January 31, 1854 the state established a school system, with but few exceptions the people resorted to the use of private schools which under the law could be designated ‘common schools’ ”); Hudson & Maresh, supra note 720, at 177 (noting that in the 1870s tuition was paid by the state for three to four months with the other months paid by the parents); Billy D. Walker, Intent of the Framers in the Education Provisions of the Texas Constitution of 1876, 10 Rev. Lrnc., 625, 633 (1990) (noting that during the Republic of Texas, several private academies received governmental assistance); id. at 634-35 (concluding most Texans interpreted “public schools to include private schools”). A review of the history of state payments to private schools in the nineteenth century can be found in Allan E. Parker, Jr., Public Free Schools: A Constitutional Right to Educational Choice in Texas, 45 Sw. L. J. 825 (1991).

763. See, e.g., infra text accompanying notes 784-87 (describing private Czech-language schools that received state funds).

764. Letter from Jesus Prado to City Council (Nov. 12, 1866), microformed on Laredo Archives, supra note 106, Folder 209, Document 3.


766. Id. at 9.

767. See Biese1e, supra note 631, at 88 (noting that the Society for the Protection of German Immigrants in Texas promised that one or more free schools would be built in which instruction would be given in the German and English languages).

768. Biese1e, supra note 669, at 86-87; Seele, supra note 627, at 77-83 (describing his experiences when opening bilingual school in New Braunfels in August, 1845).
Teachers Adolf Schlameus and Heinreich Guenther opened the New Braunfels City School, or Stadtshule, in 1853. German and English were taught. German-language schools opened in German communities throughout Texas. German language textbooks were used in these schools. In bilingual schools such as the German-English School in San Antonio, “German was the dominant language.” Brenham High School offered a three-year course of study in 1875 covering “Cicero & Virgil in Latin; the Anabasis, Crito, & Iliad in Greek; a good selection of English studies, and instruction in German throughout.” Even Tejanos attending segregated schools in German communities were provided instruction in German.
The German Texans even sought to establish a bilingual university. A charter for Hermann's University was granted by the Congress of the Republic of Texas in 1844.\footnote{Act of Jan. 27, 1844, 1844 Republic of Texas Laws 36-38, reprinted in 2 Tex. Gen. Laws 948-50 (H.P.N. Gammel 1898).} The charter required all professors at the university to understand both English and German, with provision made for waiver of this requirement only by a unanimous vote of the trustees.\footnote{Id. § 7, at 949.} These grandiose plans for a university were never realized.\footnote{BIESELE, supra note 631, at 216.}

In Czech communities, the languages used in the schools depended entirely on the makeup of the community: "Where our [Czech] people made up the majority, a Czech teacher was obtained for the state school. Of course he did not know English, and so he taught only in 'Moravian.' Where there were more Germans, teaching was in German 'or in both languages.'"\footnote{HUDSON & MARESH, supra note 720, at 172 (quoting early settler Josef Holec).}

As early as 1855, Reverend Bergman taught the children at Kašprlink (Cat Springs) in Czech and in German.\footnote{Id. at 173.} Josef Mašík taught in Czech at Wesley, Texas after 1859.\footnote{Id. at 214.} In 1872, Mašík was replaced by a teacher brought from Czechoslovakia.\footnote{Id. at 174. For a description of the state support for private schools, see supra note 764 and accompanying text.} Between 1874 and 1881, Rev. J.L. Chlumsky "received the support of the State to teach the Czech language" in Wesley.\footnote{Id. at 179. Cf. Cowick, supra note 722 (asserting the school at Praha, Texas was the first to hold classes in both English and Czech).} Seven Czech school houses were built west of the Colorado River in Fayette County, "all of which were supported by the State School Fund."\footnote{Id. at 128.} The hall at Ross Prairie, Texas became the first school in Texas "where both the English and the Czech languages were taught at the expense of the State."\footnote{Id. at 173.} The teacher at Grief, Texas taught "three languages, German, English and Czech with lessons in all grades."\footnote{Id. at 178.} Just as German language textbooks were used in the German schools, Czech-language textbooks were used in the Czech schools.\footnote{Hudson & Maresch, supra note 720, at 176 (describing books ordered after 1868 from Praha, Bohemia for the school in Mulberry (later called Praha), Texas)).}
The first teachers at Panna Maria, a Polish community, were Polish immigrants brought for that purpose in 1858.\textsuperscript{789} In 1869 two teachers were hired: a Polish teacher and an English teacher.\textsuperscript{790} The parochial school also taught in both English and Polish.\textsuperscript{791}

In February, 1856, the Wends at Serbin established a parochial school that was conducted in Wendish.\textsuperscript{792} It operated until 1916.\textsuperscript{793} Wendish children continued to speak Wendish at home, but learned German in the schools; English was learned in adulthood.\textsuperscript{794}

\section*{E. The Limitations of Historical Argument: Racism During Early Statehood}

Once again, it is important to recognize the limits of original intent. In the 1850s, Tejanos were driven from Austin, Seguin, Uvalde, Matagorda County, and Colorado County.\textsuperscript{795} Even Laredo was not immune to anti-Mexican sentiment. Some Anglo-Americans "began a movement to clean out the Mexicans. They would rant at public meetings and declare that this was an American country and the Mexicans ought to be run out."\textsuperscript{796} In 1863, Charles Callaghan of Laredo narrowly defeated S. Kinney of Corpus Christi for state representative. Newspapers in Corpus Christi and Brownsville noted that Kinney carried the precincts where English was spoken and opposed "allowing an ignorant crowd of Mexicans to determine the political questions in this country, where a man is supposed to vote knowingly and thoughtfully."\textsuperscript{797}

Even after the Civil War, the Texas Legislature continued to prohibit interracial marriages, and excluded African-Americans from juries and from voting.\textsuperscript{798} Segregated schools were created.\textsuperscript{799}

\textsuperscript{789} Baker, supra note 730, at 35-36.
\textsuperscript{790} Edward J. Dworaczyk, The Centennial History of Panna Maria, Texas 73 (1936).
\textsuperscript{791} Id. at 85.
\textsuperscript{792} Grider, supra note 732, at 51.
\textsuperscript{793} Id. at 52.
\textsuperscript{794} Id.
\textsuperscript{795} Montejano, supra note 253, at 28.
\textsuperscript{796} Jose Maria Rodriguez, Memoirs of Early Texas 75 (1913) (quoted in Montejano, supra note 253, at 31).
\textsuperscript{797} Montejano, supra note 253, at 39 (quoting Corpus Christi Ranchero and Fort Brown Flag).
\textsuperscript{799} See, e.g., Act of Apr. 15, 1905, ch. 124, § 93, 1905 Tex. Gen. Laws 263, 288 (providing that "white and colored children shall not be taught in the same schools").
VIII. Language at the Turn of the Century

A. The Increase in Hostility to Languages Other Than English

As the nineteenth century drew to a close, attitudes in Texas towards the use of languages other than English in government began to change. In 1879, the Texas Legislature began to enact statutes that restricted the use of languages other than English. Between 1893 and 1923, statutes that prohibited the use of languages other than English in Texas government were enacted. This restrictive legislation was paralleled by decisions of the Texas courts that ignored the language rights asserted by the framers of the Texas Bill of Rights. This new hostility to other languages arose from a combination of factors. First, like other areas of the United States, Texas experienced an increase in anti-immigrant xenophobia. By the 1920s, nativism in Texas was at its peak. This nativism sought to eradicate any language other than English—a language which had been “native” to Texas for less than a century. A Ku Klux Klan parade in Brenham in 1921 exhibited placards ordering, “Speak English or quit talking on Brenham’s streets.” A town meeting after the parade enacted resolutions requiring “ministers to preach in English and for funeral services for soldiers and business transactions to be conducted in English.”

A second factor encouraging this movement was the fact that, by the late nineteenth century few Texians who had lived in Mexican Texas or in the Republic of Texas survived. Many of their descendants were unaware of the language rights asserted by these framers.

The declaration of war against Germany in 1914 was a third factor encouraging hostility in the political arena towards languages other than English.


802. Heinen, supra note 646, at 171 (noting the ravages of World War I “on attitudes and efforts to use one’s German cultural heritage are well known and well documented”); Abernethy, supra note 513, at 225 (noting that World War I forced Germans “in some areas . . . to abandon their language in schools, churches, and business”); Nuhn, supra note 691, at 119 (noting that “the language in which [German-Texans] were taught at school was suddenly against the law” during World War I); Wilson, supra note 544, at 233-34 (describing request by state officials that the Wends of Serbin “try to conduct their school in English”); Interview with Anne Rogers, Sophienburg Museum & Archives, in New Braunfels, Tex. (July 21, 1994) (relating her mother’s experience as a German-speaking schoolgirl in Guadalupe County on the day after war was declared against Germany: the teacher wrote on the blackboard, “There will be no more German spoken.”).
A fourth factor was the escalation of racism against Spanish-speaking Tejano natives and Mexican immigrants. With the passage of time, a mythology of Texas history began to be developed. This mythology ignored the role of Tejanos in the struggle for independence from Mexico. It also provided a "context for the ongoing conflict" between Anglos and Tejanos. Mistreatment of Tejanos was justified by the war against Mexico. "Killing a Mexican was like killing an enemy in the independence war." For newcomers to Texas, unfamiliar with the Texas mythology, mistreatment of Tejanos was justified on a different basis: Mexicans were dirty, and therefore needed to be segregated.

Whatever the motivations, prejudice against Tejanos contributed to the enactment of state statutes that began to remove multilingual access to government. As one writer to the *San Antonio Express* argued, "If men want to exercise the rights of American citizens, why not require the comprehension of the language in which the laws are written?"

**B. English-Only Legislation**

1. The Development of English-Only Schools

Multilingual schools were the first casualties. Although multilingual schools survived into the twentieth century in some areas of the state, state legislation sought to transform the Texas public schools into monolingual English-speaking institutions. This effort reached its peak in the 1920s with legislation criminalizing the use of other languages in Texas public and private schools.

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804. *Id.* One example of this attitude is the reasoning used in an amicus brief opposing the naturalization petition of a Mexican immigrant. When the application of Ricardo Rodriguez for naturalization was heard in federal court in San Antonio in 1896, two Anglo attorneys opposed the application on the basis that Mexicans were neither "white" nor "African," the two races eligible for naturalization under federal law at that time. Act of Feb. 18, 1875, ch. 80, 18 Stat. 318 (amending Act of Dec. 1, 1873, tit. XXX, § 2169, 18 Stat. 382). The amicus brief filed by T.J. McMinn opposed the application because "the Texas Revolution was fought to get rid of the Mexican people." *In re Rodriguez*, 81 F. 337, 347 (W.D. Tex. 1897). The district court nonetheless concluded that citizens of Mexico qualified for American citizenship. *Id.* at 354. As late as 1934, however, the United States Supreme Court expressed doubts about whether all Mexicans could be naturalized. *Morrison v. California*, 291 U.S. 82, 95 n.5 (1934) (criticizing the *Rodriguez* case as inconsistent with later decisions and describing the eligibility of Mexicans to be naturalized as an "unsettled question"). The "descendants of races indigenous to the Western Hemisphere" were made eligible for naturalization in 1940. Act of Oct. 14, 1940, ch. 876, § 303, 54 Stat. 1140.


806. *San Antonio Express*, July 12, 1892, at 6, quoted in *De Leon*, supra note 572, at 36 n.38.
Although the Reconstruction bureaucracy had imposed English-language testing requirements for teachers, the Texas Legislature did not explicitly require such testing until 1879, when for the first time, the legislature specified that the examination of teachers “must be conducted in the English language.”807 Furthermore, no applicant for a teaching position could receive a teaching certificate “unless the board of examiners be satisfied that he or she is competent to teach the branches named in the grade of certificate applied for, in the English language.”808 In 1884, the Legislature reinstated the requirement, briefly instituted in 1874, that reading in English be taught, and later required that other English-language subjects be taught.809 Although these statutes required school


809. See supra text accompanying note 758. The 1884 act required the teaching of “orthography, reading in English, penmanship, arithmetic, English Grammar[,] modern geography and composition and other branches as may be agreed on by the trustees or directed by the State Superintendent.” Act of Feb. 4, 1884, § 55, 1884 Tex. Gen. Laws 38, 50 (requiring teacher examination to “be held in the following branches: . . . English literature and composition”), reprinted in 9 Tex. Gen. Laws 570, 582 (Gammel 1898); Act of Apr. 28, 1891, ch. 116, § 8(c), 1891 Tex. Gen. Laws
teachers to know English, and to teach in English at least part of the time, teaching in other languages was not prohibited. Multilingual schools continued to flourish.\textsuperscript{810}

In 1893, as xenophobia increased throughout the United States,\textsuperscript{811} the Texas Legislature responded to the persistence of multilingual education by prohibiting, for the first time, teaching in languages other than English:

It shall be the duty of every teacher in the public free schools of this state to use the English language exclusively, and to conduct all recitations and school exercises exclusively in the English language; provided that this provision shall not prevent the teaching of any other language as a branch of study, but when any other language is so taught, the use of said language shall be limited to the recitations and exercises devoted to the teaching of said language as such branch of study.\textsuperscript{812}

Two years later, the Legislature raised the criteria for teacher certification: teachers now had to speak English fluently so as “to use it easily and readily in conversation, and in giving instruction in all branches prescribed.”\textsuperscript{813} These statutes succeeded in decreasing

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\item 183, 186 (same), \textit{reprinted in} 10 Tex. Gen. Laws 185, 188 (Gammel 1898); Act of May 20, 1893, ch. 122, § 17, 1893 Tex. Gen. Laws 182, 187 (requiring the teaching of “reading in English” and “English grammar”), \textit{reprinted in} 10 Tex. Gen. Laws 612, 617 (Gammel 1898); \textit{TX. REV. CIV. STAT. ANN. art. 3909a} (1895) (same); \textit{TX. REV. CIV. STAT. ANN. art. 3979} (1895) (requiring teacher examination to “be held in the following branches: . . . English literature and composition”); Act of April 15, 1905, ch. 124, § 100, 1905 Tex. Gen. Laws 263, 289 (same); \textit{TX. REV. CIV. STAT. ANN. art. 2783} (1911) (same); \textit{TX. REV. CIV. STAT. ANN. art. 2911} (1925).
\item 810. See \textit{supra} part VII.D.3.
\item 811. See \textit{supra} note 800.
\item 812. Act of May 20, 1893, ch. 122, § 70, 1893 Tex. Gen. Laws, 182, 202-03, \textit{reprinted in} 10 Tex. Gen. Laws 612, 632-33 (Gammel 1898); \textit{TX. REV. CIV. STAT. ANN. art. 3976d} (1895); Act of Apr. 15, 1905, ch. 124, § 102, 1905 Tex. Gen. Laws 263, 290; \textit{TX. REV. CIV. STAT. ANN. art. 2782} (1911) (repealed 1971). Prior to the enactment of this statute, the state bureaucracy was hostile to the use of other languages in the public schools. O. N. Hollingsworth, the Superintendent of Public Instruction from 1874 until 1884, defined a public school as a “school taught in the English language.” \textit{EVANS, supra} note 201, at 101. One historian of the Texas school system noted that in 1884 “a number of schools were being taught . . . with no English whatever. In spite of much effort on the part of the educational authorities to enforce the law foreign settlers continued to teach their native languages in the state schools.” \textit{Eby, supra} note 201, at 198-99. Of course, there was no law in 1884 prohibiting the use of languages other than English in the public schools. Moreover, “efforts” on the part of the state bureaucracy to limit the teaching of other languages in the schools were contrary to the rights asserted by the Texians 50 years before.
\item 813. Act of May 20, 1893, ch. 122, § 62, 1893 Tex. Gen. Laws 199-200 (“No person shall receive a certificate of any class without first showing to the satisfaction of the county superintendent . . . his ability to speak and understand the English language sufficiently to use it easily and readily in conversation, and in giving instruction in all branches prescribed . . . . The county superintendent, unless he knows the fact personally, shall require satisfactory proof of the applicant that he has ability to use the English language as above provided, before issuing his recommendation to the board of examiners, and the examiners shall also consider it as an element in deter-
the number of schools taught in languages other than English, but it did not eliminate them. As one writer noted in describing the affirmation of the ban on instruction in other languages by the legislature in 1905, "[t]his law clearly had little effect on the use of German in the German Lutheran schools and probably in most other German schools (in 1905 one might just as well have passed a law ordering leopards not to be spotted)." Czech-Texans responded to the English-only mandate in the public schools by forming their own schools:

[T]hey were determined to run [these schools] in their native language. "It wasn't for nothing that we traveled halfway around the earth to settle in this new country," one settler commented. "Why, it was for freedom, for liberty, for the right to choose."

