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

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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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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 más de estos habitantes no entienden palabra del Castellano y es enteramente imposible gobernar un pueblo con leyes cuya existencia la masa de ellos ignoran en lo absoluto.

— Stephen F. Austin¹

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 Independence²

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

—Former Texas Governor Ma Ferguson³

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 I15. For other variations on the quotation, see Michael Anthony, *Women of the West Are Celebrated in Singers' Fifth Season at Orduway*, 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.⁴ This protection is essential to ensure that multilingual governmental services, such as bilingual ballots,⁵ bilingual education,⁶ and multilingual driver's manuals⁷ survive the challenges posed by "English Only"⁸ organi-

H.L. Mencken. Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L. L. REV. 293, 293 (1989).

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").

5. See, e.g., TEX. ELEC. CODE ANN. §§ 272.001-272.010 (West 1986 & Supp. 1995) (requiring bilingual election materials).

6. See, e.g., TEX. EDUC. CODE ANN. §§ 21.451-21.463 (West 1987 & Supp. 1995) (authorizing bilingual education programs).

7. Fred Bonavita, *English-Only Group Hits Democrats: Use of Spanish at Texas Rally Criticized*, HOUS. 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 Ingwerson, *Citizens Enforce English-Only Laws: Public Misinterprets States' Statutes*, HOUS. 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*, HOUS. 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 *fajitas*¹⁴ and the *ro-deo*.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

HOUS. POST, Oct. 20, 1988, at E2 (supporting official English but noting that campaigning in other languages is "an entirely personal matter"). Those attacking election campaigns in other languages are unaware that this Texas tradition was established by Anglo-American immigrants in the 1820s; they conducted election campaigns in English at a time when the language of government was Spanish. See *infra* text accompanying note 165.

9. U.S. English was founded in 1983 by the late Senator S.I. Hayakawa. JAMES CRAWFORD, *HOLD YOUR TONGUE: BILINGUALISM & THE POLITICS OF ENGLISH ONLY* 4 (1992).

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 LEÓN, *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 Texan¹⁸ rather than the historical reality of multilingual Texans.¹⁹

These efforts have arisen because, to the surprise of many Americans,²⁰ nothing in the law of the United States makes English the official language.²¹ Nor do most states have any law declaring English as the state's official language. English is the official language of only seventeen states.²²

maintain their ethnic institutions"). See also *infra* text accompanying notes 1043-50 (discussing the falsity of the claim of English Only proponents that Hispanics refuse to learn English).

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.").

21. The late Senator S.I. Hayakawa introduced the first legislation to make English the official language of the United States in 1981. CRAWFORD, *supra* note 9, at 3. All such proposals to date have been unsuccessful. Several "Official English" measures were introduced during the 103rd Congress. H.R. 123, 103rd Cong., 1st Sess. (1993) (Language of Government Act of 1993); S. 426, 103rd Cong., 1st Sess. (1993) (same); H.R. 739, 103rd Cong., 1st Sess. (1993) (Declaration of Official Language Act of 1993); H.R.J. 171, 103rd Cong., 1st Sess. (1993) (proposing amendment to the United States Constitution making English the official language).

22. Ten states have enacted statutes making English the official language: Arkansas (ARK. CODE ANN. § 1-4-117 (Michie Supp. 1993) (enacted in 1987)); Illinois (ILL. ANN. STAT. ch. 5, para. 460/20 (Smith-Hurd 1993) (adopted in 1923)); Indiana (IND. CODE ANN. § 1-2-10-1 (Burns 1993) (adopted in 1984)); Kentucky (KY. REV. STAT. ANN. § 2.013 (Michie/Bobbs-Merrill 1992) (adopted in 1984)); Mississippi (MISS. CODE ANN. § 3-3-31 (1991) (adopted in 1987)); North Carolina (N.C. GEN. STAT. § 145-12 (1994) (adopted in 1987)); North Dakota (N.D. CENT. CODE § 54-02-13 (1989) (adopted in 1987)); South Carolina (S.C. CODE ANN. §§ 1-1-696 to 1-1-698) (Law. Co-op Supp. 1993) (adopted in 1987)); Tennessee (TENN. CODE ANN. § 4-1-404 (1991) (adopted in 1984)); and Virginia (VA. CODE ANN. § 22.1-212.1 (Michie 1993) (adopted in 1981)).

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. *Yñiguez 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.

Spanish had been the second official language of Dade County, Florida since 1973. CRAWFORD, *supra* note 9, at 93. In 1980, however, Dade County enacted "the nation's strictest English Only ordinance." *Id.* at 91. The ordinance has been repealed. Carl T. Rowan, *Forked-Tongue Hypocrites Keep Trying*, HOUS. CHRON., May 22, 1993, at 10.

23. *Meyer v. Nebraska*, 262 U.S. 390 (1923). A summary of criticism of the *Meyer* opinion can be found in PHILIP BOBBITT, *CONSTITUTIONAL FATE: THEORY OF THE CONSTITUTION* 71 and 98-100 (1982).

24. *Yñiguez*, 730 F. Supp. at 309 (D. Ariz. 1990).

25. *Hernández v. New York*, 500 U.S. 352 (1991). The *Hernández* decision has been widely criticized. *E.g.*, Sarah B. Clasby, Note, *Understanding Testimony: Official Translation and Bilingual Jurors in Hernandez v. New York*, 23 U. MIAMI INTER-AM. L. REV. 515 (1991-92); Miguel A. Méndez, *Hernandez: The Wrong Message at the Wrong Time*, 4 STAN. L. & POL'Y REV. 193 (1992-93); Juan F. Perea, *Hernandez v. New York: Courts, Prosecutors, and the Fear of Spanish*, 21 HOFSTRA L. REV. 1 (1992); Deborah A. Ramírez, *Excluded Voices: The Disenfranchisement of Ethnic Groups from Jury Service*, 1993 WIS. L. REV. 761.

26. *García v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993), *cert. denied*, 114 S. Ct. 2726 (1994).

B. *The New Federalism & Language Rights: Unexplored Law*

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."²⁷ The freedom of the state courts to determine the meaning of state law is a well-established principle of American federalism.²⁸ Lawyers who perceive the federal courts as less protective of individual rights than in the past are turning increasingly to state constitutions.²⁹ After years of neglect, academics are beginning to respond to calls for examinations of the protections offered by state constitutions,³⁰ often using the rubric of the "new federalism."³¹

27. *Ex parte Tucci*, 859 S.W.2d 1, 13 (Tex. 1993) (stating that the U.S. Constitution provides a floor for liberties); *Davenport v. Garcia*, 834 S.W.2d 4, 15 (Tex. 1992) (stating that the "only limit on the states is that . . . they may not deny individuals the minimum level of protection mandated by the Federal Constitution"); *LeCroy v. Hanlon*, 713 S.W.2d 335, 338 (Tex. 1986) (noting that "state constitutions can and often do provide additional rights for their citizens" and that the Texas Supreme Court "has been in the mainstream of this movement"); *Whitworth v. Bynum*, 699 S.W.2d 194, 196 (Tex. 1985) (noting that states are free to set their own standards so long as these standards do "not fall below the minimum standards" of the U.S. Constitution); *Mellinger v. City of Houston*, 3 S.W. 249, 252 (Tex. 1887) (noting that the Texas Constitution protects rights "which the [C]onstitution of the United States does not give in terms"); *Shelton v. Marshall*, 16 Tex. 344, 352 (1856) (holding "it to be clear and indisputable, that every state has the right to decide, for itself all questions of its own local, internal policy, and to declare the meaning and effect of its own constitution"); *Del Valle Indep. Sch. Dist. v. López*, 863 S.W.2d 507, 514 (Tex. Ct. App. 1993) (recognizing that the Texas Constitution "protects additional liberties guaranteed to all citizens of Texas"); *State v. Morales*, 826 S.W.2d 201, 204 (Tex. Ct. App. 1992) (stating that "Texas courts have relied on the state constitution to find more expansive rights").

28. *See, e.g., Murdock v. City of Memphis*, 87 U.S. (20 Wall.) 590, 626 (1875) (noting that "[t]he State courts are the appropriate tribunals, as this Court has repeatedly held, for the decision of questions arising under their local law, whether statutory or otherwise"). *See generally* CHARLES ALAN WRIGHT, *LAW OF FEDERAL COURTS* 788-90 (5th ed. 1994) (describing the history of the inability of the United States Supreme Court to review the interpretation by state courts of state law).

29. *See, e.g.,* William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y.U. L. REV. 535 (1986) (hailing the development of state constitutional law in view of the retrenchment of federal protection by the United States Supreme Court).

30. The Texas Supreme Court has noted that "legal academia may have 'unwittingly' contributed to the common failure of counsel to [assist in developing] state constitutional issues by sometimes viewing [state constitutional issues] as the 'bush league of constitutional law.'" *Davenport v. Garcia*, 834 S.W.2d 4, 21 n.58 (quoting Hans A. Linde, *Does the "New Federalism" Have a Future?*, 4 EMERGING ISSUES ST. CONST. L. 251, 251 (1991)). *See also* Robert F. Williams, *Equality Guarantees in State Constitutional Law*, 63 TEX. L. REV. 1195, 1223 (1985) (arguing that "academics should direct some of their attention to state constitutional law").

31. Professor Donald E. Wilkes claims credit for the first use of this phrase in Donald E. Wilkes, *The New Federalism in Criminal Procedure: State Court Evasion of the Burger Court*, 62 Ky. L.J. 421 (1974). *See* George E. Dix, *Judicial Indepen-*

While academics and others have responded to this call, particularly with respect to criminal law issues³² and free speech issues,³³ analyses of language rights have focused almost entirely on federal law.³⁴ 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.³⁵ 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-

dence in Defining Criminal Defendants' Texas Constitutional Rights, 68 TEX. L. REV., at 1369, n.2 (1990).

32. Examples with respect to the Texas Constitution include Dix, *supra* note 31, at 1369; Cathleen C. Herasimchuk, *The New Federalism: Judicial Legislation by the Texas Court of Criminal Appeals?*, 68 TEX. L. REV. 1481 (1990); Matthew W. Paul & Jeffrey L. Van Horn, *Heitman v. State: The Question Left Unanswered*, 23 ST. MARY'S L.J. 929 (1992).

33. Analyses of the Texas Constitution include James C. Harrington, *Free Speech, Press, and Assembly Liberties Under the Texas Bill of Rights*, 68 TEX. L. REV. 1435 (1990); Joseph H. Hart, *Free Speech on Private Property — When Fundamental Rights Collide*, 68 TEX. L. REV. 1469 (1990).

34. See, e.g., Califa, *supra* note 3, at 330-46; Laura A. Cordero, *Constitutional Limitations on Official English Declarations*, 20 N.M. L. REV. 17, 25-52 (1990); Michael M. Pacheco, *Does My Spanish Bother You?: Language Based Discrimination as a Pretext for National Origin Discrimination*, 11 CHICANO-LATINO L. REV. 53 (1991); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 356-71 (1992); Hiram Puig-Lugo, *Freedom to Speak One Language: Free Speech and the English Language Amendment*, 11 CHICANO-LATINO L. REV. 35 (1991); Leo Jonathan Ramos, Comment, *English-First Legislation: Potential National Origin Discrimination*, 11 CHICANO-LATINO L. REV. 77 (1991).

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.³⁶ Texas has the third-highest rate among all the states of residents who speak a language other than English.³⁷ Texans speak 169 languages other than English.³⁸ 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%).

38. *Voices of America*, *supra* note 36, at A1.

Spanish,³⁹ the number of speakers of Asian languages is growing at the fastest rate.⁴⁰

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.⁴¹ 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 corraled enough votes to block it under the rules of the Texas Legislature.⁴² Similar proposals in 1988 were also stillborn.⁴³

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.⁴⁴ 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).

41. *Native Texan Crusading to Make English State's Official Language*, HOUS. POST, Dec. 11, 1988, at A31.

42. Tex. H.J.R. 55, 70th Leg. (1987) (proposing a constitutional amendment to establish English as the official language of Texas). *But see* Tex. H.C.R. 61 (expressing opposition to efforts to designate English as the official state language). "[G]roups as divergent as the Baptist Christian Life Commission and the Texas Civil Liberties Union opposed" the official English proposal at a legislative hearing in April, 1987. Bob Lowry, *English Supporters Seek Place on Special Session Agenda*, UPI, July 6, 1987, available in LEXIS, News Library, UPSTAT file.

43. Tex. H.B. 2467, 71st Leg. (1989) (providing for non-binding referendum on the establishment of English as the official language for the conduct of government business); Tex. H.J.R. 48, 71st Leg. (1989) (proposing constitutional amendment to establish English as the official language of Texas). *See also* Ken Herman, *Senators May Kill English Bill—13 Legislators Sign Hobby Letter*, HOUS. POST, Nov. 23, 1988, at A4 (reporting 13 senators agreed to block any official English proposal when only 11 votes were needed to do so).

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

ity of Hispanic U.S. citizens reject the concept as well); *Texans Support English-Only Bill, Poll Shows*, UPI, May 13, 1987, available in LEXIS, News Library, UPSTAT file (noting that three-fourths of Texans polled by Public Policy Resources Laboratory at Texas A&M University supported legislation to make English the state's official language, but finding "the strongest objections coming from Mexican American respondents"). But see John Gravois, *Robertson Group Says Blacks, Hispanics More Aligned with It*, Hous. Post, Sept. 10, 1993, at A8 ("Christian Coalition" reports poll showing 62.8% of Hispanics support English as the official language).

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" Martínez 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).

48. The leadership of the Republican Party opposed declaring English the official language of Texas because of perceptions that it offends Hispanics. Major Garrett, *GOP's Williams Backs Bilingual Education*, Hous. Post, Nov. 14, 1989, at A23 (reporting opposition of gubernatorial candidate Clayton Williams); John Gravois, *GOP Candidates Split Over Official English*, Hous. Post, Nov. 4, 1989, at A22 (reporting opposition of Republican gubernatorial candidates Clayton Williams, Tom Luce, and Jack Rains; also reporting opposition of President George Bush, Governor Bill Clements, and Senator Phil Gramm, but noting support of gubernatorial candidate Kent Hance). Cf. Joe Patrick Bean, *Is the Official English Plan Worthy? No—Lincoln Would Have Hated It*, Hous. Post, Feb. 12, 1988, at E3 (recounting opposition of President Abraham Lincoln and other Republican Party founders to nativism, and drawing parallels with the English-Only movement); Jeri Clausung, *Official English Leader Says Candidates Should Use English Only*, UPI, Aug. 25, 1989, available in LEXIS, News Library, UPSTAT file (stating that Kent Hance supports the Official English movement, but also supports bilingual education); Raúl Reyes & John Gravois, *Robertson Draws Raves as He Blasts 'Mediocre' Dukakis*, Hous. Post, June 12, 1988, at A14 (reporting opposition of President Bush to English-only plank in Republican platform and his support for bilingual education). The Texas Democratic Party platform of 1988 opposed an official English declaration as "counterproductive." Jim Simmon, *No 'English Only': Texas Democrats OK 1988 State Platform*, Hous. Post, June 19, 1988, at A15.

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.⁴⁹ 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,⁵⁰ underscores the need for such an endeavor. Whether viewed from a current political perspective as "conservative" or as "liberal,"⁵¹ 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 "[m]any 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 seabord.⁵²

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.⁵³ The Texas courts "recognized the importance of our state constitution long before 'new federalism' even had a name."⁵⁴

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.⁵⁵ The failure of the Mexican

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 XI.A.

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'⁵⁶ 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.⁵⁷ With the influx of German immigrants in the 1840's, governmental services in German became available.⁵⁸ 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.⁵⁹ 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 LEÓN, *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:

[Y]ou 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 avert, 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.⁶²

Historical argument has been the subject of intensive scholarly examination and criticism.⁶³ 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.⁶⁴ Historical argument is not the only method of deciding constitutional issues.⁶⁵ I do not

tions"); "original understanding," ROBERT H. BORK, *THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW* 6 (1990).

62. PHILIP BOBBITT, *CONSTITUTIONAL INTERPRETATION* 90-91 (1991) (quoting Judge Bork's testimony before the Senate in 1987) (emphasis added).

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.⁶⁶ 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.⁶⁷

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.⁶⁸ Most of the leading proponents of the English Only movement, but not all,⁶⁹ 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).

BOBBITT, *supra* note 62, at 12-13. Many arguments about constitutional interpretation "take on aspects of more than one type." BOBBITT, *supra* note 23, at 7.

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.⁷⁰ 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.⁷¹ Professor Bobbitt 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."⁷² Additional concerns are raised by the subjectivity any observer brings to the analysis.⁷³ 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."⁷⁴ 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.⁷⁵ 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 "[h]istorical 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.⁷⁶ 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 documented 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 constitutional 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 determining that intent, 'the history of the times out of which it grew and to which it may be rationally supposed to have direct relationship, the evils intended to be remedied and the good to be accomplished, are proper subjects of inquiry.'⁸¹ The provisions of the

76. *García v. State*, 210 S.W.2d 574 (Tex. Crim. 1948). See BOBBITT, *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 philosophy); *id.* at 90-96 (discussing use of concepts and conceptions in law).

77. Cf. BOBBITT, *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. García*, 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); *Director of Dep't of Agric. & Env't*, 600 S.W.2d at 267 (same); *Travelers' Ins. Co. v. Marshall*, 76 S.W.2d 1007, 1012 (Tex. 1934) (same); *Brown v. Strake*, 706 S.W.2d 148, 151 (Tex. Ct. App. 1986) (same); *Terrell v. Middleton*, 187 S.W. 367, 372 (Tex. Civ. 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."⁸² 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."⁸³

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."⁸⁴ These values, customs, and traditions include those of the native Tejanos, as well as those of German, Czech, Polish, and Wendish immigrants.⁸⁵ 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*, 690 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 267 (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' societal 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.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,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.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."⁹³

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"); *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).

91. GEORGE D. BRADEN ET AL., *THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED & COMPARATIVE ANALYSIS* 3 (1977).

92. *Cf. Long v. State*, 742 S.W.2d 302, 313 (Tex. Crim. App. 1987), *cert. denied*, 485 U.S. 993 (1988). In the *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 *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 *García 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 *infra* parts VIII.C & XI.B.) 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").

93. *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. See e.g., Herasimchuk, *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"); Maltz, *supra* note 61, at 1000-01 (contrasting constraints imposed by interpretive review that are lacking in noninterpretive approaches); 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 1836.⁹⁴ 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."⁹⁵

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.⁹⁶ 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]."⁹⁷ 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 "set[ting] 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.⁹⁸ 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.⁹⁹ Determining the intent of the framers of the 1836 Constitution in turn requires an examination of the history of Texas during the Mexican period.¹⁰⁰

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.¹⁰¹ 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. BOBBITT *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 “[d]ue 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 Béxar*, 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

faster governance and control of Spanish subjects. Alastair Pennycook, *The Concept of Method, Interested Knowledge, & the Politics of Language Teaching*, 23 TESOL Q. 589, 592 (1989).

106. El Marqués de Croix, Decree (Oct. 10, 1769) (translation by Juárez), *microformed on The Laredo Archives* (St. Mary's Univ. Press) [hereinafter Laredo Archives] (microfilm and original documents available in St. Mary's University Academic Library).

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" families¹⁰⁸ and the capture of Indian slaves¹⁰⁹ also played a role in this Hispanicization.

The Hispanicization of Texas natives, however, was far from complete. Many "independent Indians"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.¹¹¹

IV. Government and Language in Mexican Texas

After Mexico obtained independence from Spain in 1821,¹¹² 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.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.¹¹⁴

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 B exar,¹¹⁵ then still a

108. Hinojosa & Fox, *supra* note 104, at 109-10 (describing adoptions of Indians by well-established San Fernando families).

109. *Id.* at 110 (describing adoption of Indians acquired in slave raids).

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 b arbaros' [barbarous Indians] of eighteenth century usage").

111. *Id.* at 127.

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.

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 120 (Walter Prescott Webb ed., 1952) [hereinafter I HANDBOOK OF TEXAS].

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).

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 B exar. Jes s F. de la Teja & John Wheat, *B exar: Profile of a Tejano Community, 1820-1832, in TEJANO ORIGINS, supra* note 104, at 2.

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.¹¹⁶ The Governor initially refused his permission, but Austin persisted, using Baron de Bastrop, a Dutchman who spoke English, Spanish, and French, as an interpreter.¹¹⁷

Moses Austin died in 1821,¹¹⁸ but his son, Stephen F. Austin, continued his efforts to secure permission from newly-independent Mexico to establish the Anglo-American colony. Stephen F. Austin¹¹⁹ was ultimately successful, and the first Anglo-American immigrants arrived in Texas in December, 1821.¹²⁰

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.¹²¹ Baron de Bastrop continued his role as interpreter during this period.¹²² 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.

116. DAVID B. GRACY, II, *MOSES AUSTIN: HIS LIFE* 3 (1987).

117. *Id.* at 4; Examination of Moses Austin by Antonio María Martínez (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 Martínez (about Feb. 1, 1821) (stating he has translated letter from Moses Austin), in *AUSTIN PAPERS, 1789-1827*, *supra*, at 380-81.

118. I *HANDBOOK OF TEXAS*, *supra* note 113, at 81.

119. All further references in this article to "Austin" refer to Stephen F. Austin.

120. Stephen F. Austin, *Introduction to the Settlers in What is Called "Austin's Colony," in Texas*, in *LAWS, ORDERS & CONTRACTS ON COLONIZATION, 1821-1829 UNDER WHICH COLONEL STEPHEN F. AUSTIN INTRODUCED AND SETTLED EMIGRANTS IN TEXAS TRANSLATED FROM SPANISH* (Stephen F. Austin trans., 1829) [hereinafter *LAWS, ORDERS & CONTRACTS ON COLONIZATION*], reprinted in 1 *Tex. Gen. Laws* 7 (Gammel 1898).

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.¹²³ Although he apologized for his poor Spanish in 1828, he wrote Spanish very well.¹²⁴ Austin played a critical role as translator for the Anglo-American immigrants.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."¹²⁶ James Austin wrote a letter to Stephen F. Austin, in May, 1823, which began in Spanish and finished in English.¹²⁷ Stephen F. Austin re-

123. See, e.g., Letter from Austin to Emperor Iturbide (Sept. 8, 1822), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 543; Letter from Austin to José Félix Trespalacios (Jan. 8, 1823), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 567; Letter from Austin to Erasmo Seguin (Jan. 1, 1824), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 718-19; Letter from Austin to Supreme Executive Power of the Republic (Oct. 1, 1824), in AUSTIN PAPERS, 1789-1827, *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), *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), *microformed on Texas as Province & Republic, supra*, Item 9.

124. Austin wrote:

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 conocimto. del castellano, pues hace pocos años qe. lo he aprendido.

[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 AUSTIN PAPERS, 1828-1834, *supra* note 1, at 122.

125. See *infra* text accompanying notes 152-56.

126. SAMUEL HARMAN LOWRIE, *CULTURE CONFLICT IN TEXAS, 1821-1835* 121 (1932) (quoting letter from Stephen F. Austin to J.E.B. Austin July 8, 1832).

127. Letter from J.E.B. Austin to Stephen F. Austin (May 4, 1823), in AUSTIN PAPERS, 1789-1827, *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:

Yo creo [que] V. ha hecho mas progreso (en la [sic] estudia [sic] dela mas hermosa lengua del mundo.) [que] yo. pero [sic] mi cabeza ha estado un poco trastornada como la de V.

[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.]

Id. (translation by Juárez).

sponded 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 Músquiz 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-

128. Letter from Stephen F. Austin to J.E.B. Austin (June 13, 1823) (writing a letter largely in Spanish, with a short conclusion in English), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 670-71.

129. Letter from Stephen F. Austin to Samuel M. Williams (Mar. 14, 1835), in THE AUSTIN PAPERS, 1834-1837 49 (Eugene C. Barker ed. 1926) [hereinafter AUSTIN PAPERS, 1834-1837]; Letter from Stephen F. Austin to Samuel M. Williams (Mar. 21, 1835), in AUSTIN PAPERS, 1834-1837, *supra*, at 50.

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, Decree No. 13 (Feb. 1, 1825) (describing powers of Chief), reprinted in 1 Tex. Gen. Laws 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.

132. Letter from Ramón Músquiz to Stephen F. Austin (Jan. 22, 1828) (translation by Juárez), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 8-9.

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.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.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.¹³⁶ Presumably, this administration was to be conducted in English. After independence from Spain was secured, the Mexican government granted Austin similar authority.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

134. Letter from Stephen F. Austin to Lucas Alamán (Sept. 20, 1830), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 489-92. The proposal was never realized. It is described *infra* IV.E.

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 binds of . . . language") (translation by Juárez), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 122-30.

136. Translation of Official Communications from Don Antonio Martinez, Governor of Texas, to Moses Austin (Aug. 24, 1821), *reprinted in* 1 Tex. Gen. Laws 27 (Gammel 1898).

137. Decree of the Emperor (Feb. 18, 1823) (authorizing Austin to organize the colonists into a militia and to administer justice), *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), *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. *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"), *reprinted in* 1 Tex. Gen. Laws 54 (Gammel 1898).

he shall promote the establishment of schools in the Spanish language, in such towns."¹³⁸ The other *empresarios*, as the colony organizers were known, had similar provisions in their colonization contracts.¹³⁹ 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.¹⁴⁰

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.¹⁴¹ 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*¹⁴² (municipality) be bilingual so that

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 *stndico 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 *stndico 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 occasionally, to the state government in Saltillo.¹⁴⁵ The Mexican government 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 immigrants by selecting bilingual government officials where possible.¹⁴⁷

These terms were among the first Spanish words incorporated into the Texian vocabulary. 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] *Politico 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 PAPERS, 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 M. 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 Músquiz 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 María Viesca (May 31, 1830) (recommending C. Miguel Arciniiega 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 collector 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:¹⁴⁸ 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 “[s]alary of a Secretary learned in the Spanish and English languages, who can also serve as translator.”¹⁴⁹ 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.”¹⁵⁰ The Ayuntamiento met Williams’ demand.¹⁵¹

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.¹⁵² He also prepared Spanish-language translations of the English-language documents composed by the Anglo-American immigrants.¹⁵³

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 Saucedo 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 Músquiz to Austin (Nov. 26, 1829) (asking Austin to translate Músquiz’ 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 Músquiz 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 Músquiz (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 inlisted [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 Governativa [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 Militial 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.¹⁶⁹ Licenses were issued in English.¹⁷⁰ Legal forms and writs were published in English.¹⁷¹ Promissory notes were printed in English.¹⁷² 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.¹⁷³ Gubernatorial speeches were translated into English.¹⁷⁴ Political writings were translated into English.¹⁷⁵

This documentary evidence establishes that, contrary to the claims of English Only proponents, multilingual government in

(Mar. 16, 1828), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 26-27; *Minutes of the Ayuntamiento of San Felipe de Austin*, *supra* note 148, at 406 (requiring on March 2, 1829 that state law concerning hospitals, apothecaries, and physicians be translated and posted in public places so those concerned could present themselves to the ayuntamiento with their diplomas); Notice from Stephen F. Austin to Colonists (Nov. or Dec. 1829), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 295-96; Public Notice from Stephen F. Austin to Public (Oct. 9, 1832), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 870-71; Milam's Colony (1834) (notice from R.M. Williamson advising land certificate holders of his appointment as commissioner and requiring them to report to him to receive land titles), *microformed on Texas as Province & Republic*, *supra* note 123, Item 52.