By 1907, the ability to "read and write intelligently the English language" became a requirement for any resident desiring to serve as a trustee of a school district. The Texas Legislature was so determined to ensure that non-English speakers did not serve as trustees that it authorized the county school superintendent to request the county attorney or district attorney to file suit to remove the trustee. The court was authorized to enjoin the trustee from acting as trustee during the pendency of the suit. Refusal to submit to an examination of his qualifications subjected the trustee to determining his grades upon the branches upon which he is examined.

814. CZECH VOICES, supra note 723, at xxiii (noting that instruction in Czech in the public schools declined rapidly in the late nineteenth century).

815. Wilson, supra note 544, at 233; see also Interview with Carl Saur, Sophienburg Museum & Archives, in New Braunfels, Tex. (July 21, 1994) (describing use of German-speaking teacher to help German-speaking children learn English in his elementary school in rural Comal County). The anti-Germany hysteria created when the United States entered World War I was more effective in eradicating German from the schools of Texas. See infra part VIII.B.5 (describing the survival of multilingual government in Texas despite English-only legislation).

816. Cowick, supra note 722, at *1.

817. Act of Apr. 16, 1907, ch. 106, § 93, 1907 Tex. Gen. Laws 204; TEX. REV. CIV. STAT. ANN. art. 2821 (1911); TEX. REV. CIV. STAT. ANN. art. 2745 (1925) (requiring the trustee to "read and write the English language intelligibly"); id. art. 2747 (providing for removal of trustee who does not possess required qualifications).
fault judgment and to removal from office. The existence of such elaborate precautions to ensure that non-English speakers did not serve as trustees says much about the hysteria against Tejanos and against immigrants during this period.

Until 1907, the selection of textbooks had been controlled by each local district. School districts were therefore free to select textbooks in the language spoken by the residents of the district. In 1907 the legislature created a State Text Book Board which was to "select and adopt a uniform system of text books to be used in the public free schools of Texas . . . ." While the act stated it should not be construed "to prevent the teaching of German, Bohemian, Spanish, French, Latin or Greek in any of the public schools as a branch of study," it also prohibited the teaching of these languages from interfering with the use of the standard textbooks prescribed. Any trustee or teacher who prevented the use, or aided in preventing the use, of the official English-language textbooks was guilty of a misdemeanor. If a German text had been used to teach German-speaking youngsters to read, that would no longer be permissible. Everyone was to learn in English from English-language texts. While the statute permitted the use of supplementary books, the act required that "full use . . . be made in good faith of the books adopted under this act." Four years later, apparently unconvinced that it had rooted out the use of other languages in the public schools of Texas, the legislature amended the statute to explicitly require that "the [supplementary] books so selected and adopted shall be printed in the English language." In 1918, the provision of texts for elementary grades not printed in the English language was made a misdemeanor.

819. See supra text accompanying notes 773 and 788 (describing the use of German-language and Czech-language texts).
821. Act of May 14, 1907, ch. 9, § 11, 1907 Tex. Gen. Laws 448, 454-55 (imposing a fine of "not less than five dollars nor more than fifty dollars for each offense and each day of such wilful [sic] failure or refusal by said teacher or wilful [sic] prevention of the use of the books by said school trustee shall constitute a separate offense").
This was not the only criminalization of the use of languages other than English in the public schools by the 1918 Legislature. That year brought the extension of the prohibition against using other languages to principals and superintendents. Any teacher, principal, superintendent, trustee or other school official who violated the prohibition was guilty of a misdemeanor, with each day's use of other languages considered a separate offense. Trustees and superintendents were given the duty to inspect schools regularly to ensure enforcement and to file criminal charges whenever a violation occurred.825

Ironically the Penal Code also required the schools to teach Texas history.826 Had the Texas legislators of this period studied Texas history, they would have learned that the statutes they were enacting to prohibit multilingual education were contrary to the long history of the use of multiple languages in schools in Texas—a tradition brought to Texas by the Anglo-American immigrants of the 1820s and 1830s. Apparently oblivious to this history, these Texas legislators deemed the speaking of other languages in the Texas schools to be a danger to the schoolchildren of Texas that had to be rooted out. In contrast, other threats facing Texas schoolchildren, such as child abuse, did not merit the criminalization warranted for the speaking of other languages.827 To these Texas legislators, the greatest threat to the children of Texas came from speaking to the children in a language they understood.

These criminal provisions were ameliorated somewhat in 1927, when the Legislature permitted the teaching of Spanish in public schools in counties bordering on the boundary line between the United States and Mexico, and with at least one city of 5,000 or more.828 For Tejanos living along the border, the fundamental

825. Act of Apr. 3, 1918, ch. 80, § 2, 1918 Tex. Gen. Laws 170; Tex. Penal Code art. 288 (1925) (repealed 1969). See Schmidt, supra note 506, at 67 (asserting that the law forbidding the use of school funds in support of instruction in foreign languages was directed at the German summer schools).


828. Act of Mar. 28, 1927, ch. 188, § 1, 1927 Tex. Gen. Laws 267. Section 2 of the Act recognized the "inestimable value" of knowing Spanish to the inhabitants of these border counties, and further noted that "in order to obtain a speaking knowl-
right claimed by the Texians was restored; for Tejanos elsewhere in the state, relief would not arrive until 1969.\textsuperscript{829}

In 1923, basic instruction in languages other than English in private and parochial schools was prohibited.\textsuperscript{830} Although the United States Supreme Court held a similar Nebraska statute unconstitutional less than three months after the passage of the Texas statute,\textsuperscript{831} the Texas Legislature responded by codifying the prohi-

\textsuperscript{829} See infra text accompanying notes 936-39.


The exemption for the border counties was affirmed in 1933. Act of May 13, 1933, ch. 125, 1933 Tex. Gen. Laws 325-26. Section 2 of the 1933 Act, with great understatement, noted that “present law greatly hinders the teaching of foreign language by restricting it to high school grades.” The exemption was codified in article 288 of the Texas Penal Code. It was repealed as unnecessary after bilingual education was authorized for the entire state in 1969. See infra text accompanying notes 936-39.

The state bureaucracy, however, was unwilling to remove the requirement. Purporting to act under the authority of the very statute that removed the English language requirement (the Act of June 21, 1969), the Texas Education Agency in 1975 enacted a regulation stating that “a nonpublic school shall be recognized as satisfying the requirements of the compulsory attendance laws when the basis for instruction is the English language . . . .” Tex. Admin. Code tit. 19, § 65.2 (1986). This purported requirement was finally removed in 1991. Tex. Educ. Agency, 16 Tex. Reg. 2585-86 (1991) (repealing § 65.2). Thus from 1976 to 1991, the Texas Education Agency required English as the language of instruction in nonpublic schools—almost 70 years after the U.S. Supreme Court had struck down such restrictions in Meyer v. Nebraska, 262 U.S. 390 (1923).

\textsuperscript{831} Meyer v. Nebraska, 262 U.S. 390 (1923).
bition on the use of other languages in the Penal Code. It now became a crime to send a child to a private or parochial school that did not make English the basis of instruction in all subjects.\textsuperscript{832} German Texans responded to the ban by creating German summer schools, often supported by the Grand Lodge of the Order of the Sons of Hermann, to provide instruction in German reading, writing, spelling, and music. These schools ended, however, with the onset of World War II.\textsuperscript{833}

What would the Anglo-American immigrants of the 1820s and 1830s have thought if Mexico had prohibited the use of any language other than Spanish in the schools? The rich pluralistic legacy of Texas was temporarily lost in a torrent of xenophobia.

2. English-Only Property Deeds

Until 1898, property records were regularly filed in languages other than English.\textsuperscript{834} In 1898, the legislature for the first time required that all property deeds be in English. A grandfather clause permitted the recording of deeds not in English if executed prior to the act and if accompanied by a verified translation.\textsuperscript{835} Despite this statutory requirement, however, the Texas Supreme Court enforced Spanish-language deeds.\textsuperscript{836}

3. English-Only Elections

The tradition of multilingual elections established by the Anglo-American immigrants to Mexican Texas persisted throughout


\textsuperscript{833} SCHMIDT, supra note 506, at 66.

\textsuperscript{834} See supra text accompanying notes 693-97 (describing property records in German); Ross v. Sutter, 223 S.W. 273, 276 (Tex. Civ. App. 1920) (describing the recordation of a Spanish-language power of attorney in Robertson County in 1852).

\textsuperscript{835} Act of Mar. 3, 1897, ch. 13, § 1, 1897 Tex. Gen. Laws 11, 12, reprinted in 10 Tex. Gen. Laws 1065-66 (Gammel 1898). The statute provided:

No deed, conveyance, or other instrument, whether relating to real or personal property, if in any other than the English language, shall be admitted to record; provided, that all such instruments executed prior to the taking effect of this act may be filed and recorded if accompanied by a correct translation thereof, the accuracy of which is sworn to before some officer authorized to administer oaths. Such translations shall be recorded with the original, and if correct shall operate as constructive notice from and after the date of its filing, if the original be authenticated in the manner required by law.

See also TEX. REV. CIV. STAT. ANN. art. 6826 (1911); TEX. REV. CIV. STAT. ANN. art. 6629 (1925). The current version of this statute can be found in TEX. PROP. CODE ANN. § 11.002 (West Supp. 1994).

\textsuperscript{836} Mondragón v. Mondragón, 257 S.W. 215 (Tex. 1923) (enforcing an instrument written in Spanish in 1916).
the nineteenth century. As large numbers of Mexican immigrants settled in Texas in the early twentieth century, fears increased about the political strength of these Spanish-speakers. The legislature passed a law in 1918 eliminating the use of interpreters at the voting booth, and prohibiting assistance by the election judge in any language other than English unless the voter had been a citizen for twenty-one years, intended to discourage Tejano voters “Who, with the potential naturalization of the Mexican immigrant, constituted a decisive bloc of voters in the state.” The statute worked. In the 1918 elections, the Texas Rangers told Tejanos at Corpus Christi they would be put in the penitentiary if they could not read, write and speak the English language and they voted. Fewer than seventy Tejanos voted in Nueces County in that

837. See supra part VII.B.
838. MATT S. MEIER & FELICIANO RIBERA, MEXICAN AMERICANS/AMERICAN MEXICANS: FROM CONQUISTADORS TO CHICANOS 129 (1993) (estimating that between 1900 and 1930, more than half a million Mexicans entered the United States as documented immigrants, and half of these remained). The statistics for documented immigration from Mexico reveal a dramatic increase in immigration after 1910. Statistics on documented Mexican immigration, broken down by 5-year periods, are set out below:

<table>
<thead>
<tr>
<th>Period</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900-1904</td>
<td>2,259</td>
</tr>
<tr>
<td>1905-1909</td>
<td>21,732</td>
</tr>
<tr>
<td>1910-1914</td>
<td>82,588</td>
</tr>
<tr>
<td>1915-1919</td>
<td>91,075</td>
</tr>
<tr>
<td>1920-1924</td>
<td>249,248</td>
</tr>
<tr>
<td>1925-1929</td>
<td>238,527</td>
</tr>
</tbody>
</table>

LEO GREBLER ET AL., MEXICAN IMMIGRATION TO THE U.S.: THE RECORD & ITS IMPLICATIONS 8 (Table I) (1966). From 1900-1904, Mexicans comprised only 0.07% of all documented immigrants to the United States. Id. By 1925-1929, Mexicans constituted 15.68% of all documented immigrants. Id. Although the statistics are not broken down by state, most Mexican immigrants stated their intent to reside in Texas during this period. Id. at 104 (Table 23). From 1910 to 1914 77.8% of all Mexican immigrants stated their intent to reside in Texas. Id. By the 1925-1929 period this had declined to 63.3%. Id. See also HERSCHEL T. MANUEL, THE EDUCATION OF MEXICAN & SPANISH-SPEAKING CHILDREN IN TEXAS 5-6 (1930) (noting that the number of foreign-born Mexicans in Texas increased 75.9% between 1900 and 1910, and 101.4% between 1910 and 1920, and that the Commissioner General of Immigration estimated the number of Mexicans to have increased by about 250,000 between 1920 and 1928).

840. MONTEJANO, supra note 253, at 143. See also Huff v. Duffield, 251 S.W. 298, 301 (Tex. Civ. App. 1923) (invalidating votes cast by Tejanos with Spanish-language assistance and describing the English-only law as “enacted to purify the ballot box of Texas”) (emphasis added). The Huff court seemed to use the term “purify” in a racial sense since a later portion of the same opinion permits Anglo voters who did not have their poll tax receipts to vote because the “right of suffrage is too sacred a right for a voter to lose [sic] it through no fault of his own.” 251 S.W. at 302. The Huff opinion’s description of the Tejano voters being assisted “through a foreign language,” id. at 300, is especially ironic since the votes were cast in Willacy County—a part of the state settled by Tejanos in the 1780s. II HANDBOOK OF TEXAS, supra note 114, at 911.
election.841 Notwithstanding its success at the polls, the legislature in the following year strengthened the ban. Assistance to disabled voters and to voters over sixty years of age who were unable to read and write, which was permitted by the 1918 Act, was required to be given in English.842 Its effect, of course, was not limited to Tejanos.843

The legislature had continued to permit immigrants to vote, but in 1903 it required that the immigrant have filed his declaration of intention to become a citizen more than six months before the election in which he wished to vote.844 In 1923 the legislature, for only the second time in the history of the State of Texas, limited suffrage to citizens only.845 Since immigrants were now required to learn English in order to attain U.S. citizenship,846 this provision ensured that future immigrants who did not speak English would not participate in the electoral process, although prior immigrants had always been able to do by meeting the simple requirements for naturalization.847

841. MONTEJANO, supra note 253, at 146-47.
842. Act of Mar. 13, 1919, ch. 55, § 1, 1919 Tex. Gen. Laws 95. The statute provided:

[T]he voter must in every case explain in the English language how he wishes to vote, and no judge of the election shall use any other than the English language in aiding the voter, or in performing any of his duties as such judge of the election, and in all cases where assistance is given hereunder, two judges of the election shall assist such voter, they having been first sworn . . . that they will confine their assistance to answering his questions in the English language[,] and where any assistance is rendered in preparing a ballot other than as herein allowed, the ballot shall not be counted, but shall be void for all purposes.

See also Tex. Rev. Civ. Stat. Ann. art. 3010 (1925). The provision of assistance in any language other than English was made a misdemeanor, with the election official subject to “a fine of not less than $200 and not more than $500,” or to “confinement in the County jail for not less than two months and not more than twelve months, or both.” Act of Mar. 13, 1919, ch. 55, § 2, 1919 Tex. Gen. Laws 95; Tex. Penal Code arts. 224 and 225 (1925).

843. Lee v. Whitehead, 182 S.W.2d 744, 746 (Tex. Civ. App. 1944) (invalidating votes cast in Wilson County because assistance was provided in Polish and in German).


845. Act of Mar. 28, 1923, ch. 149, § 1, 1923 Tex. Gen. Laws 318-19; Tex. Rev. Civ. Stat. Ann. art. 2955 (1925). Suffrage was limited to citizens from 1845 until 1869, although non-citizens who had resided in Texas at least six months at the time of annexation were permitted to vote. See supra note 542.

846. See supra note 543.
847. See supra part VII.B.
4. The Publication of Laws Solely in English

Although Texas had always published laws in other languages,\textsuperscript{848} the Legislature in 1919 revised the statutes relating to public printing and deleted the authorization for the printing of laws in other languages.\textsuperscript{849} The elimination of this provision is extraordinary since it occurred in the midst of the period of the highest levels of immigration in American history. Moreover, immigration from Mexico into Texas was especially heavy as Mexican refugees fled the violence connected with the Mexican Revolution of 1910.\textsuperscript{850}

5. The Survival of Multilingual Government Despite English-Only Legislation

Despite the best efforts of the Texas Legislature, languages other than English continued to be used in governmental activities in Texas. Whatever Austin might think it was dictating through state law, bilingual government remained a reality in South Texas and West Texas, as it had to if government was to function at all. Children continued to be instructed in Spanish, as they had to be if they were to learn anything.\textsuperscript{851} English-only schools succeeded only in creating an extraordinarily high rate of dropouts among Tejanos and the notorious (among Chicanos) practice of punishing children because they spoke the only language they knew: Spanish.\textsuperscript{852}

Similarly, the statutes requiring English-only elections were ignored in areas of the state where many did not speak English. One set of this author's grandparents, native-born Tejanos, spoke virtually no English. Notwithstanding the state law requirements that all voting be conducted in English, they always voted.\textsuperscript{853}

The federal government recognized the need to communicate with Tejanos in Spanish in order to assure victory in World War I. When the draft was instituted during World War I, Tejanos were

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\textsuperscript{848} See supra parts VI.A.2 & VII.A.2.

\textsuperscript{849} Act of Aug. 7, 1919, ch. 84, 1919 Tex. Gen. Laws 303-08.

\textsuperscript{850} See supra note 838.

\textsuperscript{851} José María Martínez, Mis Memorias [My Memories] (1994) (narrated to José Roberto Juárez, Sr., 1994) (stating that the school program at Dolores (Zapata County, Tex.) in 1917 or 1918 was "entirely in Spanish because the residents only spoke Spanish" but that the teacher, Mrs. Ochoa, taught them some English) (translation by José Roberto Juárez, Jr.).