168. Official Letter from Stephen F. Austin to Ayuntamiento of San Felipe (Oct. 18, 1830), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 516; Letter from Ayuntamiento of San Felipe to Stephen F. Austin (Nov. 24, 1830), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 539-40; Maritime Custom-House of Galveston (Oct. 6, 1831) (letter from Commandant General Terán asking all to forget past difficulties of George Fisher with Texans), *microformed on Texas as Province & Republic*, *supra* note 123, Item 771A; Explanatory Remarks on the Official Document, under the title of Security for Texas, with a fair view of her present political situation, by Henry Smith, Political Chief of the department of Brazos (1834), *microformed on Texas as Province & Republic*, *supra* note 123, Item 48; Ayuntamiento of Brazoria to the Ayuntamiento of — (Jan. 2, 1834) (requesting views of other ayuntamientos on making Texas a separate Mexican state), *microformed on Texas as Province & Republic*, *supra* note 123, Item 44.

169. Battalion Order from Stephen F. Austin to Militia (Oct. 18, 1830), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 515-16.

170. License for Coasting Vessel (Aug. 1823?), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 691-92; Marriage bond (Apr. 29, 1824), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 779-80.

171. Forms & Writs (May 24, 1824) (forms for attachment, warrant, subpoena, & bail bond), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 800-03.

172. Promissory Note (1829), *microformed on Texas as Province & Republic*, *supra* note 123, Item 10. The form provided at the bottom: "I execute this note in this language, because I do not understand Spanish." *Id.*

173. *Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832* (Eugene C. Barker ed.), 23 Sw. HIST. Q. 214, 220 (Eugene C. Barker ed., 1920) (ordering "the translation of the evidence taken in the case of Ingram and League").

174. Governor Viesca's Inaugural Address (Apr. 15, 1835) (published by "Coahuilteanus"), *microformed on Texas as Province & Republic*, *supra* note 123, Item 823.

175. Virtuoso José María Viesca! (1834) (translation of notice exulting over election of new deputy to Congress), *microformed on Texas as Province & Republic*, *supra* note 123, Item 815.

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 104-05; 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 0509.

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 Músquiz (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.¹⁸¹ English-language petitions were accepted.¹⁸² Even petitions to the state government were presented in English.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.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.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.¹⁸⁶ In April, 1830, Stephen F. Austin sent the overdue reports caused by the Al-

Letter from Ayuntamiento of San Patricio (Aug. 10, 1834) (explaining inability to comply with all details of electoral law), *microformed on Béxar 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 "Copia del [sic] Declarations [sic] Contra Dn. Juan Hulihan" ["Copy of Declarations Against Juan Hulihan"], *microformed on Béxar Archives, supra* note 144, Roll 162, Frames 0905-0911.

181. Letter from Ayuntamiento of Liberty to Political Chief of Department of Béxar (May 31, 1834) (requesting decision on which of two individuals is first regidor), *microformed on Béxar Archives, supra* note 144, Roll 161, Frame 0777.

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

Aquí 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].

Id. (translation by Juárez). 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.

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.

184. Letter from Ramón Músquiz 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").

185. Letter from Thomas Barnett to Ramón Músquiz (Feb. 1, 1830), in *AUSTIN PAPERS, 1828-1834, supra* note 1, at 329.

186. 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.¹⁸⁷ Austin later recommended to Anglo-American officials that official correspondence be acknowledged, even if in English.¹⁸⁸

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 adress [sic] 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.¹⁸⁹

Mr. Davis then asked for permission to have official documents translated by Mr. Smith¹⁹⁰ at Béxar. Mr. Smith continued to translate English-language documents for the Ayuntamiento of Gonzáles,¹⁹¹ and for other Anglo-American immigrants.¹⁹² Some of the documents from Gonzáles, however, do not have a Spanish translation.¹⁹³

text accompanying note 157 (describing the requirement that bilingual ayuntamiento records be maintained).

187. Letter from Stephen F. Austin to Ramón Músquiz (Apr. 3, 1830), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 355-56.

188. Letter from Stephen F. Austin to Alcalde Luke Lesassier (May 6, 1833), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 963.

189. Letter from James C. Davis to Chief of Department of Béxar (Apr. 18, 1834), *microformed on Béxar Archives, supra* note 144, Roll 161, Frame 149.

190. "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]"), *microformed on Béxar Archives, supra* note 144, Roll 162, Frame 0634.

191. Letter from Alcalde James C. Davis (May 2, 1834) (acknowledging receipt of laws "and through the translation of Mr. Smith are all understood"), *microformed on Béxar Archives, supra* note 144, Roll 161, Frame 0358; Letter from Alcalde James C. Davis (May 16, 1834), *microformed on Béxar Archives, supra* note 144, Roll 161, Frame 0572; Letter from Alcalde James C. Davis (May 17, 1834), *microformed on Béxar Archives, supra* note 144, Roll 161, Frame 0583; Letter from Alcalde James C. Davis (May 19, 1834), *microformed on Béxar Archives, supra* note 144, Roll 161, Frame 0606; Letters from Alcalde James C. Davis (May 22, 1834), *microformed on Béxar Archives, supra* note 144, Roll 161, Frame 0659 and 0662; Letter from Ezekiel Williams (July 8, 1834), *microformed on Béxar Archives, supra* note 144, Roll 162, Frame 0370.

192. 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 AUSTIN PAPERS, 1834-1837, *supra* note 129, at 95.

193. Letter from James C. Davis (Apr. 18, 1834) (nominating four persons to serve as judges), *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.¹⁹⁴ Anglo-American surveyors wrote their field notes in English, and these were then translated into Spanish.¹⁹⁵ While some land titles were only in Spanish,¹⁹⁶ many were bilingual.¹⁹⁷ Land titles for properties within the Anglo-American towns were in English.¹⁹⁸

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.¹⁹⁹ This contract provision was, as one historian has described, as "ineffective as the requirement that the colonists become Catholics."²⁰⁰ The Anglo-American immigrants established schools taught only in English.²⁰¹ 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 vacias 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.

197. See Form of Land Certificate (Aug. 1823), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 691.

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.

200. Max Berger, *Education in Texas During the Spanish & Mexican Periods*, 51 Sw. HIST. Q. 41, 49 (1948).

201. The first English-language school in Texas was probably operated by Isaac M. Pennington in 1823-24. C.E. EVANS, *THE STORY OF TEXAS SCHOOLS* 35 (1955). Thomas J. Garner taught at Nacogdoches in 1825, and T.J. Pilgrim at San Felipe de Austin in 1829, and then at Columbia. Henry Smith taught in Brazoria from 1827-1830, while Oyster Creek had a school beginning in 1834. *Id.* at 35-37. The Anglo-American immigrants operated an English school in Nacogdoches in 1828. BARKER, *supra* note 141, at 53 (quoting report by General Manuel Mier y Terán). See also FREDERICK EBY, *THE DEVELOPMENT OF EDUCATION IN TEXAS* 76-78 (1925) (describing Anglo-American schools); Berger, *supra* note 200, at 50-53 (same).

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:

[P]ublic 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).

203. CONSTITUTION OF COAHUILA & TEXAS of 1827, tit. VI, *reprinted in* 1 Tex. Gen. Laws 451 (Gammel 1898).

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.

206. THE DECLARATION OF INDEPENDENCE OF THE REPUBLIC OF TEXAS, *reprinted in* TEX. CONST., *supra* note 2, at 479.

207. JEAN FLYNN, STEPHEN F. AUSTIN: THE FATHER OF TEXAS 49 (1981).

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 . . . [T]he 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

208. Mattie Austin Hatcher, *Plan of Stephen F. Austin for an Institute of Modern Languages at San Felipe de Austin*, 12 Q. TEX. ST. HIST. ASS’N 231, 235-36 (1909).

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 accomadation [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.²¹⁹ This proposal was finally realized in 1834.²²⁰

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.²²¹ 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.²²²

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.²²³ The Mexican government published certain decrees in English for the benefit of the Anglo-American immigrants.²²⁴ Ste-

to permit English-speaking Protestant ministers to preach in the colony. A note at the end of the draft states he ultimately deemed this section "a dangerous subject to touch and therefore not sent." *Id.* at 1002.

219. Barker, *supra* note 155, at 232.

220. *See infra* part V.G.

221. *Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832*, *supra* note 173, at 72.

222. *See also infra* parts V.B and V.C (describing the demands for greater bilingualism by the Conventions of 1832 and 1833).

223. *See supra* text accompanying notes 142-46.

224. Puede desembarcar el extranjero [sic] [The foreigner may disembark] (Jan. 12, 1831) (regulations for passports in Spanish, English, & French), *microformed on Texas as Province & Republic*, *supra* note 123, Item 733; Provisional Regulations for the Surveying of Vacant Lands . . . A.D. 1829 (Dec. 21, 1829) (printed in Spanish & English), *microformed on Texas as Province & Republic*, *supra* note 123, Item 15; *Alcance al Num. 25 del Noticioso del Puerto de Matamoros* (May 23, 1831) (newspaper extra in Spanish and English containing decrees on slavery and on division of Department of Béxar into two departments), *microformed on Texas as Province and Republic*, *supra* note 123, Item 40; Notice that empresarios cannot sell the lands received by them as premiums until they are naturalized citizens of the Mexican

phen F. Austin maintained manuscript translations of all the Mexican laws in his office and made them available to the immigrants.²²⁵ The ayuntamientos regularly ordered the translation and printing of Mexican laws.²²⁶

Nonetheless, the Anglo-American immigrants demanded more translations of the Mexican laws.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,

Republic (Jan. 12, 1831) (published in Spanish and English in NOTICIOSO DEL PUERTO DE MATAMOROS), *microformed on Texas as Province & Republic*, *supra* note 123, Item 763; Milam's Colony (1834) (notice from land commissioner containing translations of state laws relating to securing land titles), *microformed on Texas as Province & Republic*, *supra* note 123, Item 52; Laws and Decrees, State of Coahuila and Texas, Decree no. 277, art. 140 (1834) (providing for translation and publication of decree establishing bilingual court system), *reprinted in* 1 Tex. Gen. Laws 254, 270 (Gammel 1898); Decree No. 308 of the Congreso constitucional [Constitutional Congress], authorizing Samuel Williams to establish a bank (Apr. 30, 1835) (published in English by state legislature), *microformed on Texas as Province & Republic*, *supra* note 123, Item 822A.

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.

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).

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 "totally [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.

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).

The first newspaper published in Texas, the *Gaceta de Texas*, was printed in Spanish in May, 1813 at Natchitoches. THOMAS W. STREETER, BIBLIOGRAPHY OF TEXAS, 1795-1845 1 (Research Publications, Inc. 1983) (1955). The following month, the first Texas newspaper published in English and Spanish, *El Mexicano*, was printed at Natchitoches. *Id.* The *Mexican Advocate*, a weekly paper, was printed at Nacogdoches in Spanish and English in 1829. *Id.* at 198; Barker, *supra*, at 129.

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.²³² Other state laws,²³³ as well as the municipal ordinance for the government of the Ayuntamiento of *San Felipe de Austin*,²³⁴ 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.²³⁵ The *Gazette* continued to print translations of Mexican laws.²³⁶ Austin also continued to press for the translation of all of the laws of Coahuila and Texas.²³⁷ 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.²³⁸

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.²³⁹ For the Anglo-American immigrants, this was not enough, for less than a year

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 Político 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*).

235. TEX. GAZETTE, Mar. 13, 1830 & Mar. 20, 1830, *cited in* LOWRIE, *supra* note 126, at 121-22.

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 conduct 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 B́exar into at least two *partidos*, or districts. In support of this proposal, Austin noted:

The eastern part of the department is populated with new colonies whose populations in general do not understand the Castilian 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 reasons 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 B́exar 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 necessary for each *Alcalde* and each *Ayuntamiento* . . ." ²⁴³ Austin concluded 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 B́exar was divided into two depart-

240. See *infra* part V.J.

241. Barker, *supra* note 155, at 232.

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.²⁴⁵ In 1834, the Department of Béxar was divided yet again into the Departments of Béxar and Brazos.²⁴⁶ 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.²⁴⁷ 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.²⁴⁸

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 some²⁴⁹ of the Anglo-American immigrants and native Tejanos to declare their independence from Mex-

245. Laws and Decrees, State of Coahuila and Texas, Decree no. 164, arts. 1 & 2 (1831), reprinted in 1 Tex. Gen. Laws 281 (Gammel 1898).

246. Laws and Decrees, State of Coahuila and Texas, Decree no. 270, arts. 1, 3, & 4 (1834), reprinted in 1 Tex. Gen. Laws 355 (Gammel 1898).

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 Independence²⁵⁰ were military abuses,²⁵¹ the inadequacies of the Mexican justice system,²⁵² the failure of the Mexican Republic to abide by the federalist guarantees of the Mexican Constitution of 1824,²⁵³ 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 guarantee 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, *ANGLOS & 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.²⁵⁴ Other reasons not cited by the Texians included a desire to protect their purported "right" to own slaves,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.²⁵⁶ Others have attributed the break to "differences in folkways and mores, in the culture patterns of the two groups."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").

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." THE DECLARATION OF INDEPENDENCE OF THE REPUBLIC OF TEXAS (1836), reprinted in *TEX. CONST.*, *supra* note 2, at 479. 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." 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. See *infra* text accompanying note 256 (noting Manifest Destiny as one explanation for Texas independence); 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 Euroamericans 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. See *supra* note 250.

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. *Introduction to Constitutions of Texas*, in *TEX. CONST.*, *supra* note 2, at 463-65. *But see* BARKER, *supra* note 141, at 62 (concluding that slavery was not an active cause in precipitating the revolution). See generally *infra* note 353 (describing Mexican law regarding slavery and Anglo-American responses).

256. MONTEJANO, *supra* note 253, at 24 (describing Texas independence and subsequent annexation as "essentially the reflection of a 'manifest destiny'"); *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"). 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"); 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").

257. 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 Languages²⁶⁴

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:

262. I HANDBOOK OF TEXAS, *supra* note 113, at 404.

263. PROCEEDINGS OF THE GENERAL CONVENTION OF DELEGATES REPRESENTING THE CITIZENS & INHABITANTS OF TEXAS (Oct. 3, 1832), *reprinted in* 1 Tex. Gen. Laws 485 (Gammel 1898).