\textsuperscript{852} See, e.g., Carlos Guerra, Some Forget Bilinguals Also Speak English, SAN ANTONIO EXPRESS-NEWS, July 16, 1994, at C1 (rejecting argument by retired teacher that newspaper columnist should be grateful his teachers punished him for speaking Spanish); Méndez, supra note 25, at 199 (noting that Tejanos in South Texas were aware of "the sinister ends" served by the prohibition on speaking Spanish).

\textsuperscript{853} Interview with María Antonia M. Juárez (author's mother) & Irma M. Burón (author's aunt), in Castle Hills, Tex. (July 16, 1994).
advised of the need to register through Spanish-language notices placed by local draft boards and law enforcement officials.\textsuperscript{854} Tejano businesspersons were notified of wartime rationing regulations through Spanish-language notices in 1917 and 1918.\textsuperscript{855}

Given the demographics of Texas and the inadequacies of the Texas public school system in teaching English to non-English-speakers, the need for multilingualism in government is not surprising. The efforts of the early twentieth-century Texas legislatures to impose an English-only regime may have made multilingualism more difficult, but it certainly did not eradicate it.

6. The Legal Effect of English-Only Legislation on Interpretation of the Texas Bill of Rights

What is the effect of these legislative attempts to impose monolingualism on the interpretation of the rights protected by the Texas Bill of Rights? One argument might be that the existence of these long-standing legislative practices prevent the Texas courts from recognizing any language rights under the Texas Constitution. The Texas courts have in the past been willing to acquiesce in long-standing interpretations of the Texas Constitution by the Texas legislature.\textsuperscript{856} If the Texas legislature for about sixty years of this century believed it could constitutionally prohibit the use of other languages in government, the argument would go, then the courts should defer to this legislative interpretation.

There are five problems with such an argument. First, legislative acquiescence is a factor that is given controlling force only if "after applying sound rules of construction . . . the true intent and meaning of the Constitution remains doubtful."\textsuperscript{857} There should be no doubt about the meaning of the Texas Constitution with respect to language rights after applying the "fundamental" rule of construction: giving effect to the intent of the framers.\textsuperscript{858}


\textsuperscript{855} Id. at 585.

\textsuperscript{856} Director of Dep't of Agric. & Env't v. Printing Indus. Ass'n of Texas, 600 S.W.2d 264, 269 (Tex. 1980) (stating that "[g]eneral public acceptance of and acquiescence in administrative and legislative interpretations over a long period of time are particularly persuasive and are to be given serious consideration in construing constitutional provisions"); Shepherd v. San Jacinto Junior College Dist., 363 S.W.2d 742, 751-53 (Tex. 1963) (same); Brown v. Strake, 706 S.W.2d 148, 152 (Tex. Ct. App. 1986) (same).

\textsuperscript{857} Shepherd, 363 S.W.2d at 761 (Calvert, C.J., dissenting).

\textsuperscript{858} See supra notes 79-83 (cases holding that the fundamental rule in interpreting the Texas Constitution is to give effect to the intent of the framers).
The second problem is the highly selective nature of the period used to justify a legislative judgment about the use of other languages. The earliest legislatures, the Congress of the Republic of Texas and the first state legislatures, practiced multilingualism. The actions of these legislatures, immediately after the Texas Declaration of Rights and the first Bill of Rights were enacted, should arguably be given greater weight. The attempt to limit the use of languages other than English did not arise until the 1890s—more than sixty years after the assertion of a right to communicate with government in a "known tongue" by the Texians.

The third problem with the argument is that because the legislative interpretation of multilingualism in government has varied over the years the use of the principle of "legislative acquiescence" is inappropriate. That principle applies only when the legislative practice has been consistent.

Fourth, the use of legislative acquiescence by the courts is likely to encourage legislatures to "set aside constitutional restrictions, in the belief that, if the unconstitutional law can once be put in force, and large interests enlisted under it, the courts will not venture to declare it void, but will submit to the usurpation, no matter how gross and daring."

Finally, and more fundamentally, legislative practice cannot waive constitutional rights. At about the same time that the Texas Legislature was enacting the restrictions described above on the use of languages other than English, the Texas Supreme Court approved an opinion written by the San Antonio Court of Civil Appeals which quoted one of the principal treatises on constitutional law of that period:

Acquiescence for no length of time can legalize a clear usurpation of power, where the people have plainly expressed their will in the Constitution, and appointed judicial tribunals to enforce it. A power is frequently yielded to merely because it is claimed, and it may be exercised for a long period, in violation of the constitutional prohibition, without the mischief which the Constitution was designed to guard against appearing, or without any one being sufficiently interested in the subject to

859. American Indemnity Co. v. City of Austin, 246 S.W. 1019, 1023 (Tex. 1922) (noting that “[l]egislative construction and contemporaneous exposition of a constitutional provision is of substantial value in constitutional interpretation”) (emphasis added); San Antonio Indep. Sch. Dist. v. State, 173 S.W. 525, 527 (Tex. Civ. App. 1915) (refusing to give any weight to the interpretation of the Constitution by any Legislature that did not prepare and submit the constitutional provision).

860. American Indemnity Co., 246 S.W. at 1024 (citing the “entire history” of legislative practice under the 1876 Constitution).

861. THOMAS McINTYRE COOLEY, CONSTITUTIONAL LIMITATIONS 150 (7th ed. 1903) (quoted in Shepherd, 363 S.W.2d at 762 (Calvert, C.J., dissenting)).
raise the question; but these circumstances cannot be allowed
to sanction a clear infraction of the Constitution.862

Thus the court concluded: "Indifference and lack of vigilance have
lost some of the dearest rights to the people, but they can always be
regained by energy and persistence."

In the 1960s and 1970s, energy and persistence by Tejanos re-
sulted in the enactment of the wide range of multilingual govern-
mental services described below.863

C. The Mixed Record of the Texas Courts in Considering
the Language Rights Asserted by the Framers

The hostility towards the use of other languages did not affect
only the legislative branch; the Texas courts in the 1870s began to
issue opinions interpreting the Texas Bill of Rights that failed to
consider the language rights asserted by the framers. Two issues
demonstrate the Texas judiciary's abandonment of any effort to ap-
ply the Texas Bill of Rights in a way that would have been consist-
tent with the right asserted by the framers to government in a
"known tongue": the service of jurors who do not speak English and
the provision of interpreters to criminal defendants who do not
speak English.

1. Language & Jurors

a. The lack of English language requirements for jurors

The first statute setting forth the required qualifications for
jurors limited jurors to persons under sixty years of age "of good
moral character and qualified electors under the constitution, and
freeholders in the State or householders in the county."864 The
statute established no requirement that a juror speak English, and
non-English speaking juries were probably used in Bexar County,
in Comal County, and in Webb County.865 Indeed, the legislature
recognized the small numbers of English-speaking citizens when it

(qouting THOMAS M CINTYRE COOLEY, CONSTITUTIONAL LIMITATIONS 106 (7th ed.
1903). As noted by Chief Justice Calvert, when the holding of a court of appeals is
"clearly challenged by application for writ of error and with the issue squarely drawn
by the answer thereto, we 'refused' the application and thus made the holding as
authoritative as if we had made it ourselves." Shepherd, 363 S.W. 2d at 760 (Calvert,
writ when the Court of Appeals' judgment "is a correct one and where the principles
of law declared in the opinion of the court are correctly determined").

863. See infra part IX.

Laws 1476 (Gammel 1898).

865. See supra parts VII.C.1, VII.C.2, and VII.C.3.
enacted a statute explicitly permitting Spanish to be used in justice of the peace courts west of the Nueces River. 866

Although juror service was limited to "electors," it should be remembered that immigrants applying for naturalization during this period were not required to know English. 867 Moreover, large numbers of native-born Tejanos did not speak English. Finally, the Texas Constitution of 1845 permitted non-citizens resident in the state six months prior to December 29, 1845 to vote. 868 The extension of voting to non-citizens meant that these individuals were also entitled to serve on juries. 869 In 1873 the legislature explicitly authorized non-citizens and citizens to serve on juries, regardless of whether they were registered to vote, so long as they "possess the necessary qualifications to register as a voter." 870 While the legislature in 1876 added citizenship as a qualification for serving as a juror, 871 the courts interpreted this language to permit a non-citizen voter to serve. 872

b. The Texas courts imply an English language qualification for jurors

Although no statute required that a juror speak English, by 1874 the Texas courts, ignoring the beliefs of the framers who had insisted on a judicial system in a "known tongue," found an implied requirement that a juror speak English. In Lyles v. State, 873 an Anglo was tried for murder in El Paso County. The jury, reflecting the population of El Paso County at that time, had nine Tejano ju-

866. See supra text accompanying notes 525 and 526.
867. See supra text accompanying note 543.
871. Act of Aug. 1, 1876, ch. 76, § 1, 1876 Tex. Gen. Laws 78 (providing that "no person shall be qualified to serve as a juror on the trial of any cause, civil or criminal, unless he be a legal voter, a citizen of this State, a freeholder in this State, or household in the county in which he may be called to serve; of sound mind and good moral character; provided, that an inability to read or write shall be a sufficient cause for challenge, without being charged to either party"), reprinted in 8 Tex. Gen. Laws 914 (Gammel 1898); see also Tex. Rev. Civ. Stat. Ann. arts. 3009 & 3010 (1879) (imposing similar qualifications); Tex. Rev. Civ. Stat. Ann. arts. 3138 and 3139 (1895) (same); Tex. Rev. Civ. Stat. Ann. arts. 5114 & 5115 (1911) (same).
873. 41 Tex. 172 (1874).
rors who did not speak English. Using methods similar to those used by the Anglo-American immigrants of Mexican East Texas, and probably used by the German immigrants of Comal County as well, the El Paso court translated the English-language charge for the jury orally. Citing no statutory authority, and apparently oblivious to the practices in those areas of the state with non-English-speaking populations, the Texas Supreme Court asserted:

It is scarcely necessary to remark that the proceedings in the courts of Texas are in the English language. No other is allowed. There is no exception, save in the limited authority to use the Spanish language in judicial proceedings before justices of the peace in certain counties west of the Guadalupe river.

\[874\]

The court dismissed the lack of statutory authority for its holding disqualifying jurors who did not speak English by claiming:

The code does not, in express terms, make this one of the disabilities of a juror; and the reason would seem to be, that neither the framers of the code nor the Legislature which approved and adopted it supposed it possible that jurors would be forced on a party to try a cause when they could neither speak nor understand the language in which the trial was had.\[875\]

The court concluded by using circular reasoning: "[English is] the only language recognized in this State as the language to be used in the district or other courts, save the exceptions cited in this opinion."\[876\] Until the decision in Lyles, this was factually incorrect.\[877\] Even after the decision in Lyles, court proceedings continued to be conducted in Spanish.\[878\]

The Texas Supreme Court properly announced in Lyles that the "accused was entitled to a jury to pass upon his case who could understand the proceedings had during the trial."\[879\] But the

\[874\] Id. at 176.
\[875\] Id. at 177.
\[876\] Id.
\[877\] See also Zunago v. State, 138 S.W. 713, 719 (Tex. Ct. App. 1911) ("We have been unable to find any statutory provision requiring that all pleadings and court proceedings shall be in the English language. We take it that no such provision would be necessary; that it would go without saying that all proceedings in our courts of every character whatsoever should be in the English language and no other.").

\[878\] De Leon, supra note 572, at 36 (noting that visitor to San Antonio in 1892 complained of the inability of Tejanos to speak English and alluded to "the fact that courts were held in Spanish").

\[879\] Lyles v. State, 41 Tex. 172, 176 (1874). This also seemed to lead the court to properly conclude that if non-English-speaking jurors are used, a written translation of the charge must be provided to them. Id. at 179-80; see also McCampbell v. State, 9 Tex. Crim. 124, 126 (1880) (stating that a trial with non-English speaking jurors "would be equally fair and impartial, within the meaning of the Constitution, [as one] before a jury of deaf mutes, who, by reason of their misfortune, could not hear a word of the testimony or argument of counsel; and a trial before either could
court's assumption that these proceedings were in English led it to provide the wrong remedy to the defendant. The jury had understood the proceedings in *Lyles* because most of the case no doubt was conducted in Spanish.**880** Texas history provided ready solutions to the dilemma facing the Texas Supreme Court. One such solution would have been to ensure that the English-speaking defendant was provided with simultaneous interpretation of all of the proceedings.**881** While any appeal would necessarily have to be in English, since most of the appellate judges were monolingual English-speakers, Texas history provided the solution: translate the record of any case that is actually appealed into English.**882** Alternatively, the court could have followed the model used by the bilingual court system set up by Mexico in Texas in 1834 to meet the demands of the Anglo-American immigrants: if a jury that spoke the language of the accused could not be found, the case would be transferred to a district where such a jury could be found.**883** Either solution would have protected the right of the accused to a fair trial, as well as the right of all citizens to serve on juries.**884** The Texas Supreme Court held that the presence of Spanish-speaking jurors deprived the defendant of his rights under the due course clause.**885** But the court ignored the effect of its ruling: depriving almost all Tejanos, few of whom spoke English at this time, of the "privilege" of serving on juries without the due course the framers intended.**886**

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**880.** The judge apparently spoke Spanish since he orally translated the charge. Almost all of the witnesses were Tejanos. *Cf.* *Yáñez v. State*, 6 Tex. Crim. 429 (1879) (rejecting challenge in Cameron County trial in which several Tejano jurors did not speak English). The *Yáñez* court reproduced in its report of the facts a Spanish-language obscenity uttered by the defendant, without any translation. *Id.* at 431.

**881.** See infra parts VII.C.2 and XI.B.

**882.** See supra part V.G (discussing law of Coahuila and Texas providing for trials to be conducted in English, and the record to be translated into Spanish for any appeals to the state capital).

**883.** See supra part V.G.


**885.** TEX. CONST. art. 1, § 16 (1876).

**886.** As more Tejanos learned English, language became an inadequate screening device, and some counties resorted to the blatantly racist exclusion of Tejanos from
The effect of the decision in Lyles can be seen in Essary v. State, a Webb County case in which apparently only one Tejano served on the jury. Then, as now, the population of Webb County was overwhelmingly Tejano. The only Tejano on the jury in Essary worked in the office of the Webb County tax assessor. The Anglo defendant's lawyer required him to read a passage from the Penal Code, a challenge he met. Nonetheless, on appeal Essary's lawyer "challenged this juror because he was a Mexican, and for the reason, as alleged, that he did not understand the English language sufficiently well to comprehend the proceedings of the court." One suspects Essary's lawyer was unwittingly honest about the real reason for raising the English fluency challenge. The Texas Court of Criminal Appeals rejected the challenge.

The exclusion of a majority of the population of West Texas and South Texas from eligibility as jurors is ironic since the framers of the Texas Constitution claimed Mexico's failure to provide trial by jury was one of the principal causes for declaring independence. The Anglo Texians protested vigorously whenever they perceived the Mexican government was conditioning their participation in the Mexican legal system on an ability to speak Spanish. The judicial implication of an English-language requirement for jurors where none had been imposed by the legislature did not comport with the intent of the framers of the Texas Bill of Rights.

c. The literacy requirement is interpreted to mean literacy in English

Although nothing in the Texas Constitution or in the Texas statutes states that a juror must speak English, the courts have construed the statutory requirement that the juror be literate as a requirement that the juror be literate in English. When first
presented with this question in *Nolen v. State*, the Texas Court of Appeals noted that implying that the juror must be able to read and write in English "would seem a hardship to many intelligent citizens of superior education," declined to decide the question, and called on the legislature to clarify the statute. Two years later, the court was forced to decide the issue when confronted in *Wright v. State* with a Kendall County juror who read and wrote German, and who "did not understand some [English] words well, but an examination showed him to be possessed of a very fair knowledge of English." Citing dicta in *Nolen v. State*, the court concluded that the statutory literacy requirement "must be held to mean an ability to read and write the English language." The dicta in *Nolen* argued:

> When we consider, however, that the English is the common language of the country, and that it is the language in which our courts are conducted, and in which all our legislative proceedings have been conducted from the date of our Declaration of Independence, in 1836, to the present time, and particularly when we consider that this was the language in which were conducted the proceedings of the Legislature which passed the law in question, and in which the laws were all written, in connection with the manifest fact that the Legislature intended to place the jury service in the hands of those who were fitted for its performance by virtue of their interest in the due administration of the laws, to the exclusion of the rabble, we confess that the inclination of our minds is to hold that when the Legislature enacted the law that inability to read and write is a disqualification of a juror, they had in their minds the language they themselves made use of, and the common language of Texas and the other American States—the English language.

The court was simply wrong about several of the "facts" used to support its conclusion that a juror must be able to read and write in English. English was not the common language at this time for Tejanos, German Texans, or Czech Texans. Nor was English the only language used for court proceedings. Legislative proceedings had not been conducted solely in English since 1836. Finally, while the laws were written in English, those laws were

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893. 9 Tex. Crim. 419, 423 (1880).
894. *Id*.
896. *Id.* at 167.
898. *See supra* parts VII.C.1, VII.C.2, and VII.C.3.
899. *See supra* part VII.A.1.
published in other languages. Whatever the status of languages other than English might have been in other states, the court ignored the historic practices of the Republic of Texas and of the State of Texas.

To the extent that the decision in *Wright* excluded native Tejanos from juries, it may have served the legislative purpose described in *Nolen*: "exclusion of the rabble." When a Webb County court invoked the statutory exception permitting illiterate voters in counties where there are not sufficient literate voters, and permitted a Tejano who spoke some English but did not read or write it to serve as a juror, the Texas Court of Appeals rejected the attempt, holding in *Garcia v. State* that the court could not enter a general order suspending the literacy requirement but instead had to specifically find in each case that there were insufficient voters literate in English. Thirty-four years later, the Texas Court of Criminal Appeals, without discussing *Garcia*, approved the use of an illiterate, but presumably English-speaking, Anglo juror in Taylor County, holding that the defendant had the burden of showing there were sufficient literate persons in the county to require that jurors be literate.

d. The Texas courts interpret English language skills broadly

The Texas Legislature did not specifically authorize a juror to be excused for inability to understand or speak English until 1983, and this authority is permissive, not mandatory. Some of the lower courts have nonetheless been willing to dispense with the statutory requirement of literacy so long as a requirement that is not in the statute, English-speaking skills, is present. However, this English-language requirement has been construed liberally. Thus, if a party fails to question or challenge a juror who does not speak English, the objection is waived. A

900. See supra part VII.A.2.
901. Tex. Rev. Civ. Stat. Ann. art. 3011 (1879) (providing that "[w]henever it shall appear to the court that the requisite number of jurors able to read and write can not be found within the county, the court may dispense with the [literacy requirement]").
905. Yáñez v. State, 6 Tex. Crim. 429, 431-32 (1879) (rejecting challenge to "Mexicans who did not understand the English language, and could neither read nor write ... [and] did not understand the charge of the court"); San Antonio & A.P. Ry. Co. v.
Czech immigrant who said, "I cannot write the English language much, but I can understand," was found to be a qualified juror.\textsuperscript{906} When a German immigrant was challenged as a juror because he admitted there were "some words in the English language he might not understand the meaning of," the Texas Court of Criminal Appeals rejected the challenge, noting, "If we were to hold as disqualified all citizens who do not understand the meaning of all words in the English language, the list of men qualified to serve on the juries in this state would be quite limited."\textsuperscript{907} A juror who has difficulty understanding English if it is spoken rapidly and has to ask other jurors what some words mean is not "absolutely disqualified."\textsuperscript{908} Similarly, a juror who does not understand English "too well" and can read English "just a little bit" is qualified.\textsuperscript{909} But when a challenge is properly raised, jurors who do not speak English sufficiently may be excluded.\textsuperscript{910}

2. Interpreters

Whatever languages may have been used in the Texas courts in the past, today English is the language of the Texas courts. As in the past, large numbers of Texans speak other languages. The

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Gray, 66 S.W. 229, 232 (Tex. Civ. App. 1901) (rejecting defendant's challenge to Kerr County juror who "could not read, write, understand or speak the English language" because it had failed to question the juror), rev'd on other grounds, 67 S.W. 763 (Tex. 1902); Bailey v. Tuck, 591 S.W.2d 605, 608-09 (Tex. Ct. App. 1979.) (rejecting challenge to juror who allegedly could not "read, write or understand English" and who had some of the issues translated into Spanish by another juror so that he "might be sure that he correctly understood the issues"); Guzmán v. State, 649 S.W.2d 77, 79 (Tex. Ct. App. 1982) (rejecting challenge to juror who allegedly could not comprehend English and who asked that the entire charge be translated into Spanish); Van Dalen v. State, 789 S.W.2d 334, 336 (Tex. Ct. App. 1990) (rejecting challenge to juror who testified "he had difficulty understanding English if it was spoken rapidly and that he had asked other jurors what some words meant" in part because defendant failed to ask panel whether they could understand English).

906. Duncan v. State, 146 S.W.2d 749, 754 (Tex. Ct. App. 1940) (opinion on motion for rehearing). The juror did not speak English as a native speaker would; he testified "nobody didn't ask me that question. . . . I read the newspaper some time." \textit{Id.}


908. \textit{Van Dalen}, 789 S.W.2d at 336.


910. McCampbell v. State, 9 Tex. Crim. 124, 125-26 (1880) (reversing Cameron County trial in which jurors did not speak or understand English); Sullenger v. State, 182 S.W. 1140, 1142 (Tex. Ct. App. 1916) (reversing a defendant's conviction when a German immigrant served on a jury who "had lived in America only about five years, . . . could read and write the English language a little bit only, and . . . could understand a little English, just enough to tell what people were talking about, and did not understand all that was asked him touching his qualifications as a juror, and . . . if he was taken on the jury, he could not understand all that was said, and would have to guess at a part of it from what he heard").
Texas courts must therefore consider how to provide access to the judicial system for these individuals.

This problem did not exist in those areas of the state with large numbers of non-English speaking persons until the late nineteenth century. Until then, government operated bilingually, or provision was made for interpreters at the local level. After the Texas Supreme Court held, however, that court proceedings in Texas must be in English, the courts began to contend with claims from criminal defendants who did not speak English and had not been provided an interpreter.

The 1879 Code of Criminal Procedure required the provision of an interpreter when a witness did not “understand and speak the English language.” The statute also authorized any person to be subpoenaed to act as the interpreter. Provision for paying for such interpreters, however, did not exist until 1918.

The same 1918 statute also appears to have authorized payment for interpreters in civil cases for the first time as well. The Legislature had provided for interpreters in civil cases since 1879. Unlike modern practice, which requires an interpreter even if the court reporter is bilingual, the Texas Supreme Court assumed an interpreter would not be required if the officer taking the deposition understood English and the language of the witness, but otherwise the officer “should undoubtedly secure an interpreter, and swear him.”

Although the Code of Criminal Procedure had provided for interpretation for witnesses who did not speak English, no statute authorized interpretation for defendants who did not speak English. Until 1911, the response of the Texas courts was that criminal

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911. See, e.g., supra note 680 (describing payment of interpreters for the Comal County courts).
914. Act of Mar. 18, 1918, ch. 15, § 1, 1918 Tex. Gen. Laws 26 (authorizing payment of $3.50 per day by county commissioners’ courts to interpreters in criminal cases).
915. Id. § 2, at 26 (authorizing payment of $3.00 per day to interpreters in civil cases, to be paid as part of the costs of the case).
917. Schunior v. Russell, 18 S.W. 484, 486 (Tex. 1892) (criticizing, but permitting, one of the attorneys in the case to interpret although unsworn, because the officer taking the deposition was also bilingual).
918. See supra note 913.
defendants had no right to an interpreter.\textsuperscript{919} In 1911, the Texas Court of Criminal Appeals rejected a challenge to the lack of interpretation made after all of the testimony had been given, but concluded that if a timely request had been made:

the court would and should have granted the request and furnished the defendant and his attorneys with an interpreter, if they or either of them deemed one necessary or proper, and would and should have given a sufficient time for the interpretation of the testimony of any or all of these witnesses and for a consultation between the appellant and his attorneys in everything pertaining to the testimony of these witnesses."\textsuperscript{920}

In 1948, the Texas Court of Criminal Appeals heard an appeal from a death sentence for murder from Webb County in which a Spanish-speaking defendant complained of the lack of an interpreter. Initially, the court conceded that “it would seem but fair that a party on trial should be able, while confronted with his accuser, to hear and understand what he says,” but refused to find a right to an interpreter because “we find no act of the legislature or decisions of this court which require an interpreter to translate any part of it into another language. We have no authority to write a new law on the subject.”\textsuperscript{921} On motion for rehearing, however, the Court noted that the Texas Constitution guarantees a criminal defendant the right to confront the witnesses against him,\textsuperscript{922} and concluded:

All persons are charged with notice that for crimes committed against the laws of this State, the trial will be conducted in the English language and that for non-English speaking witnesses the law has made provision for the translation of their testimony by interpreters into the English language, with no express statutory provision requiring interpreters for those accused of crime who do not speak or understand the English language. Such fact tends to support the trial court’s ruling. On the other hand, we know that in this State, especially along the Rio Grande border, our citizenship is comprised of Latin Americans who speak and understand only the Spanish language. These citizens, as also nationals of the Republic of Mexico (which was the status of appellant), when brought before the courts of this State charged with crimes against the laws of this State, are entitled to be tried according to the Constitution and laws of this State. \textit{This, of necessity, means they are entitled to}

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\item \textsuperscript{919} Livar v. State, 9 S.W. 552, 554 (Tex. Ct. App. 1888) (holding in a death penalty case in Hidalgo County that “[t]here is no law requiring the court to furnish a defendant with an interpreter on his trial”).
\item \textsuperscript{920} Zunago v. State, 138 S.W. 713, 719-20 (Tex. Ct. App. 1911). \textit{See also} Luera v. State, 63 S.W.2d 699, 701 (Tex. Ct. App. 1933) (rejecting appeal when interpreter was not requested).
\item \textsuperscript{921} Garcia v. State, 210 S.W.2d 574, 577 (Tex. Ct. App. 1948).
\item \textsuperscript{922} \textit{Id.} at 578 (opinion on motion for rehearing) (\textit{citing} Tex. Const. art. I, § 10).
\end{itemize}
be confronted by the witnesses under the same conditions as apply to all others. Equal justice so requires. The constitutional right of confrontation means something more than merely bringing the accused and the witnesses face to face; it embodies and carries with it the valuable right of cross-examination of the witness.

... [In denying to appellant an interpreter, the trial court abused his discretion and appellant was thereby denied a right granted by the Constitution.]

Here, at last, is a decision that enforces the principles set out by the framers of the Texas Bill of Rights.

3. Cases Considering the Multilingual Heritage of Texas

While decisions such as Lyles v. State failed to consider the multilingual heritage of Texas, not all Texas courts did so. Just as they had done previously, the Texas courts recognized the multilingual heritage of Texas and considered it when interpreting Texas law. For example, Texas courts accepted Spanish-language documents as evidence without translations.

In Western Union Telegraph Co. v. Olivarri, the plaintiff sought to recover damages when the defendant failed to deliver a Spanish-language telegram indicating the plaintiff's newborn twins were about to die and that he should return to San Antonio. The defendant argued it could not be held liable for failing to deliver a message of such importance when the message was not written in English. The Texas Supreme Court affirmed the judgment against Western Union.

In 1947, Jerry Machann, a Czech Texan with a "meager education" who "spoke broken English," attempted to file an appeal of a worker's compensation claim in Fort Bend County. The County Clerk took the papers, said, "I'll take care of it," and filed them in the wrong court. By the time the appeal was filed in the correct

923. Id. at 580 (emphasis added).
924. See, e.g., Landa v. Obert, 14 S.W. 297 (Tex. 1890) (reversing judgment against German Texan who did not speak English and who alleged he was erroneously accused of embezzlement and coerced into an English-language settlement that did not state the terms of the agreement actually reached).
925. Ross v. Sutter, 223 S.W. 273, 276 (Tex. Civ. App. 1920) (affirming trial court's acceptance of a Spanish-language power of attorney and noting there is "no rule of evidence which forbids the introduction in evidence of a power of attorney for the reason that it is not in the English language. Presumably the court understood the Spanish language, and, if he did not, he could call to his aid an interpreter, in order to intelligently read the same"). For a discussion of the refusal of the Texas Court of Criminal Appeals to accept such documents without translation, see infra part XI.A.
926. 135 S.W. 1158 (Tex. 1911).
928. 135 S.W at 1159.
court, the twenty-day statute of limitations had expired. The United States Court of Appeals for the Fifth Circuit, applying Texas law, concluded that "in the light of his sparse education and background," the suit was timely filed.929

In Logue v. Scrivener,930 a codicil to the will of a German Texan was interpreted. The codicil stated in part:

> About Contents of This Notice of my last Wish —
> Arnold R. Scrivener shall be The Gaurdine of the Live Oak Co Farm
> This shall be devided in 3 equal parts — My Oil Well Money —

The San Antonio Court of Civil Appeals used German grammar to construe the codicil:

> There is no period after the word “Farm” but the sentence above begins with a capital letter and also begins on a separate line. It is true that the phrase “My Oil Well Money” is set off by two dashes, but when it is considered that in the German language the subject of a sentence is often placed at the end rather than at the beginning, we experience no difficulty in determining that the subject of the sentence is “My Oil Well Money,” and not the Live Oak County Farm. When this is determined, then the intention of the testatrix becomes perfectly clear and understandable.932

In Malone v. State,933 a criminal defendant appealed an order revoking his probation because the revocation motion alleged the complaining witness was Powell Battle, while the proof showed the witness was Paul Battell. On motion for rehearing, the Texas Court of Criminal Appeals affirmed the judgment, noting:

> [Elven if the merits were before the Court, the contention would be overruled. Texans of German extraction still aware of the mother-tongue, and others familiar with the language, know that Paul is pronounced in German communities as pa-ool, sounding the same as Powell. Also, Houstonites, and others familiar with the well-known Houston department store Battelsteins, know the first two syllables of that name are regularly sounded the same as if spelled battle. Hence, Paul Battell and Powell Battle are not patently incapable of being sounded the same.934

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929. Travelers' Ins. Co. v. Machann, 188 F.2d 828, 829-30 (5th Cir. 1951) (emphasis added).
931. Id. at 88.
932. Id. at 89.
933. 630 S.W.2d 920 (Tex. Crim. App. 1982).
934. Id. at 921 n.1 (opinion on rehearing en banc); cf. id. at 922 (Onion, J., dissenting) (stating that “I didn't know until today that Harris County was a German
IX. Language in Modern Texas

Notwithstanding the long history of multilingual government in Texas, and the growing Tejano population, the English-only laws so alien to Texas remained in place until the 1960s. In 1963, the Texas Legislature removed the prohibition on the use of languages other than English to assist a voter.\textsuperscript{935} The Legislature in 1969 finally repealed the provisions of the Penal Code making it a crime to teach in any language other than English.\textsuperscript{936} Although English remains “the basic language of instruction,”\textsuperscript{937} the 1969 Education Code explicitly permitted bilingual instruction “in those situations when such instruction is educationally advantageous to the pupils.”\textsuperscript{938} The Texas Legislature finally recognized the absurdity of these restrictions:

The fact that instruction in the earlier years which includes the use of language the child understands makes learning easier; and the further fact that in this highly technical and scientific world where transportation and communication have literally reduced the size of the world, knowledge of languages and understandings of other peoples and where in this hemisphere Spanish is spoken by as many people as speak English, a second language becomes vitally important . . .\textsuperscript{939}

\textsuperscript{935} Act of June 10, 1963, ch. 424, § 60, 1963 Tex. Gen. Laws 1017, 1064 (permitting an election officer to communicate with a voter who does not understand English, or to use a qualified voter in the precinct as an interpreter). The current version of this authority is codified at Tex. Elec. Code Ann. § 61.031(b) (West 1986).


\textsuperscript{937} Id. § 1, at 871, (codified at Tex. Educ. Code Ann. § 21.109(a) (West 1987)).

\textsuperscript{938} Id. § 2. Although Article 288 of the Penal Code had previously permitted bilingual instruction only in areas of Texas along the Mexican border, bilingual education had already been implemented in other areas of the state. See Atilano A. Valencia, Identification & Assessment of Ongoing Educational & Community Programs for Spanish-Speaking People 1-9 (1969) (describing the Good Samaritan Center’s bilingual education program in San Antonio); id. at 11-17 (describing the Bilingual Follow Through Project of the Corpus Christi Public Schools, operated since 1967); Proceedings of National Conference on Educational Opportunities for Mexican-Americans 66-67 (1968) (summarizing a bilingual program demonstration conducted at the conference by children from San Antonio). Presumably any such programs receiving funding under the Bilingual Education Act of 1968 would have been authorized under the Supremacy Clause. U.S. Const. art. VI.

With these important breakthroughs,\textsuperscript{940} and with growing Tejano clout in the Texas Legislature, the state of Texas began to respond to the needs of its diverse population. Today, the laws of Texas provide a multitude of services to individuals who do not speak English.