264. PROCEEDINGS OF THE GENERAL CONVENTION OF DELEGATES REPRESENTING THE CITIZENS & INHABITANTS OF TEXAS (Oct. 5, 1832), *reprinted in* 1 Tex. Gen. Laws 493 (Gammel 1898).

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.

266. PROCEEDINGS OF THE GENERAL CONVENTION OF DELEGATES REPRESENTING THE CITIZENS & INHABITANTS OF TEXAS (Oct. 5, 1832), *reprinted in* 1 Tex. Gen. Laws 491-92 (Gammel 1898).

267. *See infra* part V.D.

268. I HANDBOOK OF TEXAS, *supra* note 113, at 404.

The laws which ought to be enforced [sic], 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.

[T]he *right* of the people of Texas to represent their wants to the government, and to explain in a respectfull [sic] 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 nation²⁷⁰

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

[T]he *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 unknownA 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 intirely [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

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 [T]he 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 inhabitants are ignorant of the language, it has left them without a remedy for the injustice done them by the inferior judges.²⁷⁸

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

[W]e believe that legislators arising out of the bosom of the people, *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.²⁷⁹

The Texas Declaration of Independence asserted that the failure 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

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.²⁸⁰

In considering the problems the framers of the Texas Bill of Rights were attempting to remedy, the Texas courts must consider the failure 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.²⁸¹ One of the most important forces behind the move for statehood was the failure of the Mexican state of Coahuila

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) *microformed on Texas as Province & Republic*, *supra* note 123, Item 39. Chambers became *asesor general* (state attorney) in February 1834 and helped frame the judicial code establishing a bilingual court system for Texas, described *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. I HANDBOOK OF TEXAS, *supra* note 113, at 326.

279. The Ayuntamiento of Brazoria to the Ayuntamiento of __ (Jan. 2, 1834), *microformed on Texas as Province & Republic*, *supra* note 123, Item 44 (emphasis added).

280. THE DECLARATION OF INDEPENDENCE OF THE REPUBLIC OF TEXAS (1836) (emphasis added), *reprinted in TEX. CONST.*, *supra* note 2, at 479.

281. HARRINGTON, *supra* note 45, at 52 (noting that in interpreting the Texas Constitution 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

282. THE DECLARATION OF INDEPENDENCE OF THE REPUBLIC OF TEXAS (1836), *reprinted in* TEX. CONST., *supra* note 2, at 478.

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 B́exar Remonstrance, the Tejanos of B́exar 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 languages²⁸⁶

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 [abus]ing 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 B́exar al Honorable congreso del Estado, manifestando los males que aflijen [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 B́exar 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.²⁸⁷ 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.²⁸⁸ The *Béxar Remonstrance* was published in both Spanish and English.²⁸⁹ Austin prepared instructions from the 1833 Convention for the mission to Congress in Spanish.²⁹⁰ A Tejano, Don Erasmo Seguín, was appointed to the mission to present the petition to the Mexican Congress.²⁹¹ Other Tejanos translated the memorial for Austin.²⁹²

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."²⁹³ 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."²⁹⁴

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.

291. Letter from Stephen F. Austin to Luke Lesassier (May 6, 1833), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 961.

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.

294. Laws and Decrees, State of Coahuila and Texas, Decree no. 239 (1833), reprinted in 1 Tex. Gen. Laws 332-33 (Gammel 1898).

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

295. Laws and Decrees, State of Coahuila and Texas, Decree no. 270 (1834), *reprinted in* 1 Tex. Gen. Laws 356 (Gammel 1898).

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. I *HANDBOOK 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* B exar 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 ADMINISTRACI N 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.

306. Opinión de Don Lorenzo de Zavala sobre el Estado Político actual de los Estados Unidos Mejicanos [Opinion of Don Lorenzo de Zavala on the Current Political State of the United Mexican States] (Oct. 25, 1835), *microformed on Texas as Province & Republic*, *supra* note 123, Item 112.

307. DECLARATION OF THE PEOPLE OF TEXAS IN GENERAL CONVENTION ASSEMBLED (Nov. 7, 1835), *reprinted in* TEX. CONST., *supra* note 2, at 469.

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 & Republic.

people of each municipality of the department of Béxar."³⁰⁹ Proclamations were sent out in Spanish to the Tejanos.³¹⁰ Austin sent an address in Spanish to Béxar explaining the activities of the Anglo-Americans and specifically guaranteed the rights of Texas towns inhabited 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 consultation if they wish to do so.³¹¹

The Consultation established a provisional government that purported to operate as a state within the Mexican nation.³¹² The intent of the framers of the Texas Bill of Rights to establish a bilingual 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.³¹³ 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. Macomb was appointed interpreter."³¹⁴ 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."³¹⁵ Mr. Padilla was one of three members of this committee.³¹⁶ 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 available in English, or if communication in any other language but Eng-

lic, *supra* note 123, Item 88. One thousand copies were printed in Spanish and one thousand in English. STREETER, *supra* note 229, at 64.

309. SAN FELIPE DE AUSTIN JOURNALS, *supra* note 308 (Nov. 9, 1835), reprinted in 1 Tex. Gen. Laws 527 (Gammel 1898).

310. Proclamation by Stephen F. Austin (Nov. 10, 1835), in AUSTIN PAPERS, 1834-1837, *supra* note 129, at 248.

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 PROVISIONAL DE TEJAS, AL PUEBLO MEJICANO (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.

314. JOURNAL OF THE PROCEEDINGS OF THE GENERAL COUNCIL OF THE REPUBLIC OF TEXAS HELD AT SAN FELIPE DE AUSTIN, [hereinafter JOURNAL OF THE PROCEEDINGS], reprinted in 1 Tex. Gen. Laws 562 (Gammel 1898). Padilla resigned from the Council 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."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.³¹⁸ Similarly, Tejanos who were almost certainly monolingual Spanish-speakers were appointed as commissioners for organizing the militia.³¹⁹

The Council provided for the translation of Spanish documents into English,³²⁰ and of English documents into Spanish. Translation obviously was necessary to monitor the Mexican Army.³²¹ Communications in Spanish were received from Mexican Federalist General José Antonio Mexía.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.³²³ A resolution thanking Col. González for his intercession on behalf of Texian prisoners of war was ordered translated and furnished to him.³²⁴ A communication in Spanish regarding the military movements of the Mexican Army was presented by Mr. Paddilla and translated.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.

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.

318. SAN FELIPE DE AUSTIN JOURNALS, *supra* note 308, at 589 (Nov. 26, 1835) (appointing Plácido Benavidas [Benavides] as First Judge and Francisco Cárdenas as Second Judge at Guadalupe Victoria; appointing Encainacion [Encarnación] Vásques [Vásquez] as First Judge and Robert Galán as Second Judge at Goliad; and appointing Juan N. Seguin as First Judge and Miguel Arceniega [Arciniega] as Second Judge at Béxar).

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

320. *Id.* at 575 (Nov. 20, 1835).

321. *Id.* at 623 (Dec. 4, 1835).

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

323. *Id.* at 605-06 (Nov. 30, 1835).

324. *Id.* at 672 (Dec. 16, 1835).

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.

...
[C]an 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 Mexicans³²⁸

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,³²⁹ the elections for delegates in Béxar to the convention at Washington-on-the-Brazos were held in Spanish.³³⁰ Three Tejanos were elected as delegates: Lorenzo de Zavala³³¹ (representing Harrisburg), and Francisco Ruíz and Antonio Navarro (representing Béxar).³³²

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 . . ." ³³³ 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 Seguín to Francisco Ruíz (Feb. 10, 1836) (advising Ruíz that he has been elected as a delegate), *reprinted in* JESÚS F. DE LA TEJA, *A REVOLUTION REMEMBERED: THE MEMOIRS & SELECTED CORRESPONDENCE OF JUAN N. SEGUÍN* 135-36 (1991). All of Juan Seguín's correspondence reproduced in the appendix in this work is in English, but de la Teja has identified those documents written by Seguín 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.

332. *JOURNALS OF THE CONVENTION OF THE FREE, SOVEREIGN AND INDEPENDENT PEOPLE OF TEXAS, IN GENERAL CONVENTION ASSEMBLED* (Mar. 1, 1836), *reprinted in* 1 *Tex. Gen. Laws* 823-24 (Gammel 1898).

333. *THE DECLARATION OF INDEPENDENCE OF THE REPUBLIC OF TEXAS* (1836), *reprinted in* *TEX. CONST.*, *supra* note 2, at 478.

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.³³⁴ 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.³³⁵

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.

335. THE DECLARATION OF INDEPENDENCE OF THE REPUBLIC OF TEXAS (1836), reprinted in TEX. CONST., *supra* note 2, at 479.

and create another in its stead, calculated to rescue them from impending dangers, and to secure their welfare and happiness.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."³³⁷ The motion was approved on March 10, 1836.³³⁸

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.³³⁹ Lieutenant Colonel Seguín wrote to his commanding officer, General Thomas J. Rusk, in Spanish.³⁴⁰ Secretary of War John A. Wharton requested that Seguín make his reports in English, but authorized the employment of an interpreter to make this possible.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.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

336. THE DECLARATION OF INDEPENDENCE OF THE REPUBLIC OF TEXAS (1836), reprinted in *TEX. CONST.*, *supra* note 2, at 478; BRADEN, *supra* note 91, at 2-3 (describing the social contract philosophy of the Texas Bill of Rights).

337. 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* 878 (Gammel 1898).

338. *Id.* at 885 (Mar. 10, 1836).

339. Muster Roll of Seguín's Regiment (Dec. 31, 1836) (listing members of Companies A, B & C), reprinted in *DE LA TEJA*, *supra* note 330, at 148-51.

340. See e.g., Letter from Juan Seguín to General Thomas J. Rusk (June 7, 1836), reprinted in *DE LA TEJA*, *supra* note 330, at 141-42, and *supra* note 332.

341. Order No. 1 from Secretary of War John A. Wharton to Juan Seguín (Sept. 17, 1836), reprinted in *DE LA TEJA*, *supra* note 330, at 144-45.

342. Letter from Stephen F. Austin to Antonio de la Garza (Nov. 16, 1835), in *AUSTIN PAPERS, 1834-1837*, *supra* note 129, at 255-56.

necessary to carry into due effect the object of your mission."³⁴³ Lieutenant Colonel Seguín continued to use Spanish in official communications with the Alcalde of Béxar.³⁴⁴ Proclamations delivered in Spanish to Tejano citizens were translated into English and published in the Texian newspapers.³⁴⁵

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

As noted above,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."³⁴⁷ William B. Travis claimed that the Tejanos at Béxar "are all our enemies, except those who have joined us heretofore . . . those who have not joined us . . . should be declared public enemies, and their property should aid in paying the expenses of the war."³⁴⁸

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

343. Orders from Lieutenant Colonel Juan Seguín to Captain Thomas Pratt (Mar. 26, 1837), reprinted in DE LA TEJA, *supra* note 330, at 163.

344. Letter from Juan Seguín to Nicolás Flores (Mar. 29, 1837), reprinted in DE LA TEJA, *supra* note 330, at 165.

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), published in TELEGRAPH AND TEXAS REGISTER, Sept. 21, 1836, reprinted in DE LA TEJA, *supra* note 330, at 143.

346. See *supra* text accompanying note 64.

347. Letter from Governor Henry Smith to President and Members of the Legislative Council (Dec. 12, 1835), JOURNAL OF THE PROCEEDINGS, *supra* note 314, reprinted in 1 Tex. Gen. Laws 658-59 (Gammel 1898).

348. Letter from W. Barrett Travis to Convention (Mar. 3, 1836), *id.* at 846. 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"), 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." *Id.*

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."³⁴⁹ 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

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 Ruíz, 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."³⁵⁴

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 enterprize [sic]."³⁵⁵ 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."³⁵⁶

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.³⁵⁷ 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 188-89 (Gammel 1898); 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). 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. 190, art. 36 (1832) (limiting servants and day laborers introduced by foreign settlers to a contract term no longer than ten years), *reprinted in* 1 Tex. Gen. Laws 189, 193 (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. 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).

356. THE DECLARATION OF INDEPENDENCE OF THE REPUBLIC OF TEXAS (1836), *reprinted in* TEX. CONST., *supra* note 2, at 480.

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,³⁵⁸ 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.³⁵⁹

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, 1836.³⁶⁰

The Constitution of the Republic of Texas was signed by the three Tejano delegates to the Convention: Francisco Ruíz, José Antonio Navarro, and Lorenzo de Zavala.³⁶¹ While Lorenzo de Zavala spoke English,³⁶² Francisco Ruíz and José Antonio Navarro did not.³⁶³ 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,"³⁶⁴ 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 "[r]acial 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 482, n.*.

361. CONST. OF THE REPUBLIC OF TEXAS (1836), reprinted in TEX. CONST., *supra* note 2, at 495.

362. See I 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 Ruíz was "[u]nable 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."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 Ruíz were in Spanish.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 Seguin "never acquired command of English."³⁶⁷ He therefore debated in the Senate of the Republic of Texas in Spanish.³⁶⁸ Although he needed an interpreter, Seguin served as Chair of the Committee on Military Affairs, and served on the Committee of Claims and Accounts.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-

365. CONST. OF THE REPUBLIC OF TEX., Schedule § 8 (1836), *reprinted in* TEX. CONST., *supra* note 2, at 490.

366. *Davidson v. Ryle*, 124 S.W. 616, 617-18 (Tex. 1910) (describing sale of land in Jefferson County).

367. DE LA TEJA, *supra* note 330, at 53. A newspaper reporter in 1886 interviewed Seguin 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. Seguin" 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,³⁷⁰ 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.”³⁷¹ 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.”³⁷² The laws of the Mexican state of Coahuila & Texas were published in both Spanish and English.³⁷³ The Velasco Treaty, terminating the war for independence, was also published in both languages.³⁷⁴

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.³⁷⁵ 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 caunties [sic], who shall give all due publicity to said laws; provided, the expense shall not exceed three hundred dollars annually.”³⁷⁶ A similar statute, but without the three hundred dollar limitation, was enacted in 1839.³⁷⁷ 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.