The most common provision in the Texas statutes regarding English is a standard introductory section in each of the Codes stating that the purpose of the code is to "restate the law in modern American English."\textsuperscript{941} While some statutes require that particular activities take place in English,\textsuperscript{942} others that formerly required


(West Supp. 1994) (requiring institutions of higher education to ensure that courses are taught in English and that all faculty members are proficient in English); Tex. ELEC. CODE ANN. § 61.031 (West 1986) (requiring election officers to use English when performing an official duty in connection with the election unless the officer must communicate with a voter who cannot communicate in English); Tex. ELEC. CODE ANN. § 61.036 (West 1986) (providing that any election officer or watcher may request an English translation of any communications between an election officer and a voter in any other language); Tex. Gov't Code ANN. § 62.109 (West 1988) (permitting a district court judge to permanently exempt from service as a juror any person who is unable to comprehend or communicate in English); Tex. HEALTH & SAFETY Code ANN. § 143.013(a) (West 1992) (requiring any employer who delivers materials for industrial homework to affix an English-language label); Tex. HEALTH & SAFETY Code ANN. § 282.081(c) (West 1992) (requiring hospital district boards to publish a notice of a change in the use of bond proceeds in English); Tex. HEALTH & SAFETY Code ANN. § 345.021(c) (West 1992) (requiring bedding to bear an English-language tag); Tex. HEALTH & SAFETY Code ANN. § 822.025(b) (West 1992) (requiring county judge to issue if possible a proclamation in an English-language newspaper declaring the result of an election on whether dogs should be registered); Tex. INS. Code ANN. art. 3.27-3(b) (West Supp. 1994) (requiring alien insurers to maintain in English the books, records and accounting for trusted assets); Tex. INS. Code ANN. art. 8.24(a) (West Supp. 1994) (requiring Mexican insurance carriers to include an English translation of their charter and by-laws when applying for a certificate to do business); Tex. INS. Code ANN. art. 8.24(g) (West Supp. 1994) (requiring Mexican insurance carriers to file an English-language document expressly accepting the terms of the statute); Tex. INS. Code ANN. art. 21.43(12)(b) (West Supp. 1994) (requiring alien insurance corporations to maintain books, records, and accounting for trusted assets in English); Tex. LOCAL Gov't Code ANN. § 143.023(f) (West 1988) (requiring police officers and firefighters to read and write English); Tex. LOCAL Gov't Code ANN. § 232.006(c) (West 1988) (requiring county commissioners' court to publish notice of an application for cancellation of a subdivision in an English-language newspaper); Tex. LOCAL Gov't Code ANN. § 263.001(b) (West 1988) (requiring county commissioners' court to publish notice of auction of real property in English); Tex. LOCAL Gov't Code ANN. § 263.006(b) (West 1988) (requiring county commissioners' court to publish notice in English that county will consider offers for exchange of real property); Tex. LOCAL Gov't Code ANN. § 317.002(a) (West 1988) (requiring county commissioners court to publish notice in English of abandonment of a county park); Tex. NAT. RES. Code ANN. § 88.056 (West 1978) (requiring oil properties, tanks, and flares to post an English-language sign); Tex. PROP. Code ANN. § 11.002 (West Supp. 1994) (requiring all recorded instruments relating to real or personal property to be in English, unless executed before Aug. 22, 1897, or acknowledged outside the United States); Tex. WATER Code ANN. § 50.153(b) (West 1988) (requiring district condemning cemeteries to build dams, lakes, or reservoirs to give notice to persons having relatives interred in the cemetery by publishing a notice in an English-language newspaper); Tex. WATER Code ANN. § 56.123(b) (West 1972) (requiring governing body of a drainage district to provide notice of changes in plans for use of bonds by publishing a notice in an English-language newspaper); Tex. Code Crim. Proc. ANN. art. 19.01(a) (West Supp. 1994) (requiring jury commissioners to be able to read and write English); Tex. REV. Civ. STAT. ANN. art. 342-1004(a)(1) (West Supp. 1994) (requiring foreign bank corporation to file an English translation of its articles of incorporation and bylaws with the secretary of state); Tex. REV. Civ. STAT. ANN. art. 342-1006(c) (West Supp. 1994) (requiring foreign bank corporation to submit an authenticated copy in English of its articles and bylaws to the banking department when obtaining a license); Tex. REV. Civ. STAT. ANN. art. 342-1009 (West Supp. 1994) (requiring foreign bank corporation to make written reports in English to the banking department); Tex. REV. Civ. STAT. ANN. art. 1396-8.05(A) (West Supp. 1994) (requiring English translation of certificate of authority of foreign corporation to be delivered to secretary of state); Tex. REV. Civ. STAT. ANN.
English to be used no longer do so.943 State statutes recognize the multicultural heritage of Texas.944 That multicultural heritage re-

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944. TEX. EDUC. CODE ANN. § 21.101(d) (West 1987) (stating that a primary purpose of the public school curriculum shall be to provide students with an appreciation for the state's heritage); TEX. GOV'T CODE ANN. § 441.003(c) (West 1990) (requiring the state archivist to have a fluent reading knowledge of Spanish and French); TEX. LOCAL GOV'T CODE ANN. § 191.005 (West 1988) (providing that a translation of a Spanish archive has the same effect as the original record); TEX. NAT. RES. CODE ANN. § 21.041(3) (West Supp. 1995) (requiring the field notes of a survey of public land to observe the Spanish measurement by varas); TEX. NAT. RES. CODE ANN. § 31.064 (West Supp. 1994) (permitting the land commissioner to set fees for Spanish translations); TEX. PARKS & WILD. CODE ANN. § 22.181(a) (West 1991) (authorizing the state to acquire Spanish mission sites in Milam County); TEX. REV. CIV. STAT. ANN. art. 256 (West 1973) (providing for historical documents to be delivered to the State Librarian); TEX. REV. CIV. STAT. ANN. art. 4529e, § 4(g) (West Supp. 1995) (stating the legislature's intent that the State Board of Examiners of Perfusionists reflect the historical diversity of the state); TEX. REV. CIV. STAT. ANN. art. 5414a, § 3 (West 1962) (validating land patents derived from Spanish and Mexican
quires the translation of government records that are not in English. Recognizing that the population of Texas today continues to include many persons who do not speak English, provisions exist for interpreters. Many state agencies are required by the legislature to prepare a plan describing how a person who does not speak English can be provided “reasonable access” to the agency.
Others consider the ability to speak English as a criterion in the extension of governmental services. Bilingual governmental
services are required by many statutes.949 Other statutes en-
determining whether they are at high risk of dropping out of school); TEX. EDUC. CODE ANN. § 21.136(b)(1) (West Supp. 1994) (making children unable to speak and comprehend English eligible for prekindergarten classes); TEX. EDUC. CODE ANN. §§ 21.557(c)(2) & (f)(2)(C) (West Supp. 1994) (requiring that school district provide a remedial and support program for students at risk of dropping out; students at risk includes those of limited English proficiency); TEX. EDUC. CODE ANN. § 35.041(c) (West Supp. 1994) (providing that school districts will be compared with similar school districts, including those with students of limited English proficiency); TEX. REV. CIV. STAT. ANN. art. 6687b-2, § 21(d) (West Supp. 1994) (prohibiting Department of Public Safety from administering tests related to English proficiency to applicants for a commercial driver’s license, but providing that applicants unable to speak English may have such license limited to operation in intrastate commerce).

949. TEX. AGRIC. CODE ANN. § 125.010(10)(b) (West Supp. 1994) (requiring the Texas Department of Agriculture to provide “crop sheets” with information on crops in English and Spanish); TEX. BUS. & COM. CODE ANN. § 35.72(a) (West 1968) (requiring that rental-purchase agreement be written in English and in any other language used by the merchant in advertisements); TEX. EDUC. CODE ANN. § 11.19 (West 1991) (requiring the Central Education Agency to conduct bilingual education training institutes); TEX. EDUC. CODE ANN. § 11.32(f) (West 1991) (including the cost of bilingual education and preschool for non-English speaking children in allotments to Regional Education Service Centers); TEX. EDUC. CODE ANN. §§ 21.452-21.463 (West 1991) (establishing bilingual education and special language programs); TEX. EDUC. CODE ANN. § 21.557 (West 1991) (requiring school districts to provide remedial and support programs for any student at risk of dropping out, and defining at risk students to include students of limited English proficiency); TEX. ELEC. CODE ANN. §§ 272.001-272.008 (West 1986) (requiring bilingual election materials); TEX. ELEC. CODE ANN. § 272.009 (West 1986) (requiring reasonable efforts to appoint bilingual election clerks); TEX. ELEC. CODE ANN. § 272.010 (West 1986) (providing for bilingual voter registration application forms); TEX. FAM. CODE ANN. § 14.802(g) (West Supp. 1994) (requiring bilingual notice to implement child support review process); TEX. GOV’T CODE ANN. § 81.078(a) (West Supp. 1994) (requiring the state bar to develop a bilingual brochure on the grievance process and to provide bilingual complaint forms); TEX. GOV’T CODE ANN. § 406.017 (West 1988) (requiring any notary public who is not an attorney and who advertises in a language other than English to post a notice in the language of the advertisement advising the public that the notary is not an attorney, and prohibiting the literal translation into Spanish of the phrase “Notary Public”); TEX. R. DISCIPLINARY P. 6.01, reprinted in TEX. GOV’T CODE ANN. tit. 2, subtit. G app. (West Supp. 1994) (requiring the Commission for Lawyer Discipline to provide a bilingual brochure summarizing the disciplinary and disability system for attorneys); TEX. GOV’T CODE ANN. § 441.003(c) (West 1990) (requiring the state archivist to have a fluent reading knowledge of Spanish and French); TEX. GOV’T CODE ANN. § 2105.054(b) (West Supp. 1994) (requiring all state agencies to provide bilingual notice of public hearings regarding plans for block grants); TEX. GOV’T CODE ANN. § 2105.056(c) (West Supp. 1994) (requiring all state agencies to provide bilingual information regarding how the agency’s staff develops preliminary options for the use of block grants); TEX. GOV’T CODE ANN. § 23.202(b) (West Supp. 1994) (requiring the state bar to publish a Spanish language version of the uniform jury handbook); TEX. HEALTH & SAFETY CODE ANN. § 161.134(j) (West Supp. 1994) (requiring every hospital, mental health facility, and treatment facility to post a bilingual notice advising that employees and staff are protected from discrimination); TEX. HEALTH & SAFETY CODE ANN. § 161.135(h) (West Supp. 1994) (same); TEX. HEALTH & SAFETY CODE ANN. § 161.136(a) (West Supp. 1994) (authorizing state health care regulatory agencies to require mental health service providers to furnish a bilingual brochure summarizing the law prohibiting sexual exploitation of patients); TEX. HEALTH & SAFETY CODE ANN. § 321.002(h) (West 1992) (requiring any facility admitting patients for inpatient mental health, chemical dependency or com-
courage bilingualism, while still others permit bilingualism.
Although Spanish is usually the second language specified in these statutes, the state legislature has recognized the growing diversity of Texas and required governmental services in languages other than English and Spanish. State agencies have also begun to
provide services in other languages.\textsuperscript{953} Local government also provides multilingual services.\textsuperscript{954}

The Texas courts continue to recognize the multilingual heritage of Texas. The Texas courts look to Spanish and Mexican law to decide cases, and quote those laws in Spanish with English translations.\textsuperscript{955} Indeed, with respect to land titles, the law of Spain and Mexico "is not foreign law; as the law of the former sovereign, it is Texas law, which Texas courts have a duty to know and to follow."\textsuperscript{956}

X. The Texas Bill of Rights & Language Rights: Giving Effect to the Intent of the Framers

Having examined the history of multilingualism in government in Texas, I turn now to the application of historical argument to the question of whether the Texas Bill of Rights protects language rights.

No provision of the Texas Bill of Rights explicitly prohibits language discrimination or guarantees language rights. The lack of a specific provision regarding language rights does not, however, resolve the issue of whether language rights are protected by the

\textsuperscript{953} \textit{Africanized Bee Warnings Now in Vietnamese; Printed Material Aimed at Fishermen Along Gulf}, Hou. Posr, July 26, 1992, at A23 (describing provision of materials produced by Texas Agricultural Extension Service); \textit{Founder of "Official English" Says Bush May Support the Issue}, supra note 12 (reporting criticism by English Only proponent Lou Zaeske of the printing of official forms and literature in Spanish by the Texas Employment Commission, the Texas Department of Public Safety, and the State Comptroller's Office).

\textsuperscript{954} See, e.g., Jennings, supra note 546, at A1 (describing Spanish-language materials in libraries, translations of part of the Dallas City Council agenda, and bilingual education).


\textsuperscript{956} \textit{In re Adjudication of Water Rights in the Medina River Watershed of the San Antonio River Basin}, 670 S.W.2d 250, 252 (Tex. 1984). English-language translations available today make it possible for monolingual English-speaking judges to carry out this duty, although examination of the original Spanish language source would be preferable. See, e.g., \textit{Valmont Plantations}, 346 S.W.2d at 866-67 (rejecting translation of Spanish law and looking to original law in the Spanish language); \textit{Treviño v. Fernández}, 13 Tex. 630, 634 (1855) (setting forth counsel's suggestion that the court reject "the incorrect and absurd translation given by White of the passage in the Recopilación de Indias"); \textit{id.} at 654-59 (opinion of Chief Justice Hemp-hill) \textit{(quoting without translating the original Spanish law, examining Spanish language authorities, and concluding that White's translation is "believed to be utterly erroneous, and the very opposite of what was intended by the law")}.
Texas Constitution. While the difficulties inherent in ascertaining the intent of the framers and ratifiers have led the Texas courts to "rely heavily on the literal text," the texts of these specific provisions are "to be understood as people generally understood them at the time of the adoption of the Constitution." The Texas Supreme Court has long held that state constitutional provisions "should not be given a technical construction which would defeat their purpose." The court requires that the intent of the framers of the Texas Constitution be effectuated even when the plain language of the Constitution, or the rules of statutory construction, or the rules of grammar would require a different result. Thus the lack of an explicit provision in the Texas Bill of Rights has not prevented the Texas Supreme Court from recognizing the fundamental right of privacy, the fundamental right to raise a


959. Sears v. Bayoud, 786 S.W.2d 248, 251-52 n.5 (Tex. 1990) (refusing "to ignore clear evidence of constitutional intent in favor of technical rules of grammar"); Cramer v. Sheppard, 167 S.W.2d 147, 154 (1942) (same); Mellinger v. City of Houston, 3 S.W. 249, 252 (1887) (stating that "it is to be presumed that the language [of the constitution] ... was ... made to express the will of the people").

960. Damon, 781 S.W.2d at 599-600 (refusing to apply the literal text of art. III, § 18, prohibiting any legislator from benefitting from any contract authorized by a law passed while he was a member of the Legislature, to impose a lifetime ban on employment with the state because of a lack of evidence framers intended this result); Director of Dep't of Agric. & Env't Printing Indus. Ass'n of Texas, 600 S.W.2d 264, 270 (Tex. 1980) (refusing to apply the literal text of art. XVI, § 21, requiring all state printing to be performed by the lowest bidder, to prohibit state agencies from purchasing printing equipment because framers' intent was to protect citizens from favoritism, corruption, and extravagance, and not to benefit private printers); Brown v. Strake, 706 S.W.2d 148, 151 (Tex. Ct. App. 1986) (interpreting the decision in Director of the Dep't of Agric. & Env't, 600 S.W.2d at 264, to ascertain the purpose of the constitutional provision as different from that which "would appear from a literal reading that ignored the history of legislative intent" and therefore refusing to interpret the constitutional provision limiting the right of legislators to hold other public office literally).

961. Collingsworth County v. Allred, 40 S.W.2d 13, 15 (Tex. 1931) (holding that the "fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent of the framers and of the people who adopted it" and refusing to give effect to rules of construction "where the facts and circumstances surrounding the adoption of the [provision] ... demonstrate that the people in adopting the same intended a different meaning to be given to their action").

962. Sears, 786 S.W.2d at 251-52 n.5 (refusing "to ignore clear evidence of constitutional intent in favor of technical rules of grammar"); Cramer, 167 S.W.2d at 154 (same).

963. Texas State Employees Union v. Texas Dept of Mental Health & Mental Retardation, 746 S.W.2d 203, 205 (Tex. 1987) (holding that "a right of individual privacy is implicit among those 'general, great, and essential principles of liberty and free government' established by the Texas Bill of Rights") (quoting Tex. Const., art. I, Introduction to the Bill of Rights).
child, or the fundamental right to pursue an occupation. Like the right to privacy, language rights should be implied from a number of different provisions of the Texas Bill of Rights, construed in light of the history set forth in this article.

That a right of access to government in a "known tongue" may sound radical to some today is no justification for the Texas courts to refuse to recognize this right. The Texas courts must remember that this right was asserted by Texians who had immigrated to a foreign country less than fifteen years before. Under Mexican law, many of these Anglo-American immigrants could have been considered illegal aliens since they had failed to convert to Catholicism and flouted Mexican regulations and prohibitions against slavery. English was a completely foreign tongue in the Texas of the

964. In the Interest of J.W.T., 872 S.W.2d 189, 194-95 (Tex. 1994) (noting that previous recognition of natural right between parents and children is one of constitutional dimension); id. at 198 (Hecht, J., concurring) (stating that "in a free society the State cannot deny a man all right to his child without due process"); Holick v. Smith, 685 S.W.2d 18, 20 (Tex. 1985) (affirming that the natural parental right is a basic civil right).