371. CONST. OF THE REPUBLIC OF TEX., General Provisions § 7 (1836) (emphasis added), reprinted in TEX. CONST., *supra* note 2, at 490.

372. Act of Dec. 14, 1837, §§ 33-34, 1837 Republic Tex. Laws 73, reprinted in 1 Tex. Gen. Laws 1415 (Gammel 1898).

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.

375. Joint Resolution of Dec. 18, 1837, 1837 Republic Tex. Laws 99, reprinted in 1 Tex. Gen. Laws 1441-42 (Gammel 1898).

376. *Id.*

377. Act of Jan. 23, 1839, 1839 Republic Tex. Laws 76-77, reprinted in Tex. Gen. Laws 76-77 (Gammel 1898).

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 SEGUIN, 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.³⁸² The Spanish translation was finally printed in 1841.³⁸³ 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.³⁸⁴

A third statute requiring translation of the laws into Spanish "immediately upon the adjournment of Congress of each year" was enacted in January, 1842.³⁸⁵ Five days later, however, the Secretary of State was ordered to suspend the printing of the laws in Spanish.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

382. Letter from Joseph Waples to Juan Seguín (July 1, 1840), *reprinted in* DE LA TEJA, *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." 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." Letter from Joseph Waples to Samuel A. Roberts, Secretary of State (Oct. 12, 1841), *reprinted in* REPORT OF THE SECRETARY OF STATE, 1841, *reprinted in* JOURNALS OF CALLED SESSION, 1842, *supra*, at 276.

384. STREETER, *supra* note 229, at 149. For the finished translation, see S.P. ANDREWS, CONSTITUCIÓN, LEYES JENERALES [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, *supra* note 123, Item 477.

385. Joint Resolution of Jan. 12, 1842, 1842 Republic Tex. Laws 35, *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.

386. Joint Resolution of Jan. 17, 1842, 1842 Republic Tex. Laws 38, *reprinted in* 2 Tex. Gen. Laws 710 (Gammel 1898). A typographical error in Gammel identifies the date of this joint resolution as January 17, 1841.

colleagues to provide Spanish translations.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.³⁸⁸

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. II HANDBOOK OF TEXAS, *supra* note 114, at 262-63. Juan N. Seguín, 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. *Id.* at 590.

388. A bill to suspend the printing of the laws in Spanish was first introduced in the House on Dec. 10, 1841. H.J. OF TEX., 6th Cong. 125 (Capital Printing Co., Inc. 1944) (1841-42) [hereinafter HOUSE JOURNAL, 1841-42]. The journal of December 15th characterized the proposal as a joint resolution on its second reading. *Id.* at 162-63 (Dec. 15, 1841). The following day, the joint resolution "was laid on the table." *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. *Id.* at 183 (Dec. 17, 1841). There is no record in the *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. *Id.* at 203.

On December 31st, the joint resolution to suspend the printing of laws was resurrected, read a third time, and passed. *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! *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. CONST. OF THE REPUBLIC OF TEXAS, art. 1, § 26 (1836), *reprinted in* 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. 1 JOURNALS OF THE SIXTH CONGRESS OF THE REPUBLIC OF TEXAS 1841-1842 58 (Von Boeckmann-Jones Co. 1940) [hereinafter 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. *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" *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. *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. *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. *Id.* at 89 (Dec. 3, 1841). However, later that same day the report was "laid on the table." *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 1841,³⁸⁹ 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.³⁹⁰ 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.³⁹¹ 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."³⁹²

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. *Id.* at 145. 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. *Id.* at 154. The joint resolution received a second reading on December 29, 1841. *Id.* at 164. 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. *Id.* at 175. 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. *Id.* at 186. The joint resolution received its first reading in the Senate that same day. *Id.* at 188. The joint resolution received a second reading the following day. *Id.* at 192. The joint resolution was read a third time, and passed, on January 5, 1842. *Id.* at 199. 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.

390. Letter from Samuel A. Roberts to Mirabeau B. Lamar (Oct. 27, 1841), *reprinted in* Report of Secretary of State, in *JOURNALS OF CALLED SESSION*, 1842, *supra* note 383, at 187.

391. *Id.* at 188.

392. Letter from Samuel A. Roberts to J. W. Cruger (Oct. 26, 1841), *reprinted in* *JOURNALS OF CALLED SESSION*, 1842, *supra* note 383, at 277.

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.

396. Letter from Samuel Whiting to Samuel A. Roberts (Oct. 27, 1841), reprinted in JOURNALS OF CALLED SESSION, 1842, *supra* note 383, at 280.

397. Letter from Samuel A. Roberts to Mirabeau B. Lamar (Oct. 27, 1841), reprinted in JOURNALS OF CALLED SESSION, 1842, *supra* note 383, at 187.

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.*

399. Letter from Joseph Waples to Samuel A. Roberts, Secretary of State (Oct. 12, 1841), reprinted in REPORT OF THE SECRETARY OF STATE, 1841, reprinted in JOURNALS OF CALLED SESSION, 1842, *supra* note 383, at 276-77.

400. Letter from J. W. Cruger to Samuel A. Roberts (Sept. 22, 1841), reprinted in JOURNALS OF CALLED SESSION, 1842, *supra* note 383, at 279.

troubled Republic⁴⁰¹ 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.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.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.⁴⁰⁴ Legislative action to protect the frontier was also published in Spanish.⁴⁰⁵ Rewards for the capture of fugitives were announced in Spanish.⁴⁰⁶ When General Thomas J. Rusk issued a General Order regarding hunger in Nacogdoches, he did so in Spanish.⁴⁰⁷ A proclamation by President Sam Houston regarding the Tejanos at Nacogdoches was published in Spanish.⁴⁰⁸ Reg-

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.

402. See *infra* part VII.A.2.

403. Letter from Stephen F. Austin to President Sam Houston (Nov. 21, 1836), in AUSTIN PAPERS, 1834-1837, *supra* note 129, at 458.

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.

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 108.

406. A Proclamation by the Presiden to 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.

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.

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.

ulations for the conduct of trade with settlements near the Río Grande were sent in Spanish to the county judges at San Patricio,⁴⁰⁹ Bexar, Goliad, and Victoria.⁴¹⁰ A proclamation opening trade on the Río Grande was published in English and in Spanish.⁴¹¹ A proclamation calling for elections in San Augustine County may have been issued in Spanish.⁴¹²

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.⁴¹³

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,⁴¹⁴ and the fact that most lawyers knew only English,⁴¹⁵ 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*,⁴¹⁶ although in *Garrett v. Nash*,⁴¹⁷ 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

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 Luís 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.

416. Dallam 416, 418 (Tex. 1841).

417. Dallam 498, 499 and 501 (Tex. 1843).

Union was approved.⁴¹⁸ With the arrival of large numbers of German immigrants after statehood, German-language governmental services were soon fully developed.⁴¹⁹

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.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.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.⁴²²

418. Act of Jan. 4, 1841, 1841 Republic Tex. Laws 89, *reprinted in* 2 Tex. Gen. Laws 553 (Gammel 1898).

419. *See infra* part VII.C.3.

420. Act of Dec. 14, 1837, 1837 Republic Tex. Laws 61, *reprinted in* 1 Tex. Gen. Laws 1403 (Gammel 1898).

421. CONST. OF THE REPUBLIC OF TEX., General Provisions § 10 (1836), *reprinted in* TEX. CONST., *supra* note 2, at 491. *See also* CONST. OF THE REPUBLIC OF TEX., art. I, § 7 (1836), *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").

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, *reprinted in* 1 Tex. Gen. Laws 1258, 1265-66 (Gammel 1898).

422. CONST. OF THE REPUBLIC OF TEX., General Provisions § 6 (1836), *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), *reprinted in* 1 Tex. Gen. Laws 30 (Gammel 1898). In 1828, naturalization was extended to all foreigners one year after they established themselves upon

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.⁴²³ 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.⁴²⁴ 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 Río Grande.⁴²⁵ 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.

423. CONST. OF THE REPUBLIC OF TEX., art. VI, § 11 (1836), *reprinted in* TEX. CONST., *supra* note 2, at 488.

424. CONST. OF THE REPUBLIC OF TEX., art. VI, § 1 (1836), *reprinted in* TEX. CONST., *supra* note 2, at 487.

425. The Republic of Texas claimed its territorial boundaries extended to all of the lands north and east of the Río 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 Río Grande); I HANDBOOK OF TEXAS, *supra* note 113, at 194 (noting that "[i]n 1721 the Medina River was considered the boundary

Nuevo Mexicanos did not speak English.⁴²⁶ As a result, the Republic prepared documents for the Nuevo Mexicanos in Spanish. The Texas Declaration of Independence was published in Spanish in 1841.⁴²⁷ 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.⁴²⁸ The preparation of these documents inviting the Nuevo Mexicanos in Spanish 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 FE (1841) [Proclamation of His Excellency Mirabeau B. Lamar to the Citizens of Santa Fé], *microformed on* Texas as Province & Republic, *supra* note 123, Item 483; 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, delegates, 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:

429. Letter from Samuel A. Roberts, Acting Secretary of State, to Commissioners of Santa Fé (June 15, 1841), *reprinted in* REPORT OF THE SECRETARY OF STATE, 1841, *reprinted in* JOURNALS OF CALLED SESSION, 1842, *supra* note 383, at 290-91 (emphasis added).

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

431. Letter from Samuel A. Roberts, Acting Secretary of State, to Colonel William G. Cooke (June 15, 1841), reprinted in REPORT OF THE SECRETARY OF STATE, 1841, reprinted in JOURNALS OF CALLED SESSION, 1842, *supra* note 383, at 295-96.

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 Fréteillère, *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.⁴³³ An 1838 invitation to a banquet and ball to celebrate the battle of San Jacinto was sent in Spanish.⁴³⁴

The first records of the City of San Antonio in the Republic of Texas period are entirely in Spanish.⁴³⁵ Statutes of the Republic of Texas were translated into Spanish,⁴³⁶ and elections were conducted entirely in Spanish.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."⁴³⁸ The cities of Victoria and Gonzáles were subject to the same requirements.⁴³⁹ These requirements were extended to the towns of San Patricio, Franklin, and Refugio in May, 1838.⁴⁴⁰ As the Tejano population of these cities declined, either through forced expulsions or because refugees fled continued battles be-

433. Letter from Juan Seguín to General Albert Sidney Johnston (Mar. 13, 1837) (noting that Seguín made an address "in the Castilian [sic] language as I do not possess the English" and that Major Western addressed the group in English), reprinted in DE LA TEJA, *supra* note 330, at 161-62. Juan Seguín's comments in Spanish are reproduced in DE LA TEJA, *supra* note 330, at 156.

434. INVITATION (Apr. 21, 1838), *microformed on Texas as Province & Republic*, *supra* note 123, Item 228. One of the hosts was Erasmo Seguín, but the others, "Colonel" [Colonel] W.H. Karnes, W.H. Daingerfeld, and Joseph Baker, were not Tejanos. *Id.*

435. CITY OF SAN ANTONIO, JOURNAL OF CITY COUNCIL A 1-11 (minutes in Spanish for the period from June, 1837 through February, 1838) [hereinafter 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. 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).

436. 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).

437. SAN ANTONIO CITY COUNCIL JOURNAL A, *supra* note 435, at 3-4 (containing election documents for election of Sept. 1837).

438. Act of Dec. 14, 1837, § 3, 1837 Republic of Tex. Laws 37, reprinted in 1 Tex. Gen. Laws 1379 (Gammel 1898).

439. *Id.* §§ 11 & 12, reprinted in 1 Tex. Gen. Laws 1381 (Gammel 1898). The Congress of the Republic of Texas repealed the requirement for a bilingual secretary in Gonzáles in May, 1838. Act of May 3, 1838, § 1, 183 Republic Tex. Laws 3-4, reprinted in 1 Tex. Gen. Laws 1473-74 (Gammel 1898). After Tejanos were expelled from Victoria, see *infra* note 479, the Congress of the Republic of Texas passed a new act incorporating Victoria which did not require a bilingual city secretary. Act of Feb. 5, 1840, 1840 Republic Tex. Laws 276-79, reprinted in 2 Tex. Gen. Laws 450-53 (Gammel 1898).

440. Act of May 24, 1838, §§ 6-7, 1838 Republic Tex. Laws 29-30, reprinted in 1 Tex. Gen. Laws 1499-1500 (Gammel 1898).

tween the Republic of Texas and Mexico,⁴⁴¹ the requirement for bilingual secretaries was removed.⁴⁴²

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,⁴⁴³ they kept English language records on the left hand page and Spanish-language records on the right-hand page.⁴⁴⁴ This bilingual practice continued until October, 1840, when records again were maintained only in Spanish.⁴⁴⁵ Bilingualism resumed in January, 1841.⁴⁴⁶ At the end of that year, however, minutes were maintained only in Spanish.⁴⁴⁷ Bilingual records resumed in April, 1842 and continued until August of that year.⁴⁴⁸

Juan Seguín served as Mayor of San Antonio in 1841 and 1842.⁴⁴⁹ Since Seguín did not speak English,⁴⁵⁰ he communicated with other governmental officials in Spanish.⁴⁵¹

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 Seguín, 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).

442. Act of Jan. 14, 1842, 1842 Republic Tex. Laws 32-35 (repealing previous incorporation act requiring a bilingual secretary), *reprinted in* 1 Tex. Gen. Laws 704-07 (Gammel 1898). As the Tejano population of San Antonio declined, Anglos gained control of the City Council. MONTEJANO, *supra* note 253, at 40 (noting that Tejanos comprised 57 of the 88 aldermen in San Antonio between 1837 and 1847, but only 17 of 99 aldermen between 1847 and 1857).

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 Seguín to Mirabeau B. Lamar (Nov. 1839) (requesting special election after resignation of José Antonio Navarro from Congress), *reprinted in* DE LA TEJA, *supra* note 330, at 173-74; Letter from Juan Seguín 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.

retreated.⁴⁵² When municipal government resumed operation in March, 1844, the minutes explain the lack of records as due to the "disorganized state of this County."⁴⁵³ The decline in the Tejano population during this period⁴⁵⁴ had an immediate effect on the maintenance of municipal records: after March 30, 1844, all the records are maintained only in English.⁴⁵⁵

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.⁴⁵⁶ Multilingual governmental services would continue to be provided in San Antonio after statehood was achieved in 1845.⁴⁵⁷

2. Laredo

The Republic of Texas claimed that the border of Texas extended to the Río Grande.⁴⁵⁸ The lands of the Río 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 Río Grande had been part of the Spanish province of Nuevo Santander, and later the Mexican state of Tamaulipas.⁴⁵⁹ 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 425 (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 Río 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. Rodríguez 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 Chereña 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. Ballí, 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 Río 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 Río 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 1845.⁴⁶³ 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.⁴⁶⁴ Taxes were collected under Mexican law, and elections were held under Mexican law.⁴⁶⁵ Census information in 1845 was sent to the Mexican government.⁴⁶⁶ Because Laredo continued to be governed by Mexico during the Republic of Texas period, government continued to be conducted solely in Spanish.⁴⁶⁷

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.⁴⁶⁸ The Texas Rangers under Captain Jack Hays robbed horses at Laredo in January, 1841, but did not assert control over the

the Río 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 (Feb. 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.

465. Elecciones Primarias ó de Compromisarios - Ley de 27 de Abril de 1837 [Primary Elections or Elections of Arbitrators - Law of April 17, 1837], *microformed on* Laredo Archives, *supra* note 106, Folder 234, Document 1.

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).

468. JERRY THOMPSON, *SABERS ON THE RIO GRANDE* 76-77 (1974).

area.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.⁴⁷⁰ The Army quickly left,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.⁴⁷²

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."⁴⁷³ These provisions were also extended to other cities with large Tejano populations.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."⁴⁷⁵ Like the Mexican laws that required that Castilian be taught, but did not prohibit instruction in English,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.⁴⁷⁷

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.

470. STREETER, *supra* note 229, at 162; THOMPSON, *supra* note 468, at 117-27.

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

472. *See infra* part VII.C.2.

473. Act of Dec. 14, 1837, § 10, 1837 Republic Tex. Laws 37, 39, *reprinted in* 1 Tex. Gen. Laws 1379, 1381 (Gammel 1898).

474. *See supra* 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).

475. Act of Feb. 5, 1840, §§ 6-7, 1840 Republic Tex. Laws 146, 148, *reprinted in* 1 Tex. Gen. Laws 320, 322 (Gammel 1898) (emphasis added).

476. *See supra* part IV.E.

477. *See 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* LOWRIE, *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.⁴⁸³ Jailed slaves were subject to sale as runaway slaves if not claimed by their owner.⁴⁸⁴ Texians were prohibited from emancipating their slaves unless the freed slave was removed outside of Texas.⁴⁸⁵ All "free persons of color" were expelled.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.⁴⁸⁷ Slave-running was, however, outlawed as piracy.⁴⁸⁸ This prohibition has been described as a concession to the anti-slavery sentiment of Tejanos.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.⁴⁹⁰

483. CONST. OF THE REPUBLIC OF TEX., General Provisions § 9 (1836), *reprinted in* TEX. CONST., *supra* note 2, at 491.

484. Act of Feb. 5, 1841, 1841 Republic Tex. Laws 185-86, *reprinted in* 1 Tex. Gen. Laws 649-50 (Gammel 1898).

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).

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).

487. Act of June 5, 1837, § 9, 1837 Republic Tex. Laws 233, 234-35, *reprinted in* 1 Tex. Gen. Laws 1293, 1294-95 (Gammel 1898).

488. CONST. OF THE REPUBLIC OF TEX., General Provisions § 9, *reprinted in* TEX. CONST., *supra* note 2, at 491.

489. HARRINGTON, *supra* note 52, at 17.

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.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.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.⁴⁹³

José Antonio Navarro also served in the first and second state legislatures.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.⁴⁹⁵

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

491. 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 JOURNALS OF THE 1845 CONVENTION].

492. *Id.* at iv-v. The others were James Power and Charles Bellinger Stewart.

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

494. *Id.* at xv; see also *supra* note 387.

495. See *supra* note 493.

496. See *supra* text accompanying note 367.

497. DE LA TEJA, *supra* note 330, at 50.

498. *Id.* at 51 and 102 n.49.

499. *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 Fé 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 Seguín to Comptroller of the State (Dec. 5, 1874), *reprinted in id.* at 190-91.

501. JOURNALS OF THE 1845 CONVENTION (Aug. 12, 1845), *supra* note 491, at 219-20.

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. CONSTITUCION 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 CONSTITUTION (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."⁵⁰⁵ In addition, the legislature, recognizing the new presence of large numbers of German immigrants, required these materials to be translated into German as well.⁵⁰⁶ 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.⁵⁰⁷

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.⁵⁰⁸

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.⁵⁰⁹ Translation of the laws into Spanish and German was again ordered in 1856, with \$3,000 appropriated for this purpose.⁵¹⁰ In 1858, Norwegian was added to

ian language, for the use of the population on our western frontier"); *id.* at 301 (Aug. 25, 1845) (authorizing the employment of George Fisher to translate the Constitution into Spanish at a rate of \$2 per page); *id.* at 376 (recording an expenditure of \$127.50 for "printing the Constitution in the Castillian [sic] language" and \$74.00 for "translating the Constitution into the Castillian [sic] language").

505. Act of Apr. 18, 1846, 1846 Tex. Gen. Laws 85, *reprinted in* 2 Tex. Gen. Laws 1391 (Gammel 1898).

506. The translation had "unusual significance to [the German immigrants]. It was almost as important as the Bible." CURT E. SCHMIDT, OMA & OPA: GERMAN-TEXAN PIONEERS 7 (1975). A photograph of the fly-leaf of the 1849 *Texas Statuten* appears on page 8 of this memoir.

507. Act of Apr. 18, 1846, 1846 Tex. Gen. Laws 85, *reprinted in* 2 Tex. Gen. Laws 1391 (Gammel 1898). An additional \$1,135.80 was appropriated in 1850 to pay the balance due for the printing of these translations. Act of Sept. 5, 1850, ch. 27, 1850 Tex. Gen. Laws 26, *reprinted in* 3 Tex. Gen. Laws 808 (Gammel 1898).

508. Act of Sept. 5, 1850, ch. 30, § 2, 1850 Tex. Gen. Laws 28 (appropriating \$50.00 for publication in the *Brownsville American Flag*), *reprinted in* 3 Tex. Gen. Laws 810 (Gammel 1898).

509. IRENE MARSCHALL KING, JOHN O. MEUSEBACH: GERMAN COLONIZER IN TEXAS 145 (1967).

510. Act of Sept. 1, 1856, ch. 169, 1856 Tex. Gen. Laws 94, *reprinted in* 4 Tex. Gen. Laws 512 (Gammel 1898).

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).

512. SPECIAL RESOLUTION OF SECESSION CONVENTION (1861), reprinted in 5 Tex. Gen. Laws xii (Gammel 1898). The *Neu Braunfels Zeitung* published these documents in German on April 26, 1861. OSCAR HAAS, HISTORY OF NEW BRAUNFELS & COMAL COUNTY, TEXAS, 1844-1846 154 (1968).

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).

514. Act of Mar. 14, 1874, ch. 28, § 8, 1874 Tex. Gen. Laws 23, 25, reprinted in 8 Tex. Gen. Laws 25, 27 (Gammel 1898).

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 B exar 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 R o 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

[The Board of Public Printing is] authorized to make a separate contract when printing is to be done in any other language than the English, and in such case the printing board shall employ a competent person, at a price not to exceed thirty cents per hundred words, to translate the matter required into such other language.

TEX. CIV. STAT. art. 3992 (1879). See also TEX. REV. CIV. STAT. art. 4221 (1895) (same); TEX. REV. CIV. STAT. art. 6340 (1911) (same), *repealed by* Act of Aug. 7, 1919, ch. 84, 1919 Tex. Gen. Laws 303.

516. Act of Aug. 7, 1919, ch. 84, 1919 Tex. Gen. Laws 303 (amending laws providing for public printing and deleting any authorization for the translation of the laws), *repealed by* Act of Feb. 16, 1962, ch. 47, § 2, 1962 Tex. Gen. Laws 146.

517. Act of May 12, 1845, § 3, 1845 Tex. Gen. Laws 232, 233, *reprinted in* 2 Tex. Gen. Laws 1538, 1539 (Gammel 1898) (current version at TEX. NAT. RES. CODE ANN. § 31.018 (West 1978)).

518. Joint Resolution of Jan. 24, 1850, ch. 60, 1850 Tex. Gen. Laws 71-72, *reprinted in* 3 Tex. Gen. Laws 509-10 (Gammel 1898).

519. Act of Dec. 24, 1851, ch. 29, 1852 Tex. Gen. Laws 22, *reprinted in* 3 Tex. Gen. Laws 900 (Gammel 1898).

520. Joint Resolution of Feb. 7, 1853, ch. 27, 1853 Tex. Gen. Laws 38-39, *reprinted in* 3 Tex. Gen. Laws 1322-23 (Gammel 1898).

521. Act of Aug. 26, 1856, ch. 122, 1856 Tex. Gen. Laws 50-51, *reprinted in* 4 Tex. Gen. Laws 468-69 (Gammel 1898).

522. Act of April 24, 1871, ch. 53, 1871 Tex. Gen. Laws 56-57, *reprinted in* 6 Tex. Gen. Laws 958-59 (Gammel 1898).

523. Act of May 11, 1893, ch. 112, 1893 Tex. Gen. Laws 168, *reprinted in* 10 Tex. Gen. Laws 598 (Gammel 1898) (current version at TEX. LOCAL GOV'T CODE ANN. § 193.007 (West 1988)).

3. Other Multilingual Governmental Practices

Since few Anglos resided in many areas of South Texas, local government there continued to be conducted in Spanish.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."⁵²⁵ However, special protection was provided to Anglos in these areas:

[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.⁵²⁶

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.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.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."⁵²⁹ The commissioners were required to post notices of their sessions in English and Spanish.⁵³⁰ However, the claimants were required to file a complete description of the land they claimed in English.⁵³¹

524. See *infra* part VII.C.2 (describing the use of Spanish by the City of Laredo).

525. Act of Aug. 22, 1856, ch. 116, § 1, 1856 Tex. Gen. Laws 45-46, *reprinted in* 4 Tex. Gen. Laws 463-64 (Gammel 1898).

526. *Id.* § 2, at 464.

527. See *infra* part VIII.C.2.

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").

529. Act of Feb. 8, 1850, ch. 122, § 1, 1850 Tex. Gen. Laws 144, *reprinted in* 3 Tex. Gen. Laws 582 (Gammel 1898).

530. *Id.* § 4, at 583.

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 1883,⁵³² 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."⁵³³

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*.⁵³⁴ 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."⁵³⁵ Similarly, regiments of Spanish-speaking Tejanos fought for the Union and for the Confederacy.⁵³⁶

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."⁵³⁷ Although Tejanos and Anglo-Americans often referred to Tejanos as "Spanish," almost all Tejanos were mestizos.⁵³⁸ José Antonio Navarro and several Texian allies successfully

532. II HANDBOOK OF TEXAS, *supra* note 114, at 821.

533. Act of Feb. 11, 1858, ch. 116, § 4, 1858 Tex. Gen. Laws 148, 150, *reprinted in* 4 Tex. Gen. Laws 1020, 1022 (Gammel 1898). *See also* Act of Nov. 12, 1866, ch. 148, § 3, 1866 Tex. Gen. Laws 185, *reprinted in* 5 Tex. Gen. Laws 1103 (Gammel 1898) (same).

534. HAAS, *supra* note 512, at 156-57 (containing reproduction of translation provided "for benefit of the all-German Texas companies").

535. CARL L. DUAINÉ, THE DEAD MEN WORE BOOTS, AN ACCOUNT OF THE 32ND TEXAS VOLUNTEER CAVALRY, CSA, 1862-1865 (n.d.) (describing company of Captain Podevils), *quoted in* HAAS, *supra* note 512, at 189.

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.⁵³⁹ The attempt to limit the suffrage of Tejanos was rejected forty-two to fourteen.⁵⁴⁰ 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."⁵⁴¹

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.⁵⁴²

gesting 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 1906.⁵⁴³ 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.⁵⁴⁴

ceptance of this Constitution by the Congress of the United States, shall be deemed qualified electors.

TEX. CONST. of 1845, art. III, §§ 1 & 2, *reprinted in* TEX. CONST., *supra* note 2, at 504-05. Citizenship under the Republic of Texas was extended to any "free white person" who had resided in the Republic for six months and who had sworn an oath before a competent authority "to support this constitution, and that he will bear true allegiance to the Republic of Texas." *See supra* text accompanying note 422. Section 2 of Article III of the 1845 Constitution extended suffrage on the basis of residence alone, without any requirement that the voter become a citizen by swearing the oath before a competent authority. Thus non-citizens who resided in Texas six months before December 29, 1845 were allowed to vote before the Reconstruction Constitution of 1869 extended suffrage to non-citizens who had filed a declaration of intent to become a citizen. TEX. CONST. of 1869, art. III, § 1, *reprinted in* TEX. CONST., *supra* note 2, at 594. *See infra* note 547 (describing the declaration of intent to become a citizen). The assertion in the Interpretive Commentary to the 1876 Constitution that "[i]n every Texas constitution until that of 1869, citizenship was a prerequisite to the right to vote" is thus incorrect. TEX. CONST. art. 6, § 2 interp. cmt. (West 1993). The provision of the 1845 Constitution permitting non-citizens who had resided in Texas for six months to vote was rescinded in the Confederate Constitution of 1861. TEX. CONST., of 1861, art. III, § 1, *reprinted in* 3 TEX. CONST. *supra* note 2, at 531-32.