966. Vinson v. Burgess, 773 S.W.2d 263, 265-66 (Tex. 1989) (holding that "[n]o provision in the constitution should be read or construed in isolation"; court should look "first to the specific language used and the purposes behind the passage"); Piersson v. State, 177 S.W.2d 975, 977 (Tex. Crim. App. 1944) (finding the Texas Constitution "is to be construed as a whole with a view of ascertaining the intent of its framers"); Jones v. William, 45 S.W.2d 130, 137 (Tex. 1931) ("The rule is that a Constitution is to be construed as a whole."); Collingsworth County v. Allred, 40 S.W.2d 13, 15 (Tex. 1931) (stating Constitution must be read as a whole); cf. Shepherd v. San Jacinto Junior College Dist., 363 S.W.2d 742, 743 (Tex. 1963) (noting that if constitutional limitation is not express, "it should be clearly implied") (quoting State v. Brownson, 61 S.W. 114 (Tex. 1901)); HARRINGTON, supra note 52, at 39 (asserting that each section of the Texas Bill of Rights "must be appreciated not just standing alone, but in the context of the totality of the Bill of Rights"); Harrington, supra note 81, at 412 (stating specific constitutional protection "must be respected . . . in the context of the entire bill of rights"); Bobberrt, supra note 23, at 21 (noting that historical arguments "can be most powerful when severed from the text"). But see Maltz, supra note 61, at 1023 (arguing that the failure to list a particular right suggests that the [state constitutional] convention did not consider it to be a basic element of societal morality); Herasimchuk, supra note 32, at 1509-10 (arguing that "when the state citizens did not specifically include a particular interest or right in that constitution and did not subsequently amend the constitution to include it, they did not wish to grant constitutional protection to that interest").

967. The Anglo-American immigrants were required to obey the laws of the Mexican government. General Law of Colonization, Mexico, of Aug. 18, 1824, Decree no. 72, art. 1 ("The Mexican Nation offers to those foreigners who may be desirous of settling in her territory security for their persons and property, provided they obey the laws of the country.") (emphasis added), reprinted in 1 Tex. Gen. Laws 97 (Gammel 1898). Article 3 of the General Law of Colonization required the Mexican states to enact laws for the colonization of their lands. Id. art. 3. The Law of Colonization of the State of Coahuila and Texas required the municipal authorities to bind each immigrant by oath that he shall "abide by and obey the general Constitution, and
that of the State; to observe the Religion as stipulated by the former." Law of Colonization of the State of Coahuila and Texas of Mar. 24, 1825, Decree no. 16, art. 3, reprinted in 1 Tex. Gen. Laws 99 (Gammel 1898).

Spain conditioned its grant of permission to Moses Austin to bring colonists to Texas on their meeting "the first or principal requisite of being catholics, or agreeing to become so, before entering the Spanish territory." Letter from Governor Antonio Martínez to Moses Austin (Feb. 8, 1821) (quoting Joaquín de Arredondo, the Commandant of the eastern division of the Provincias Internas), reprinted in 1 Tex. Gen. Laws 25-27 (Gammel 1898). This religious requirement was maintained by the Mexican government after it attained independence from Spain. Decree of the Emperor of Feb. 18, 1823 (colonists "must accredit that they are Roman apostolic catholics"), reprinted in 1 Tex. Gen. Laws 31 (Gammel 1898); Constitutive Acts of the Mexican Federation of Jan. 21, 1824, art. 4 ("The religion of the Mexican nation is and shall perpetually remain the Roman Catholic and Apostolic. The nation protects it by just and wise laws, and prohibits the exercise of every other."). reprinted in 1 Tex. Gen. Laws 61 (Gammel 1898); CONSTITUTION OF THE UNITED MEXICAN STATES of Oct. 4, 1824, art. 3 (using slightly different language to the same effect), reprinted in 1 Tex. Gen. Laws 73 (Gammel 1898). The state government of Coahuila and Texas also required the colonists to document that they were Catholics. Laws of Colonization of the State of Coahuila and Texas, Decree no. 16, art. 3 (1825) (requiring colonist to bind himself by oath to observe Catholicism), reprinted in 1 Tex. Gen. Laws 99 (Gammel 1898); Contract between Stephen F. Austin & the Government of the State for the Colonization of 500 Families, art. 4 (Apr. 27, 1825), reprinted in 1 Tex. Gen. Laws 48 (Gammel 1898); id. (citing Law of Colonization of the State of Coahuila and Texas of Mar. 24, 1825, Decree no. 16, art. 5 (requiring proof "by certificate from the authorities of the place from whence they came, that they are Christians"), reprinted in 1 Tex. Gen. Laws 100 (Gammel 1898). This requirement was accepted by Stephen F. Austin, id. at 49, and extended in the other colonization contracts Austin entered into. Official letter of Governor Rafael González (May 20, 1825) (granting permission to settle 500 families "on the same conditions which I have before indicated to you"), reprinted in 1 Tex. Gen. Laws 49 (Gammel 1898); Contract with the Government for settling the reserve land on the coast, between La Baca and San Jacinto (June 5, 1826), reprinted in 1 Tex. Gen. Laws 51 (Gammel 1898); Contract between the Government of the state and Austin, art. 7 (July 12, 1828) ("The Roman Catholic Apostolic Religion shall be the religion of the state. The state protects it by wise and just laws, and prohibits the exercise of any other."). reprinted in 1 Tex. Gen. Laws 54-55 (Gammel 1898); see also CONSTITUTION OF THE STATE OF COAHUILA & TEXAS, art. 9 (Mar. 11, 1827), reprinted in 1 Tex. Gen. Laws 424 (Gammel 1898); Instructions to which the commissioner for the distribution of lands to the new colonists who present themselves to settle in the State, according to the colonization law of Mar. 24th, 1825, shall conform, arts. 1 & 3 (Sept. 4, 1827) (requiring Austin to "examine in the most scrupulous manner the certificates, which colonists from foreign countries are required to bring from the authorities of the place from which they come, thereby proving themselves to be of the christian religion" and requiring the administration of an oath to obey the Constitution and laws of Mexico) [hereinafter Instructions], reprinted in 1 Tex. Gen. Laws 180-81 (Gammel 1898); Laws and Decrees, State of Coahuila and Texas, Decree no. 190, art. 24 (1832) (requiring foreigners to furnish adequate proof of their christianity in order to be admitted as new settlers), reprinted in 1 Tex. Gen. Laws 302 (Gammel 1898). While some of these statutes required proof of "Christianity" rather than "Catholicism," the terms appear to have been used interchangeably in Mexican law during this period. For example, Article 1 of the Instructions given to Austin provide that the colonist must provide a certificate "proving themselves to be of the christian religion." Instructions, art. 1 (Sept. 4, 1827), reprinted in 1 Tex. Gen. Laws 181 (Gammel 1898). But Article 3 of the same Instructions required that the colonists take an oath to obey the Constitutions of Mexico and of Coahuila & Texas. Instructions, art. 3 (Sept. 4, 1827), reprinted in 1 Tex. Gen. Laws 181 (Gammel 1898). Both Constitutions, of course,
1820s and 1830s. Yet these immigrants insisted that they had a fundamental right to communicate with the government in their own language.

Applicable provisions of the Texas Bill of Rights should be interpreted to give effect to the framers’ intent to provide Texans with access to government in a “known tongue.”

A. The Equal Rights Provision

Texas has had an equal rights provision since the 1836 Constitution—long before enactment of the analogous equal protection clause of the Fourteenth Amendment to the United States Constitution. The provision “was designed to prevent any person, or class of persons, from being singled out as a special subject for discriminating or hostile legislation,” and has been used to strike down legislation that operated against a discrete and insular class of Mexican-origin persons. The Texas equal rights clause requires that any classifications drawn by a statute be rationally related to the statute’s purpose. This rational basis test “is actually much closer to what some courts have called the ‘strict reasonableness’ test, which is similar to middle-tier federal analy-

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prohibited the practice of any religion other than Catholicism. Notwithstanding these ubiquitous provisions requiring the immigrants to be practicing Catholics in order to have legal status under Mexican law, the Anglo-Americans widely flouted the requirement. BARKER, supra note 141, at 64 (stating that “the sentiment of the colonists forbade any real establishment of the Catholic Church”); Berger, supra note 200, at 49 (noting that requirement that colonists become Catholics was ineffective since “the American colonists followed their own traditions”).

For a discussion of the failure of many of the Anglo-American immigrants to obey Mexican laws on slavery, see supra note 353.

968. TEX. CONST. art. I, § 3 provides:

Equal Rights. . . . All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

969. HARRINGTON, supra note 52, at 70. The 1845 Constitution changed “all men” in the 1836 version to “all freemen” and added the last clause regarding public services. The 1876 Constitution changed “freemen” to “free men.” BRADEN ET AL., supra note 91, at 13.

970. Burroughs v. Lyles, 181 S.W.2d 570, 574 (Tex. 1944).

971. Delgado v. Texas, No. 356,714 (147th Dist. Ct., Travis County, Tex., May 22, 1985) (striking down the exclusion of farmworkers from the Texas Workers’ Compensation Act); Camarena v. Texas Employment Comm’n, Nos. 369,808 and 369,808-A (21st Dist. Ct., Travis County, July 2, 1985 [No. 369,808] and May 15, 1986 [No. 369,808-A]), (striking down the exclusion of farmworkers from the Texas Unemployment Compensation Act), rev’d on other grounds, 710 S.W. 2d 665 (Tex. Ct. App. 1986), modified, 754 S.W.2d 149 (Tex. 1988). Both Delgado and Camarena relied on other constitutional provisions as well (art. I, §§ 3, 19, and 29) and are discussed in HARRINGTON, supra note 52, at 71.

In determining whether a non-English-speaking Texan has a claim under the Texas equal rights clause, the courts must consider whether the framers would have considered a particular linguistic classification to satisfy the "strict reasonableness" test. Given the framers' claim of a fundamental right of access to government in a "known tongue," most linguistic classifications should fail the "strict reasonableness" test. If the intent of the framers is to be given effect, any legislative attempt to declare English the official language would violate the Texas equal rights clause.

B. The Equal Rights Amendment

The Texas Equal Rights Amendment specifically prohibits all discrimination on the basis of national origin. While discriminatory effect is insufficient to state a claim under the equal protection clause of the Fourteenth Amendment to the United States Constitution, "[t]he express proscription of discrimination [in the Texas Equal Rights Amendment] . . . provides a strong textual basis for extending such protection beyond federal equal protection doctrine." The lower courts have therefore found that when governmental action has a discriminatory effect on a particular national origin group, that states a claim under Section 3a.

There is a close correlation between language and national origin. When language-based discrimination has a discriminatory effect on a national origin group, that discriminatory effect should

974. Tex. Const. art. I, § 3(a) provides:
Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.
978. Gutiérrez v. Municipal Ct., 838 F.2d 1031, 1039 (9th Cir. 1988), vacated as moot, 490 U.S. 1016 (1989); Perea, supra note 34, at 357-60 (describing the use of
be deemed a violation of Section 3a. Permitting inequalities based on language would provide a simple subterfuge that would violate the express and explicit command of the Texas Equal Rights Amendment prohibiting the denial of "[e]quality under the law . . . because of . . . national origin."

Although the Texas Equal Rights Amendment was not adopted until 1972, and the intent of the 1836 and 1845 framers does not control the interpretation of this provision, an interpretation recognizing the close correlation between language and national origin, and using the effects test, would be consistent with the intent of the framers with respect to the rest of the Texas Bill of Rights.979 Nothing should be permitted to interfere with the express prohibition against national origin discrimination in the Texas Equal Rights Amendment.980

One potential obstacle to the use of Section 3a in language rights cases must be noted. In Richards v. LULAC,981 a unanimous Texas Supreme Court held that the Texas Equal Rights Amendment "would not afford any additional level of scrutiny" in cases alleging discrimination on the basis of race or national origin since strict scrutiny was already applied to such discrimination under federal and state equal protection analysis. This conclusion is extraordinary since it renders the Texas Equal Rights Amendment superfluous with respect to race and national origin.982 The
Richards opinion contradicts without explanation the court’s previous interpretation of the Texas Equal Rights Amendment’s prohibition on sex discrimination in In re Unnamed Baby McLean.983 The McLean court refused to interpret the Equal Rights Amendment identically to the Texas and federal due process and equal protection guarantees.984 It is difficult to fathom any justification for the differential treatment of sex claims from race and national origin claims under the Texas Equal Rights Amendment. The text of the amendment provides no such justification, nor does the court’s naked conclusion in the Richards footnote. Former Texas Supreme Court Justice William Wayne Kilgarlin, the author of the opinion in In re Unnamed Baby McLean, believed the McLean standard applied to race, color, creed, and national origin claims under the Texas Equal Rights Amendment.985 Given the complete lack of justification for the Court's holding in Richards, the Texas Supreme Court should overrule the announcement buried in the Richards footnote and give effect to the Equal Rights Amendment’s proscription of all national origin discrimination by applying the effects standard to prohibit language discrimination that has a discriminatory effect on a national origin group. Given the history of multilingual governmental services in Texas, the state is unlikely to be able to establish a compelling state interest for monolingual English governmental services.986 The state would also likely be unable to establish that there is no other state action possible to protect whatever state interest might be asserted in the monolingual services.

C. The Free Speech Clause

The free speech provision987 originated as Section 4 of the 1836 Declaration of Rights.988 The Texas Supreme Court long ago

983. 725 S.W.2d 696 (Tex. 1987).
984. Id. at 697.
985. Kilgarlin & Tarver, supra note 976, at 1553. See In re Unnamed Baby McLean, 725 S.W.2d at 698.
986. For a discussion of the use of cost as a defense in language rights cases, see infra part X.G.
987. Tex. Const. art. I, § 8 provides:

Freedom of Speech and Press; Libel. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

988. In later constitutions, the language was expanded, divided, and then re-united in the present section 8. BRADEN ET AL., supra note 91, at 27.
noted that freedom of speech "cannot coexist with a power to... fashion the form of... speech."989 Any attempt to regulate the form of speech used in government, such as legislation prohibiting governmental services in languages other than English, should be struck down. If such prohibitions violate the United States Constitution,990 they certainly violate the Texas Constitution, whose framers specifically intended to provide a right to governmental services in a "known tongue."

D. The Due Course Clauses

The Texas Bill of Rights has two due course clauses: Section 13991 and Section 19.992 The text of Section 19 is especially significant. It prohibits disenfranchisement “in any manner.” The reference to disenfranchisement was in the 1836 Texas Declaration of Rights.993 Disenfranchisement includes deprivation of the right to vote as well as of a citizen’s rights, privileges, or immunities.994 Given the intent of the framers, the courts should hold that a party’s interest in communicating with her government in a “known

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989. Ex parte Tucker, 220 S.W. 75, 76 (Tex. 1920) (quoted in Ex parte Price, 741 S.W.2d 366, 369 (Tex. 1987) (González, J., concurring) (emphasis added)). See generally Harrington, supra note 973, at 1529-34; Harrington, supra note 33, at 1469.


991. TEX. CONST. art. I, § 13 provides:

**Excessive Bail or Fines; Cruel and Unusual Punishment; Remedy by Due Course of Law.** Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

This provision has appeared unchanged since 1836, except for a change of “or” to “nor” in 1845. Braden et al., supra note 91, at 47; LeCroy v. Hanlon, 713 S.W.2d 335, 339 (Tex. 1986) (noting that every Texas Constitution has contained an open courts provision like § 13).

992. TEX. CONST. art. I, § 19 provides:

**Deprivation of Life, Liberty, etc.; Due Course of Law.** No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

While there have been minor changes in the phrasing of this provision over the years, it has appeared in every Texas constitution since 1836. Braden et al., supra note 91, at 67. See generally Harrington, supra note 973, at 1520-29 (analyzing § 13 as a due process guarantee independent of any federal guarantee); David Richards & Chris Riley, Developing a Coherent Due-Course-of-Law Doctrine, 68 Tex. L. Rev. 1649 (1985) (trying to clarify Texas’ courts’ due-course-of-law cases).


994. Harrington, supra note 973, at 1526 (citing Black’s Law Dictionary 420 (5th ed. 1979)).
"tongue" is a right protected under the Texas due course clauses. A finding would be consistent with prior cases construing Section 19 to require that an interpreter be provided to a criminal defendant who does not speak English.

The Texas Supreme Court has not recently set out a specific test to be applied in Section 19 cases. The Fourth Court of Appeals uses the following test:

1. The object of the law must be within the scope of the legislature's police power;
2. The means used must be appropriate and reasonably necessary to accomplish that object; and
3. The law must not operate in an arbitrary or unjust manner, or be unduly harsh in proportion to the end sought. The critical factor in the second and third prongs is reasonableness.