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.⁵⁴⁵ 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.⁵⁴⁶

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.⁵⁴⁷ 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.>").

547. TEX. CONST. of 1869, art. III, § 1, *reprinted in* TEX. CONST., *supra* note 2, at 594; Act of July 11, 1870, ch. 16, § 1, 1870 Tex. Gen. Laws 24, *reprinted in* 6 Tex. Gen. Laws 198 (Gammel 1898); *see also* Act of Aug. 23, 1876, ch. 166, § 14, 1876 Tex. Gen. Laws 306, 307-08 (same), *reprinted in* 8 Tex. Gen. Laws 1142, 1143-44 (Gammel 1898); TEX. REV. CIV. STAT. art. 1731 (1895) (same). In 1903, the Texas Legislature required that the declaration of intent be filed at least six months before the election. Act of Apr. 1, 1903, ch. 101, § 2, 1903 Tex. Gen. Laws 133; Act of May 15, 1905, ch. 11, § 2, 1905 Tex. Gen. Laws 520 (same) (repealed 1923).

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

[A]ny 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

548. Act of July 11, 1870, ch. 16, § 13, 1870 Tex. Gen. Laws 24, 25-26, *reprinted in* 6 Tex. Gen. Laws 198, 199-200 (Gammel 1898).

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).

553. Act of Feb. 13, 1854, ch. 70, 1854 Tex. Gen. Laws 98, *reprinted in* 3 Tex. Gen. Laws 1542 (Gammel 1898).

immigrants against "fraud, chicanery and peculation."⁵⁵⁴ 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.⁵⁵⁵

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.⁵⁵⁶ 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.⁵⁵⁷ 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,⁵⁵⁸ the city after the Civil War continued to look like a Mexican village, and most business continued to be conducted in Spanish.⁵⁵⁹ 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

554. Act of May 23, 1871, ch. 116, § 3, 1871 Tex. Gen. Laws 127, *reprinted in* 6 Tex. Gen. Laws 1029 (Gammel 1898).

555. *Id.* § 5, at 1030.

556. TEX. CONST. art. 16, § 56 (prohibiting the Legislature from appropriating "any of the public money for the establishment and maintenance of a Bureau of Immigration, or for any purpose of bringing immigrants to this State") (amended Nov. 4, 1958). See BRADEN, *supra* note 95, at 13 (describing the delegates to the 1875 Convention as seeking to redress the excesses of Reconstruction and the corruption of government officials).

557. Joint Resolution No. 9, Aug. 28, 1876, 1876 Tex. Gen. Laws 317, *reprinted in* 8 Tex. Gen. Laws 1153 (Gammel 1898).

558. MONTEJANO, *supra* note 253, at 29 (describing a population of 4,000 Mexicans in San Antonio in 1856 out of a total population of 10,500).

559. MONTEJANO, *supra* note 253, at 35; MAX A.P. KRUEGER, SECOND FATHERLAND: THE LIFE & FORTUNES OF A GERMAN IMMIGRANT 76 (Marilyn McAdams Sibley ed., Texas A&M Univ. Press 1976) (1930) (After 1868, "San Antonio still looked entirely Mexican. The language universally heard and spoken was Spanish . . .").

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-

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 Bejareño 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 Bejareño*. 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].

568. Susan McAtee Monday, *A New Old Country*, Apr. 2, 1990, UPI, available in LEXIS, Nexis Library, UPI file.

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 LEÓN, *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, 1846.⁵⁷³ 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.⁵⁷⁴

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.⁵⁷⁵

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.⁵⁷⁶ Lamar commanded Laredo until the summer of 1848.⁵⁷⁷ 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.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 [Martínez] to have strangers report to the military commandant. This letter was translated into Spanish.⁵⁷⁹

After Texas exercised jurisdiction over Laredo, the city received few Anglo immigrants.⁵⁸⁰ Anglos who moved to Laredo became Mexicanized.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 1872.⁵⁸²

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

579. Order from Captain Mirabeau B. Lamar to Alcalde Andrés Martínez [Martínez] (Nov. 12, 1846), *microformed on Laredo Archives, supra* note 106, Folder 180, Document 2.

580. MONTEJANO, *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").

581. *Id.* at 37 (describing "Mexicanization" of Anglos in South Texas).

582. 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.

My review of the Laredo Archives differs from that of Brother Robert D. Wood, who in his introduction to the index to the Laredo Archives asserts, "The documentation after 1848 is relatively sparse. From 1860 on it is almost entirely in English." WOOD, *supra* note 463, at ii. In fact the documentation continues to be almost entirely in Spanish. The documents in Folders 199 (for the year 1861), 205 (1862), 206 (1863), 207 (1864), 210 (1866), 212 (1867), 213 (1867), 214 (1867), 215 (1868), 216 (1869), 218 (1872), and 219 (1896) are entirely in Spanish. In contrast, only one folder, Folder 217 (1870-1872), is entirely in English. Of the folders after Folder 194 (1858-1860), the folders not listed above are usually entirely in Spanish except for a few documents. See, e.g., Folder 200 (containing documents from 1860 in Spanish except for oaths of office and bonds for city officers); Folder 203 (containing documents from 1861 in Spanish except for oaths of office); Folder 208 (containing documents from 1864 in Spanish except for letter from Blas Gortari to his brother); Folder 209 (containing documents from 1864 in Spanish except for letter in German from Edmund Lieck). See also THOMPSON, *supra* note 468, at 219 (stating that "[a]ll of the documents [in the Laredo Archives] are in Spanish, except for a few in the era of the Mexican War, the decade which followed, and the Civil War").

As Brother Wood notes, the documentation after 1848 is "relatively sparse." The post-1848 documentation occupies almost an entire roll of microfilm (of a total of 16 rolls). However sparse the documentation may be in comparison to that of the Spanish and Mexican periods, it is more than sufficient to establish that city government in Laredo continued to be conducted almost entirely in Spanish at least up to 1872.

My disagreement with Brother Wood about the language used in the post-1860 documents does not detract in any way from my appreciation for the marvelous index he has prepared.

The entire range of municipal business in Laredo was conducted in Spanish. Ordinances were enacted in Spanish,⁵⁸³ and summarized in Spanish.⁵⁸⁴ Correspondence was in Spanish.⁵⁸⁵ Municipal documents were inventoried in Spanish.⁵⁸⁶ Elections were conducted in Spanish.⁵⁸⁷ Oaths of office for city officials were taken in Spanish.⁵⁸⁸ Bonds were also in Spanish.⁵⁸⁹ Registers of animals and brands, a critical government function in the ranch-based economy of South Texas, were maintained in Span-

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, “[a]ll 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.

584. Summary of Ordinances from 1853-1860, *microformed on Laredo Archives, supra* note 106, Folder 197, Document 1; Compilation of Ordinances Issued Between 1852-1862, *microformed on Laredo Archives, supra* note 106, Folder 186, Document 2 (document in Spanish except for ordinances passed in 1852; *see infra* text accompanying note 601).

585. Letter from F. Villareal to Mayor (Aug. 1850), *microformed on Laredo Archives, supra* note 106, Folder 184, Documents 5-7; Letter from Mayor Bacilio Benavides to City Attorney (Sept. 23, 1850) (authorizing suit), *microformed on Laredo Archives, supra* note 106, Folder 184, Document 8; Letter from R. Treviño to Santos Benavides (Sept. 30, 1856), *microformed on Laredo Archives, supra* note 106, Folder 190, Document 4.

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].

589. Bond (Aug. 16, 1860), *microformed on Laredo Archives, supra* note 106, Folder 200, Document 10.

ish.⁵⁹⁰ The censuses of children were taken in Spanish.⁵⁹¹ Notices of bids were in Spanish.⁵⁹²

While the American military authorities wrote to the city in English,⁵⁹³ the city of Laredo wrote to these authorities in Spanish.⁵⁹⁴ 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.⁵⁹⁵

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.⁵⁹⁶

Few English-language documents are contained in the Laredo Archives. After Captain Lamar's order of November, 1846,⁵⁹⁷ 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.⁵⁹⁸ A more accurate description of the document is that it is bilingual: the headings at the top of the list are in Spanish.⁵⁹⁹ An 1850 subpoena by Sheriff W. Alexander is the first post-1846 document written entirely in English.⁶⁰⁰ 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.

592. Notice of Bid (Nov. 30, 1858), *microformed on Laredo Archives, supra* note 106, Folder 193, Document 3.

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

594. Resolution (June 24, 1854) (asking military for help with vagabonds), *microformed on Laredo Archives, supra* note 106, Folder 188, Document 1.

595. Letter from Mayor to Military Commander (Oct. 28, 1866), *microformed on Laredo Archives, supra* note 106, Folder 211, Document 2.

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.*

600. Subpoena of Francisco Villareal (Aug. 7, 1850), *microformed on Laredo Archives, supra* note 106, Folder 184, Document 4.

guage 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).

602. Letter from J. Slaughter to Don Bartolo García (Aug. 26, 1852), *microformed on Laredo Archives, supra* note 106, Folder 186, Document 1; Letter from Santos Benavides to Mayor (Oct. 14, 1859), *microformed on Laredo Archives, supra* note 106, Folder 195, Document 5; Letter from Blas Gortari to brother (Oct. 26, 1864), *microformed on Laredo Archives, supra* note 106, Folder 208, Document 1.

603. Letter from Edmund Lieck (Nov. 5, 1864), *microformed on Laredo Archives, supra* note 106, Folder 209, Document 1. An English translation of the letter, prepared in 1941, is included in the Archives.

604. Bond (July 12, 1860), *microformed on Laredo Archives, supra* note 106, Folder 199, Document 8; Bond (Aug. 21, 1860), *microformed on Laredo Archives, supra* note 106, Folder 200, Document 15; Bond Guarantee (Aug. 25, 1860) (for S. Galván), *microformed on Laredo Archives, supra* note 106, Folder 200, Document 19.

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.⁶⁰⁹ Two complaints were filed in English in 1860.⁶¹⁰ A warrant from Río Grande City is in English.⁶¹¹ A jury verdict is in English.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 \$1.01.⁶¹³ A complaint by George Staack is in English, although the cover sheet is in Spanish, as is the return by Marshall Jose María García.⁶¹⁴ A peace bond against F. Martínez is in English.⁶¹⁵ Several sworn statements are in English.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.⁶¹⁷ Subpoenas of

ment 2; Subpoena of José de la Cruz (July 17, 1856), *microformed on* Laredo Archives, *supra* note 106, Folder 190, Document 3; Subpoena of Mayor García (Aug. 24, 1858), *microformed on* Laredo Archives, *supra* note 106, Folder 192, Document 11; Subpoenas (1858-1860) (eleven subpoenas in English), *microformed on* Laredo Archives, *supra* note 106, Folder 199, Documents 10, 13, 14, 21, 24, and 27.

609. *See, e.g.*, Subpoena of A. Rackliffe (Jan. 4, 1858) (subpoena in English signed in different handwriting by "Refugio Benabides, Mayor de la C.[iudad]"), *microformed on* Laredo Archives, *supra* note 106, Folder 192, Document 1.

610. Complaint of M.M. (Aug. 10, 1860), *microformed on* Laredo Archives, *supra* note 106, Folder 194, Document 1; Complaint of Miguela Mendiola (Aug. 12, 1860), *microformed on* Laredo Archives, *supra* note 106, Folder 200, Document 3.

611. Warrant (Aug. 19, 1858), *microformed on* Laredo Archives, *supra* note 106, Folder 193, Document 3. Other warrants are also in English. Warrant (July 12, 1860), *microformed on* Laredo Archives, *supra* note 106, Folder 199, Document 9; Arrest Warrant (July 6, 1860), *microformed on* Laredo Archives, *supra* note 106, Folder 199, Documents 18 and 19; Arrest Warrant (July 20, 1860), *microformed on* Laredo Archives, *supra* note 106, Folder 199, Document 20; Arrest Warrant (Mar. 5, 1861), *microformed on* Laredo Archives, *supra* note 106, Folder 204, Document 2 [this folder is identified as Folder 208 on the microform, but appears immediately after Folder 203].

612. Jury Verdict (Sept. 25, 1860) (finding Juan J. Salina[s] guilty), *microformed on* Laredo Archives, *supra* note 106, Folder 201, Document 7. *See also* Jury Verdict (Nov. 30, 1860) (finding Cesario Benavides was shot by a rifle "supposed to be fired by" Manuel Aguilar), *microformed on* Laredo Archives, *supra* note 106, Folder 201, Document 18. All of the sworn statements in this case, however, are in Spanish. *See infra* note 621.

613. Finding by Mayor (Sept. 25, 1860), *microformed on* Laredo Archives, *supra* note 106, Folder 194, Document 1.

614. Complaint (July 13, 1860), *microformed on* Laredo Archives, *supra* note 106, Folder 199, Document 15.

615. Peace Bond (July 14, 1860), *microformed on* Laredo Archives, *supra* note 106, Folder 199, Document 16.

616. Sworn statements (July 12, 1860), *microformed on* Laredo Archives, *supra* note 106, Folder 199, Document 11.

617. Subpoena of Ygn[acio] Durán (Oct. 25, 1860), *microformed on* Laredo Archives, *supra* note 106, Folder 194 [the items in Folder 194 are not identified as separate documents]; Subpoena of Francisco García (Oct. 25, 1860), *microformed on* Laredo Archives, *supra* note 106, Folder 194; Subpoena of Concepción Garza (Oct. 24, 1860), *microformed on* Laredo Archives, *supra* note 106, Folder 194; Subpoenas of Ned y Epimenio Martínez (Dec. 8, 1860), *microformed on* Laredo Archives, *supra*

Anglos were sometimes written in English, with the return completed in Spanish.⁶¹⁸ The declarations of witnesses in criminal cases were prepared in Spanish.⁶¹⁹ An arrest warrant was issued in Spanish in 1860.⁶²⁰ A complaint was filed by Tereza Bustamante in Spanish in 1860.⁶²¹ As late as 1896, a petition was filed in the state court in Spanish.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.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-

note 106, Folder 194; Subpoena of Jose Ma[ría] García (Dec. 8, 1860), *microformed on Laredo Archives, supra* note 106, Folder 194; Subpoenas of 2 persons (July 13, 1860), *microformed on Laredo Archives, supra* note 106, Folder 199, Document 14; Subpoenas of 4 witnesses (Sept. 24, 1860), *microformed on Laredo Archives, supra* note 106, Folder 201, Document 6.