In determining the "reasonableness" of any governmental action discriminating against persons who do not speak English, the courts must consider the intent of the framers to protect the right of access to government in a "known tongue." Legislative attempts to prohibit the use of languages other than English to provide governmental services to Texans can never be "reasonable" when the intent of the framers is considered.

E. The Clause Guaranteeing the Right to Petition the Government

The clause guaranteeing the right to petition the government has appeared in identical form in all Texas constitutions. This right of "remonstrance" requires the government at a minimum to "stop, look and listen." The existence of a right of remonstrance is particularly significant given that the Texians

995. In the Interest of J.W.T., 872 S.W.2d 189, 194 (Tex. 1994) (holding that a plaintiff asserting a due course of law claim under art. I, § 19 must establish that his interest is constitutionally protected).
996. See supra part VIII.C.2 and infra part XI.B.
998. TEX. CONST. art. I, § 27 provides:
Right of Assembly; Petition for Redress of Grievances. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.
999. BRADEN ET AL., supra note 91, at 81; Professional Ass'n of College Educators v. El Paso County Community Dist., 678 S.W.2d 94, 95 (Tex. Ct. App. 1984) (noting that right of remonstrance dates back to the proposed constitution for the Mexican state of Texas as drafted by the Convention of 1833).
1000. Professional Ass'n of College Educators, 678 S.W.2d at 96; see also Corpus Christi Indep. Sch. Dist. v. Padilla, 709 S.W.2d 700, 704-05 (Tex. Ct. App. 1986) (same).
claimed the Mexican government had not responded to their remonstrances—in part because of the difference in languages.1001 The right must be construed in light of the Texians' insistence that their government listen to them in a tongue known to the citizens.1002

F. Section 29

Section 291003 first appeared in the 1845 Constitution.1004 It is an important affirmation of the absolute primacy of the rights protected by the Texas Bill of Rights.1005 Section 29 requires the courts to protect the rights of all Texans; this includes the right of access to government in a "known tongue," claimed by the framers of the Texas Bill of Rights.

An alternative approach to Section 29 has been suggested by Professor Linzer, who noted that § 29 could be considered analogous to the Ninth Amendment of the United States Constitution.1006 If this interpretation as an unenumerated rights provision were followed, one could then argue that a "right-protective approach" should be followed: if a right was recognized as fundamen-

1001. Hall, supra note 271, at 1415 (noting that Stephen F. Austin's address of April 1, 1833 announced the right of Texans to communicate directly with the government); id. at 1422 (stating that Texians were asserting "the right to engage in a dialogue with their government. They understood, as did those with whom they were negotiating, that the communication process was a farce unless there were at least two participants."); see supra part V (describing Texian complaints about the Mexican government's failure to communicate with the Texians).

1002. See also Harrington, supra note 81, at 428 (stating sections 8 and 27 of the Texas Bill of Rights "confer affirmative communicative rights on Texans and . . . suggest that state government may have the affirmative duty to ensure citizens' ability to invoke such rights of expression and assembly").

1003. Tex. Const. art. I, § 29 (1876) provides:

Provisions of Bill of Rights Excepted from Powers of Government; To Forever Remain Inviolate. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

1004. Braden et al., supra note 91, at 85.

1005. Travelers' Ins. Co. v. Marshall, 76 S.W.2d 1007, 1010 (Tex. 1934) (citing § 29 and then concluding that "the exercise of power in disregard of the . . . plain intent of the instrument" is impermissible) (citing 9 Tex. Jur. 449, § 35); id. at 1011 (refusing to follow federal precedents because the federal constitution does not have § 29, "an express limitation on the police power which does not appear in the Federal Constitution"); Trapnell v. Sysco Food Services, Inc., 850 S.W.2d 529, 545 (Tex. Ct. App. 1992) (applying § 29 to prohibit the application of collateral estoppel where this would infringe on the plaintiff's right to a jury), aff'd on other grounds, 890 S.W.2d 796, 805 (Tex. 1994) (refusing to approve or disapprove lower court's holding); Harrington, supra note 52, at 43 (arguing that the Texas Constitution in § 29 offers "markedly greater protection" than its federal counterpart); cf. Linzer, supra note 51, at 1581 (noting the possible argument that § 29 does "nothing more than declare explicitly what is implicit in the federal constitution").

1006. Linzer, supra note 51, at 1581 n.49.
tal in Texas when § 29 was adopted in 1845, that fundamental right was retained by the people of Texas, and any governmental action that infringes on the right is invalid. \footnote{1007} Since language rights were recognized by the framers, the right-protective approach would require that these rights be protected today.

\textbf{G. The Cost of Multilingual Government as a Defense}

The cost of multilingual government services is often raised by English Only proponents as an additional justification for conducting government solely in English. \footnote{1008} While the cost of such services is often exaggerated by English Only activists, \footnote{1009} such considerations are irrelevant when a fundamental right guaranteed by the Texas Constitution has been violated. In considering claims of individual rights guaranteed by the Texas Constitution, the Texas Supreme Court has noted that the courts must apply "an individual rights perspective" rather than a "societal perspective." \footnote{1010} Infringement of a fundamental right under the Texas Constitution can be justified only where there is a "compelling governmental objective that can be achieved by no less intrusive, more reasonable means." \footnote{1011} Thus, the cost of providing multilingual services should not be considered if the intent of the framers of the Texas Constitution was to establish a right of access to government in a "known tongue." \footnote{1012} When the courts find that a non-English-

\begin{itemize}
  \item \footnote{1007} Louis Karl Bonham, Note, Unenumerated Rights Clauses in State Constitutions, 63 Tex. L. Rev. 1321, 1328 (1985).
  \item \footnote{1008} Bob Lowry, "English First" Group Eyes 1989 Session, UPI, Sept. 13, 1988, available in LEXIS, News Library, UPSTAT file (reporting English Only advocate Lou Zaeske's criticism of Comptroller Bob Bullock for failing to provide an estimate of the cost of operating bilingual education programs and of printing bilingual forms); Founder of "Official English" Says Bush May Support the Issue, supra note 12 (reporting Zaeske has asked Lieutenant Governor Bill Hobby and House Speaker Gib Lewis to provide the cost to taxpayers of bilingual operation in Texas).
  \item \footnote{1009} The cost of trilingual English-Spanish-Chinese ballots in San Francisco, for example, amounts to less than three cents per household. Crawford, supra note 9, at 193. As one Texas official has noted, multilingual forms are a productive use of government funds: "The waste of money would be to print [materials] up in English and send it to an area that is predominantly Spanish-speaking and have them look at it and ask, 'I wonder what this means?'" Fred Bonavita, English-Only Group Hits Democrats - Use of Spanish at Texas Rally Criticized, Hous. Post, July 27, 1988, at E4 (quoting Tony Proftitt of the Texas Comptroller's office).
  \item \footnote{1010} Le Croy v. Hanlon, 713 S.W.2d 335, 342 (Tex. 1986).
  \item \footnote{1011} Texas State Employees Union v. Texas Dept' of Mental Health & Mental Retardation, 746 S.W.2d 203, 205 (Tex. 1987) (discussing infringement of the right of privacy).
  \item \footnote{1012} Cf. Schoen, supra note 977, at 553 (noting that the Texas Equal Rights Amendment has no fiscal hardship exception and arguing that it "must prevail over fiscal concerns and 'good business judgment'"); id. at 585 (rejecting administrative convenience as a justification for permitting an inequality forbidden by the Texas Equal Rights Amendment). Compare Wards Cove Packing Co. v. Atonio, 490 U.S.
speaking Texan has a right of access to government in a “known tongue,” the non-English-speaker “disfavored by the inequality should receive the benefits enjoyed by those persons favored by the inequality”—access to government in a language spoken by the plaintiff.

XI. Application of the Language Rights Asserted by the Framers of the Texas Bill of Rights

Applying the language rights asserted by the framers of the Texas Bill of Rights would result in changes in some of the holdings of the Texas courts. Two examples are set out below.

A. The English-Only Legal System

Notwithstanding the widespread use of other languages in the Texas judicial system for most of the nineteenth century, the Texas Supreme Court held in 1874 that all proceedings in the Texas courts must be in English. The requirement that all documents and evidence be in English has resulted in criminal defendants avoiding conviction for the convenience of the appellate courts. For example, in Stichtd v. State the Texas Court of Appeals reversed a conviction in Guadalupe County for slander because the allegedly slanderous words were set out in English in the information, but were proved to have been uttered in German. Given the large number of German immigrants in Guadalupe County, this posed no problem at the local level. It is only at the appellate level, where there were no German-speakers on the Texas Court of Appeals, that it posed a problem. Similarly, in Drozda v. State, the Court reversed a conviction in McLennan County for libel because the information reprinted the Bohemian-language article but did not provide an English translation. The alleged bigamist in

642, 661 (1989) (making cost a factor to be considered in determining whether a less discriminatory alternative is available in disparate impact cases brought under Title VII of the Civil Rights Act of 1964), with Schoen, supra note 977, at 601 (arguing “interests in economy and efficiency, though legitimate can never be deemed ‘compelling’ when they are offered as an affirmative defense to a violation of the specific and unqualified constitutional guarantee of . . . equality”), and id. at 607 (arguing the constitutional guarantee of equality “means nothing if it becomes ‘inoperative’ when effectuation of the guarantee will, or might, result in fiscal consequences the state prefers to avoid”).

1013. Schoen, supra note 977, at 542 (discussing the remedy for violations of the Texas Equal Rights Amendment); Schoen, supra note 980, at 1335-37 (describing justifications for this remedial principle).


Borski v. State\textsuperscript{1017} was able to reverse his conviction because the Spanish-language marriage certificate from his wedding in Mexico was not translated into English.

The reversal of the conviction of a murder defendant in Leal v. State,\textsuperscript{1018} solely because a sworn translation of a bilingual audiotape was not made, is yet another example of the high price the judicial system has been willing to pay to preserve the purity of the English-language judicial system. Since virtually all of the Hidalgo County jurors and the defendant were no doubt capable of understanding the tape without a translation, no purpose was served by the reversal. Instead, the sworn translation should have been required at the appeal so that the monolingual judges on the Texas Court of Criminal Appeals could determine whether the bilingual jurors' weighing of this evidence was appropriate. The decision in Ferguson v. State,\textsuperscript{1019} rejecting the defendant's argument that the failure to translate a Spanish-language security violated his right to have the trial conducted in English, may be one small step in this direction. Recognizing the multilingualism of local communities within the judicial system would close a linguistic loophole currently available to criminal defendants.

\section*{B. The Right to an Interpreter}

Since the Texas Court of Criminal Appeals interpreted the Texas Bill of Rights to require that a criminal defendant who does not speak English be provided with an interpreter,\textsuperscript{1020} the interpretations of the right to an interpreter under the Texas Constitution have varied. Some are consistent with the intent of the framers. For example, \textit{Ex parte Nanes}\textsuperscript{1021} granted a writ of habeas corpus because the petitioner was not provided an interpreter for the entire trial. Similarly, the holdings in Baltierra v. State\textsuperscript{1022} that the right to interpretation is not waived by failing to request it and that it is the court's responsibility to determine whether an interpreter is needed, are consistent with the framers' intent. Villarreal v. State,\textsuperscript{1023} in which the Corpus Christi Court of Appeals recently

\begin{footnotesize}
\textsuperscript{1017} 225 S.W.2d 180 (Tex. Crim. App. 1949).
\textsuperscript{1018} 782 S.W.2d 844, 849-50 (Tex. Crim. App. 1989).
\textsuperscript{1019} 572 S.W.2d 521, 523 (Tex. Crim. App. 1978) (holding that "[l]t is not the language of the instrument which is important, but whether the instrument itself constitutes a security").
\textsuperscript{1021} 558 S.W.2d 893 (Tex. Crim. App. 1977).
\textsuperscript{1022} 586 S.W.2d 553, 559 (Tex. Crim. App. 1979) (en banc).
\textsuperscript{1023} 853 S.W.2d 170 (Tex. Ct. App. 1993).
\end{footnotesize}
held that a non-English-speaking defendant is entitled to a court-appointed interpreter even if not indigent, is in the same vein.

Unfortunately, other cases have limited the right to an interpreter in ways that are fundamentally inconsistent with the intent of the framers. In *Ex parte Marezi* the district court found that the petitioner was unable to "read, write or understand the English language." The Texas Court of Criminal Appeals nonetheless denied the petition for a writ of habeas corpus because the "only basis for a trial court providing an interpreter to an accused is because of the constitutional and statutory guarantees of confrontation under the Constitution of Texas and of the United States," and concluded the right had been waived. Given the difficulty a non-English-speaking defendant would have in asserting any constitutional claim, the holding can be questioned in so far as the court discussed the right to confrontation under the Sixth Amendment to the United States Constitution. Regardless of how this federal constitutional issue might be resolved, however, the court's holding is contrary to the intent of the framers of the Texas Constitution. One of the principal complaints of the framers was that the Mexican legal system had failed to protect them because it was conducted in an "unknown tongue." Given this specific intent, the Texas courts should provide an expansive right to an interpreter for individuals who do not speak English.

The framers of the Texas Constitution believed the right of access to legal proceedings in a language they understood was fundamental. The Texas courts should interpret the right to confrontation protected by article I, section 10 of the Texas Constitution in a manner consistent with this belief. Decisions such as *Flores v. State*, denying an interpreter to individuals who speak any English, are inconsistent with the framers' intent.

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1025. Id. at 867-68.
1026. United States ex rel. Negrón v. New York, 434 F.2d 386, 390-91 (2d Cir. 1970) (holding criminal defendant who does not speak English is entitled to an interpreter under the confrontation clause of the Sixth Amendment to the United States Constitution).
1027. See supra part V.E.
1028. 509 S.W.2d 580, 581 (Tex. Crim. App. 1974) (affirming district court's refusal to appoint an interpreter for a defendant who "does speak English but it is halting and he is very slow about it" and is "much more fluent in Spanish").
1029. See also Rodríguez Briones v. State, 595 S.W.2d 546, 548 (Tex. Crim. App. 1980) (affirming the district court's refusal to provide an interpreter where the court concludes the plea "was voluntarily and intelligently entered" even though the appellant may not have understood the English language). (This case is incorrectly cited as "Briones v. State.") See supra note 459 (describing the common failure of legal publishers to understand the Hispanic practice of using both parents' last names). See also Vásquez v. State, 819 S.W.2d 932, 937-38 (Tex. Ct. App. 1991)
sions finding the right of confrontation satisfied even though the defendant is unable to speak with his attorney should also be rejected. The Anglo-American immigrants to Mexican Texas who understood some Spanish demanded a legal system in a known tongue—a language they understood sufficiently to enable them to defend themselves. A half-known tongue is insufficient. If a defendant speaks some English, but believes she cannot understand everything said in a courtroom, the courts should provide her with an interpreter. Attorneys representing non-English-speaking defendants must protect these rights. As the diversity of the

(holding trial court was not required to appoint an interpreter for a defendant who the State stipulated did not speak English); Cantú v. State, 716 S.W.2d 688 (Tex. Ct. App. 1986) (affirming conviction of defendant who testified he understood English “a little bit, not much” and who responded to the question, “You used to hunt?” with “Yeah. Well, lots of offices over there.” Id. at 689. Mr. Cantú was not provided an interpreter because the trial continued after 5:00 p.m., the end of the court interpreter’s workday. Id.); Mares v. State, 636 S.W.2d 627, 629 (Tex. Ct. App. 1982) (affirming conviction of a defendant who testified “I talk a little of English but hardly any” and who was provided interpretation for only part of the trial); Vargas v. State, 627 S.W.2d 785, 787 (Tex. Ct. App. 1982) (holding that “the mere fact that he might have been able to express himself a little better in Spanish did not require the use of an interpreter”).

Nguyen v. State, 774 S.W.2d 348 (Tex. Ct. App. 1989) (affirming refusal to appoint an interpreter for a Vietnamese-speaking defendant and finding right to confrontation was satisfied because all testimony was interpreted); cf. id. at 351 (Ellis, J. concurring) (finding right of effective assistance of counsel requires appointment of interpreter for indigent defendant, but finding no evidence in the record that Mr. Nguyen was indigent).

Bill Piatt, Attorney as Interpreter: A Return to Babble, 20 N.M. L. Rev. 1, 5 (1990) (noting that “even though a client may be able to function in English in a social conversation, he or she may still be entitled to the use of an interpreter in litigation given the sophisticated language level used in the courts”).

The actions of the bilingual attorney in Frescas v. State, 636 S.W.2d 516 (Tex. Ct. App. 1982), are one example of how an attorney should not conduct himself. Mr. Frescas understood some English, “but had difficulty expressing himself in that language.” Id. at 517. His bilingual attorney instructed the interpreter to stop his interpretation because “the continuous translation from English into Spanish was distracting his attention from the selection process.” The court, very reasonably, told the attorney to separate himself from the interpreter and Mr. Frescas. Mr. Frescas later asked for the interpretation to stop because of the confusion caused by the interpreter. The basis for the appeal suggests that the attorney was confused by the interpreter, but the language of the opinion is unclear: “[The attorney] explained his client's position that the continuous translation was confusing his own interpretation.” Id. (emphasis added). The district court refused to provide Mr. Frescas with sporadic interpretation as needed. The El Paso Court of Appeals rejected Mr. Frescas’ claim that the confusion produced by the court-required translation deprived him of effective assistance of counsel and interfered with his confrontation of the witnesses against him. Id. at 518. As a bilingual attorney who has had to sit through tedious translations of testimony, I am sympathetic to the attorney’s dilemma in Frescas. The tedium is especially burdensome because of the need to ensure that the interpretation is accurate. Nonetheless, here, as in so many other areas, lawyers are obligated to put the needs of the client ahead of their own preferences.
population of Texas increases, more speakers of more languages will call on the Texas courts to enforce the rights claimed by the framers of the Texas Bill of Rights.1033

XII. Conclusion

Texas has changed dramatically since 1836 when Anglo-American immigrants asserted the right to communicate with government in a "known tongue." Notwithstanding all of the changes Texas has experienced since 1836, no changes have occurred that suggest that the original intent of these framers should be ignored.1034 The statutes requiring or permitting multilingual government services today are in the best Texas tradition. These services are essential to provide native-born Texans and immigrants who do not speak English the access to government services in a "known tongue," a fundamental right asserted by Texians almost 160 years ago. They ensure respect and trust for government among all citizens.1035

The bilingualism of Tejanos and non-Tejanos in South Texas and West Texas (and increasingly in the rest of the state) is quintessentially Texan,1036 however "alien" it may seem to those

1033. See, e.g., Nguyen, 774 S.W.2d at 348 (prosecution of native of Vietnam); Syed v. State, 642 S.W.2d 200 (Tex. Ct. App. 1982) (prosecution of native of India).

1034. Bonarr, supra note 62 at 92-93 (discussing, as a "standard part of the middle game of historical approaches," the need to examine to what extent changed circumstances may require outcomes that were not originally contemplated); see also Davenport v. Garcia, 834 S.W.2d 4, 19 (Tex. 1992) (noting that constitutional guarantees are not "frozen in the past," but must evolve over time); Damon v. Cornett, 781 S.W.2d 597, 599 (Tex. 1989) (affirming that the Texas Constitution is an "organic" document that evolves through time); Edgewood Indep. Sch. Dist., 777 S.W.2d at 394 (stating that the Texas Constitution "was ratified to function as an organic document to govern society and institutions as they evolve through time"); Dix, supra note 31, at 1403 (noting the need to consider "how the framers wanted future decision makers to construe particular provisions"). But see Jones v. Ross, 173 S.W.2d 1022, 1024 (Tex. 1943) (stating that "settled law" is that "the provisions of our State Constitution mean what they meant when they were promulgated and adopted, and their meaning is not different at any subsequent time"); Travelers' Ins. Co. v. Marshall, 76 S.W.2d 1007, 1011 (1934) (stating that the meaning of a constitutional provision is fixed at its adoption; "its intent does not change with time or conditions; while it operates upon new subjects and changed conditions, it operates with the same meaning and intent which it had when formulated and adopted"); Cramer v. Sheppard, 167 S.W.2d 147, 154 (1942) (stating that the "meaning of a constitutional provision is fixed when it is adopted, and it is not different at any subsequent time"); Cox v. Robison, 150 S.W. 1149, 1151 (1912) (same).

1035. Hall, supra note 271, at 1433 (noting that "citizens will not respect a government they cannot trust. And they will not trust a government with which they cannot communicate.").

1036. See, e.g., City of Laredo v. Martinez, 682 S.W.2d 954 (Tex. Ct. App. 1984) (upholding the suspension of a police officer for statements made by the officer in English and Spanish).
who staff organizations such as English First and U.S. English in the suburbs of Washington, D.C. Many Texans, like other Americans, however, are monolingual.\textsuperscript{1037} While the number of children enrolling in "foreign language" courses has risen in recent years,\textsuperscript{1038} and the Texas Legislature has encouraged the learning of other languages,\textsuperscript{1039} Texas, like the rest of the United States, still has a long way to go. If the dream of economic growth brought by NAFTA is to be realized, Texas must do more. The tragic loss of multilingual skills among children who enter the public schools speaking one language (such as Spanish, Chinese, or Vietnamese) and leave the school system still speaking only one language (English) must end. Multilingualism in the school system for monolingual English-speaking children must be encouraged.\textsuperscript{1040}

The fears of English Only proponents threaten the development of multilingual skills among Texans. These English Only proponents fear what the future holds if government continues to provide multilingual governmental services. They fear that English is an endangered language, even though millions around the world study English because of its dominant position in the commercial world.\textsuperscript{1041} They fear that Hispanics don't want to learn English,\textsuperscript{1042} although seventy-four percent of Hispanic immigrants

\begin{itemize}
\item \textsuperscript{1037} An oft-repeated joke makes this point:
  \begin{itemize}
  \item Q: What do you call someone who speaks two languages?
  \item A: Bilingual.
  \item Q: Three languages?
  \item A: Trilingual.
  \item Q: One language?
  \item A: American.
  \end{itemize}
\end{itemize}


\textsuperscript{1039} \textit{See supra} note 950.

\textsuperscript{1040} Jo Ann Zúñiga, \textit{Study Picks Bilingual Education, Minority Business as Top Issues}, \textit{Hous. Chron.}, Apr. 21, 1994, at 30 (quoting Houston Indep. Sch. Dist. associate superintendent for community affairs Jaime de la Isla: "We are beginning an emphasis on dual-language—not only helping Spanish-speakers learn English, but for English-speakers to learn Spanish, since we are a part of such an urban environment.").

\textsuperscript{1041} Jennings, \textit{supra} note 546 at A1 (noting that "experts say there is no threat that English will be eclipsed by Spanish or any other tongue"); Robert McCrum \textit{et al.}, \textit{The Story of English} 19 (1986) (stating that English is used by 750 million to one billion people, of whom half speak it as a mother tongue, and asserting it "has become the language of the planet, the first truly global language").

\textsuperscript{1042} Guerra, \textit{supra} note 852, at C1 (reporting accusation by phone callers to newspaper columnist that "you Mexicans don't speak English and don't want to learn it"); Mark Langford, \textit{Democrats Reject Bid to Have English Declared Official Language}, \textit{UPI}, Jan. 13, 1987, available in LEXIS, News Library, UPSTAT file (quoting English Only proponent Lou Zaeske as stating that "recent immigrants
speak English well or very well, more than ninety percent of all Hispanics believe all citizens and residents of the United States should learn English, and today's immigrants are learning English as fast or faster than past immigrants. They fear separatism, although the long history of multilingual governmental services in Texas has not led to separatism. Many fear new, largely Asian and Hispanic immigrants. Some fear the political empowerment of the Hispanic community.

These fears are unfounded. The history of multilingual governmental services in Texas demonstrates that the dominance of

have not shown a desire to become a part of the mainstream culture" and "look upon America's English language as a secondary language"); Mattos Says "English First" Letter Biased, supra note 549 (quoting a letter from Rep. Jim Horn of Denton that asserts that 'leaders of the 'bilingual movement' do not want immigrants to learn English').

1043. Barringer, supra note 37 (reporting that Census Bureau finds 74% of Hispanics and 70% of Chinese and Korean immigrants also speak English well or very well).

1044. Juan R. Palomo, Hispanic Survey Debunks Myths, Hous. Post, Dec. 17, 1992, at A41. As Professor Rodolfo de la Garza has noted, English Only proponents who perpetuate this myth should be told "either you choose to be ignorant or you are now speaking as racists and as liars." Id. See also Voices of America, supra note 36, at A1 (quoting demographer Jeffrey Passel of the Urban Institute as finding "no evidence that recent immigrants from Latin American and Asia are less inclined to learn and use English than were earlier immigrants from Europe").

1045. Jennings, supra note 546 (quoting UCLA political scientist Dr. Peter Skerry that today's immigrants are learning English "as fast or faster than previous generations").

1046. Juan R. Palomo, Houston Station Shows the Future, Hous. Post, Oct. 21, 1990, at A26 (noting that English Only proponents "fail to understand . . . that if a separatist movement was going to thrive here, it would have done so a long time ago"); Jennings, supra note 546 (reporting that studies show immigrants continue to learn English and that English "remains a common thread that binds America together"); id. (noting that 78% of Texas Spanish-speakers also speak English fluently); Rodolfo de la Garza, supra note 44, at J1 (noting that Latino National Political Survey found Hispanics reject official English, but support speaking English); Clayton, supra note 44, at 1 (quoting Dr. Rodolfo de la Garza's interpretation of the Latino National Political Survey that "Most Hispanics see themselves first and foremost as Americans."); id. (reporting that 62.8% of U.S. born Mexican Americans speak mostly or exclusively English in their homes).

1047. Palomo, supra note 1044 (quoting Prof. Tacho Mendiola that the "English-Only movement is just a cover for 'let's stop immigration at the border'"); Seth Mydans, Pressure for English-Only Job Rules Stirring a Sharp Debate Across U.S., N.Y. Times, Aug. 8, 1990, at 12 (quoting ACLU lawyer Ed Chen: "For a lot of folks, language becomes . . . a legitimate way of expressing concern about being overrun by hordes of Mexicans and Asians coming into the United States."); Ken Flynn, Founder of Hispanic Veterans Organization Decrees "English Only," UPI, June 23, 1987, available in LEXIS, News Library, UPSTAT file (quoting American G.I. Forum founder Dr. Hector P. Garcia as describing the English Only movement as "nothing but racism, designed to make Hispanics look inferior for speaking Spanish").

1048. Lowry, supra note 1008 (quoting Republican state senate nominee Matt Harnest as favoring official English because "it can break the political bondage that the minority political bosses have over the minorities that do not speak English").
English as the basic language of government, commerce and education is not threatened by the provision of multilingual governmental services.\textsuperscript{1049} The German Texan experience is instructive:

From the Texas-Germans we can understand how immigrants can preserve a love for their old country and for their native language and still be patriotic Americans. We often read and hear, "Let these people learn English, as my grandparents did"; however, it should be remembered that many of our grandparents had no intention of learning English. They formed their German colonies for the express purpose of continuing their lives in the German language. We also hear, "English is the language of this country"; again, our foreparents knew that English was the language of government and of the majority, but the people of the country spoke all kinds of languages, and the freedom to speak one's own language was a basic American right.

As for our grandparents learning English as a model for the Texas Spanish today, we might consider that if the Hispanic Texans follow the example of the Texas-Germans, today's Spanish-speaking immigrants will never learn English, nor will their yet unborn children; their grandchildren will learn English, but will still be primarily Spanish-speaking. Their great-grandchildren, about a hundred years from now, will still be bilingual, but stronger in English, and their great-great-grandchildren finally will be monolingual in English. Following the model of the Texas-Germans, Spanish will be the language of their churches, weddings, and newspapers until approximately the year 2070.\textsuperscript{1050}

There are important differences between German and Spanish in Texas. The use of Spanish predates the use of German in Texas by centuries.\textsuperscript{1051} The use of Spanish in Texas is also reinforced by the fact that we are neighbors with Mexico and by the continuing entry of immigrants from Mexico and, to a lesser extent, other Spanish-

\textsuperscript{1049} English Only proponents who assert that the banning of other languages is essential to maintain a unified society ignore the lessons of history: Texans should be reminded that the English, using an effective educational system, successfully destroyed the Irish Celtic language, only to find that the resultant English-speaking Irish Catholics hated them even more than before and went on to pursue political separation. Jordan, \textit{supra} note 19, at 417.

\textsuperscript{1050} Wilson, \textit{supra} note 544, at 237.

\textsuperscript{1051} Flynn, \textit{supra} note 1047 (noting that Alvaro Núñez Cabeza de Baca traveled across Texas in 1519, and quoting American G.I. Forum founder Dr. Hector P. García as quipping, "They certainly weren't speaking English. We've been speaking Spanish in this state for a long, long time."). Like other Chicanos throughout the Southwest, many Tejanos who speak Spanish "were never immigrants and are 'as American as the heirs of the Mayflower.'" Helen Gaussoin, \textit{New Mexicans Prefer Diversity to Official English}, UPI, Feb. 8, 1987, \textit{available in LEXIS, News Library, UPSTAT file} (quoting New Mexico state representative Al Otero's description of Nuevo Mexicanos after the New Mexico Legislature rejected a proposal to make English the official language).
speaking countries. Nonetheless, the German Texan experience is an important one to recall as English Only proponents mount their attacks on multilingual governmental services.

Consistent with their obligation to uphold the rights protected by the Texas Constitution, the legislative and executive branches should firmly reject such attacks. Should the dark days of the early twentieth century ever return when the use of other languages was explicitly prohibited and even criminalized ever return, the courts should interpret the Texas Constitution in light of Texas history, and reject limits on access to governmental services for non-English-speaking Texas in a "known tongue." The expressive function of the court would be served if the history set forth in this article were used to recognize such a right. The use of historical argument in language claims under the Texas Constitution would itself have an expressive function:

Whenever a legitimate argument is advanced in an appropriate situation, the very fact of its avowal and assertion serves an expressive function. It says, "We are such people as would decide matters on this basis."

... The simple assertion of an historical argument is also the expression of a continuity of tradition, a fidelity to our forefathers' legacy, an acknowledgment of the modesty of our perspective and the limits of our wisdom, a statement that constitutional institutions are faithful to the extent that they are constitutional.

As one Texas Court of Appeals recently noted:

Texans historically have chosen from olden times to assure all the liberties for which Texans heroically struggled . . . . And

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1052. Professor Scott Baird, a linguist at Trinity University, concludes that by the third generation Hispanics are fluent in English, "but the difference is that they have no need to lose Spanish." David D. Medina, English-Only Movement Will Fail, Says Linguist, Hous. Post, Dec. 31, 1989, at A28.

1053. Linzer, supra note 51, at 1586 n.88 (stating that "along with public concern, the best defense of liberty is for those in the nonjudicial branches to take their constitutional duties seriously and avoid constitutional intrusions before the courts become involved").

1054. Bobbitt, supra note 23, at 211 (noting that the expressive function of a court "must sometimes be in advance of and even in contrast to, the largely inchoate notions of the people generally. The Court's role in the exercise of this function, after all, is to give concrete expression to the unarticulated values of a diverse nation.").

1055. Id. at 219 (quoting Justice Hans Linde of the Oregon Supreme Court that expressive holdings "shape people's vision of their Constitution and of themselves").
the judiciary of Texas is the stronghold and defender of those State constitutionally guaranteed rights.\textsuperscript{1056}

Recognizing language rights under the Texas Constitution would serve an important expressive function for the modern-day descendants of the Tejanos of the nineteenth century. It would recognize that, notwithstanding the mistreatment which Tejanos often suffered in nineteenth century Texas, modern-day Texas is prepared to stand by the commitments made by the framers of the Texas Bill of Rights almost 160 years ago. To the extent this may require overruling of cases that did not effectuate the framers' intent, the Texas Supreme Court has noted that this is entirely appropriate whenever "'strong additional light [has] been thrown upon the subject' through historical research."\textsuperscript{1057}

Texans have a "just pride" in their "unique Texas heritage, . . . Texas Constitution, and . . . Texas jurisprudence."\textsuperscript{1058} While Texas as a state has not always lived up to the high standards set forth in the Texas Constitution, the state's "rich history demonstrates . . . a determination that state constitutional guarantees be given full meaning to protect [Texas] citizens."\textsuperscript{1059} By providing today's Texans with the same language rights the Texans of the nineteenth century enjoyed, the Texas courts can provide leadership to other states with diverse populations struggling to accommodate the needs of their residents who do not speak English. Courts deciding language rights claims under the U.S. Constitution and under the constitutions of other states should consider the experience of the English-speaking Anglo-American immigrants in Mexican Texas.

For most of the nineteenth century, Texas excelled in meeting the language needs of its native Tejanos and of its European immigrants. This was one of the reasons immigrants developed the kind of attachment to their new home that led one German immigrant to exclaim, "Alles fuer Texas und Texas ueber alles!"\textsuperscript{1060} With the resurrection of the language rights asserted by the framers of the Texas Bill of Rights, all can agree: Qué viva Texas!

\textsuperscript{1056.} Low v. King, 867 S.W.2d 141, 145 (Tex. Ct. App. 1993) (Brookshire, J., concurring) (discussing free speech guarantee), \textit{writ conditionally granted}.
\textsuperscript{1058.} \textit{Ex parte Tucci}, 859 S.W.2d 1 app. at 15 (Tex. 1993).
\textsuperscript{1059.} Davenport v. García, 834 S.W.2d 4, 19 (Tex. 1992).
\textsuperscript{1060.} Raunick, \textit{supra} note 646, at 140 (quoting Victor Bracht "All for Texas and Texas above all!").