618. Subpoena of Finegan (July 17, 1860) (subpoena in English, with return on cover page stating "y executado el 17 de Julio de 1860" [and executed on July 17, 1860]), *microformed on Laredo Archives, supra* note 106, Folder 199, Document 21.

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.

620. Arrest Warrant of José Ma[ría] García (Sept. 24, 1860), *microformed on Laredo Archives, supra* note 106, Folder 201, Document 5.

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

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

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-

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 B xar 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 Texas as 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).

631. RUDOLPH L. BIESELE, *THE HISTORY OF THE GERMAN SETTLEMENTS IN TEXAS, 1831-1861* 129 (1930).

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").

640. Rudolph L. Bieseles, *The Texas State Convention of Germans in 1854*, 33 Sw. HIST. Q. 247, 249 (1930).

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.”⁶⁴⁷ Over thirty-five German-language newspapers were published in Texas; about twenty-nine were available in the early 1900s,⁶⁴⁸ and four were published as late as 1950.⁶⁴⁹

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.”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.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.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.

a. *City of New Braunfels*

The city of New Braunfels was organized in 1846.⁶⁵³ Reflecting the needs of its German immigrant population, the minutes of the City of New Braunfels were maintained almost entirely in Ger-

647. T. Herbert Etzler, *German-American Newspapers in Texas with Special Reference to the Texas Volksblatt, 1877-1879*, 57 Sw. HIST. Q. 423, 425 (1954).

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).

650. KRUEGER, *supra* note 559, at 30.

651. Kent Keeth, *Sankt Antonius: Germans in the Alamo City in the 1850's*, 76 Sw. HIST. Q. 183, 196 (1972). See also *Schutz 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, 1861.⁶⁵⁴ Oaths of office and bonds for city officers were recorded in English.⁶⁵⁵ The jurats for affidavits were prepared in English, but the affidavits themselves were in German.⁶⁵⁶ 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.⁶⁵⁷ 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, 1870,⁶⁵⁸ and then again in March, 1870.⁶⁵⁹ German-

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, 1872.⁶⁶⁰ The first part of the minutes for the July 18, 1873 meeting is in German only;⁶⁶¹ the last part is bilingual.⁶⁶² Bilingual entries were maintained thereafter until March 1875, when records were once again maintained in German only.⁶⁶³

All city minutes continued to be maintained in German only from March, 1875 until February 1878.⁶⁶⁴ Beginning in August, 1875, however, ordinances, resolutions, and contracts were sometimes translated into English.⁶⁶⁵

Minutes prepared solely in English did not appear until February 9, 1878.⁶⁶⁶ 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.⁶⁶⁷

b. Comal County

New Braunfels is located in Comal County. Comal County was organized on March 24, 1846.⁶⁶⁸ 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."⁶⁶⁹ Mr. Seabaugh maintained all of the minutes of the County in English from the first entry on August 7, 1846.⁶⁷⁰

660. *Id.* 304-n.p. Bilingual entries resumed from Dec. 4, 1872 to June, 1873.

661. *Id.* at n.p. (July 18, 1873), and 4 NEW BRAUNFELS MINUTE BOOK, *supra* note 654, at 1-5 (July 18, 1873).

662. 4 NEW BRAUNFELS MINUTE BOOK, *supra* note 654, at 6 (July 18, 1873).

663. *Id.* at 177 (Mar. 27, 1875).

664. *Id.* at 177-end; 5 NEW BRAUNFELS MINUTE BOOK, *supra* note 654 (1875 to 1877); 6 NEW BRAUNFELS MINUTE BOOK, *supra* note 654, at 1-68 (1877 to Feb. 9, 1878).

665. 5 NEW BRAUNFELS MINUTE BOOK, *supra* note 654, at 8 (Aug. 10, 1875) (ordinance); *id.* at 32 (Sept. 27, 1875) (ordinance); *id.* at 40 (Dec. 11, 1875) (resolution); *id.* at 52 (Jan. 25, 1876); *id.* at 70 (May 1, 1876) (contract for sale of land); *id.* at 82 (July 18, 1876) (ordinance); *id.* at 104 (Sept. 11, 1876) (document concerning sale of land). The ink used for the English translations is often less faded, suggesting the translations are of more recent vintage and may have been prepared after the 1870s. See, e.g., *id.* at 52-53 (Jan. 25, 1876).

666. 6 NEW BRAUNFELS MINUTE BOOK, *supra* note 654, at 68 (Feb. 9, 1878).

667. *Id.* at 63-67 (Feb. 4, 1878).

668. I HANDBOOK OF TEXAS, *supra* note 113, at 382.

669. Rudolph L. Bieseke, *Early Times in New Braunfels & Comal County*, 50 SW. HIST. Q. 75, 82-83 (1947) (quoting Dr. Ferdinand Roemer).

670. COMAL COUNTY COMMISSIONERS COURT MINUTES A at 1 (Aug. 7, 1846). The records of Comal County's governing body for this period are in five minute books, each identified by a letter (A, B, C, D, or E). All references to these records will hereinafter be to the volume of the COMAL COUNTY COMMISSIONERS COURT MINUTES in

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[oun]ty 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 Dist[ri]ct 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 Metzger & 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,⁶⁸² but bilingual licenses comprise about one-sixth of the first licenses issued in Comal County.⁶⁸³ One Comal County justice of the peace returned the marriage license in German.⁶⁸⁴ German was even used by one priest to record the marriage of two Tejanos.⁶⁸⁵ By the mid-1850s, only one-eighth of the marriage licenses were bilingual.⁶⁸⁶ While almost all licenses after 1857 were returned in English,⁶⁸⁷ German licenses were recorded as late as 1869.⁶⁸⁸ After 1877, English-language marriage license forms were printed.⁶⁸⁹ 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.⁶⁹⁰

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. 345 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 B  xar 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 Mart  n de Veramendi under Mexican rule. Mar  a 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 Jos   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

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;⁷⁰⁴ a few were conducted entirely in German.⁷⁰⁵

By 1854, all probate proceedings were recorded in English.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.⁷⁰⁷ However, during this period the City of New Braunfels was conducting all of its business in German only.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.⁷⁰⁹ Thus even the extensive documentation regarding the use of German in

704. There are 427 pages in Volume B of the *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. 385-92); 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 *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.

705. See, e.g., COMAL COUNTY PROBATE JOURNAL B, *supra* note 699, at 159-61 (probate of estate of A. Sickel recorded entirely in German); COMAL COUNTY PROBATE JOURNAL C, *supra* note 699, at 163 (Case No. 71, Sept. 21, 1850).

706. COMAL COUNTY PROBATE JOURNAL E, 1854-1858, *supra* note 699, is entirely in English. At the time this article was written, *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.

707. 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); *id.* at 331 (reporting on Feb. 12, 1877 a petition from the Mayor regarding the building of a gallery to place a fire engine).

708. See *supra* text accompanying note 664.

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. 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. 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. COMAL COUNTY COMMISSIONERS COURT MINUTES B, *supra* note 670, at 192 (May 30, 1866). No English-language resolution is recorded in the City's minutes for May, June, or July, 1866. 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 Braunfelser 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.⁷¹⁶ The only county business published in English alone were legal notices not related to elections.⁷¹⁷

guages"); *id.* at 222 (resolving on May 19, 1862 that communication from Brigadier General H.P. Pace on the circulation of Confederate money be printed in the *Zeitung*, but not specifying the language); *id.* at 336-37 (ordering on July 3, 1865 that the vagrant law of Aug. 26, 1856 be published and that "negroes [sic] without support" be reported, but not specifying the language); COMAL COUNTY COMMISSIONERS COURT MINUTES D, *supra* note 670, at 110 (ordering on Apr. 10, 1869 the publication in the *Zeitung* of the division of the county into five justice precincts, but not specifying the language); *id.* at 135 (ordering on Sept. 14, 1869 that an order regarding the presentation of claims against the county be published in both newspapers of the county, but not specifying the language); *id.* at 215-16 (ordering on May 31, 1871 that notice be published in the *Zeitung* that courthouse obligations numbers 10, 11 and 12 must be presented to the County Treasurer for redemption before Sept. 1, 1871, but not specifying the language); *id.* at 256-57 (ordering on Feb. 1, 1872 the publication of a notice of election on whether to sell the courthouse "in the English and german [sic] language [sic]"); COMAL COUNTY COMMISSIONERS COURT MINUTES E, *supra* note 670, at 190 (ordering on July 26, 1875 the publication in the *Zeitung* of a resolution honoring deceased Justice of the Peace Scipio Schwarzhoff, but not specifying the language); *id.* at 316 (ordering on Nov. 13, 1876 the publication in the *Zeitung* of a notice inviting proposals for a new ceiling for the courtroom, but not specifying the language); *id.* at 399 (ordering on Aug. 15, 1877 the publication in the *Zeitung* of the settlement of accounts by the Treasurer and the Collector).

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. NEU BRAUNFELS ZEITUNG, Sept. 26, 1856, at 3. Advertisement of the courthouse plans and contract, COMAL COUNTY COMMISSIONERS COURT MINUTES B, *supra* note 670, at 281 (ordered on Mar. 16, 1857), appeared in German only. NEU BRAUNFELS ZEITUNG, Mar. 20, 1857, at 3. 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. NEU BRAUNFELS ZEITUNG, May 23, 1862, at 1. The vagrant law, COMAL COUNTY COMMISSIONERS COURT MINUTES C, *supra* note 670, at 336-37 (July 3, 1865), appeared solely in German. NEU BRAUNFELS ZEITUNG, July 14, 1865, at 2.

716. 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. NEU 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").

717. See, e.g., NEU 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.⁷¹⁸ 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*).⁷¹⁹

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 1833.⁷²⁰ Large groups followed in the 1850s,⁷²¹ 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."⁷²² 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." Even the

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).

720. ESTELLE HUDSON & HENRY R. MARESH, CZECH PIONEERS OF THE SOUTHWEST 41 (1934).

721. *Id.* at 27.

722. Mark Cowick, *Prague, Texas*, 44 AMERICAN HERITAGE 101 (1993), available in WESTLAW, ACADEM-IND Database.

African-American porter at Fayetteville in 1894 spoke Moravian.⁷²³ 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."⁷²⁴

The persistence of a Czech-language culture in Texas was made possible by the establishment of Czech-language schools, and later, bilingual schools.⁷²⁵

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 1879.⁷²⁶ *Svoboda* was founded in 1885.⁷²⁷ By 1915 there were seven Czech newspapers.⁷²⁸ As of 1972, four Czech newspapers remained, with only one still published entirely in Czech.⁷²⁹

While fewer Poles immigrated to Texas than either Germans or Czechs, many Polish immigrants were concentrated in Panna Maria, Texas.⁷³⁰ Here too, schools were conducted bilingually.⁷³¹

The Wends, an ethnic minority from Germany who speak a Slavic language, established the community of Serbin in 1855.⁷³² Most of these immigrants spoke Wendish and German.⁷³³ One newspaper, the *Giddings Deutsches Volksblatt*, was published in German, English, and Wendish from 1899 to 1938.⁷³⁴ The Wends also operated a school in Wendish.⁷³⁵

723. CZECH VOICES: STORIES FROM TEXAS IN THE AMERIKÁN NÁRODNÍ KALENDÁŘ 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.

724. CZECH VOICES, *supra* note 723, at 117 (quoting L.W. Dongres).

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 & MARESH, *supra* note 720, at 190.

729. THE CZECH TEXANS, *supra* note 726, at 17.

730. See generally T. LINDSAY BAKER, THE POLISH TEXANS (1982).

731. See *infra* part VII.D.3.

732. SYLVIA ANN GRIDER, THE WENDISH TEXANS 35-37 (1982).

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.⁷³⁶ Danish was used in business, at home, and in the church.⁷³⁷ However, by 1894, when Danevang was established, Texas already required that all schools be operated in English.⁷³⁸ The ministers of the community, however, were expected to teach Danish to the children on Saturdays and at vacation school.⁷³⁹ 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."⁷⁴⁰ In contrast, Danish Texans in Fredricksburg, a largely German community, learned German instead of Danish.⁷⁴¹

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 1845.⁷⁴² Nothing in the language actually adopted in the Constitution of 1845 required that education in Texas public schools be conducted in English.⁷⁴³

It was not until 1856 that the Legislature specifically required that English be one of the subjects taught in the public schools of Texas.⁷⁴⁴ In 1858, the requirement was strengthened by prohibiting funding to a public school "unless the English language is *principally* taught therein."⁷⁴⁵ This requirement, however, permitted

736. JOHN L. DAVIS, *THE DANISH TEXANS* 50 (1979).

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").

744. Act of Aug. 29, 1856, ch. 180, § 11, 1856 Tex. Gen. Laws 111 (providing that "no school shall be entitled to the benefits of this act unless the English language is taught therein"), reprinted in 4 Tex. Gen. Laws 525, 529-30 (Gammel 1898). This requirement was reaffirmed in 1866. Act of Nov. 12, 1866, ch. 146, § 15, 1866 Tex. Gen. Laws 174, reprinted in 5 Tex. Gen. Laws 1092 (Gammel 1898).

745. Act of Feb. 5, 1858, ch. 98, § 9, 1858 Tex. Gen. Laws 124, 126-27, reprinted in 4 Tex. Gen. Laws 996, 998-99 (Gammel 1898) (emphasis added).

the teaching of other languages, and other languages continued to be widely taught in the public schools of Texas.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.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.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

746. See *infra* part VII.D.3.

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, Grammer [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.

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 "[r]eaction 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").

750. Act of Aug. 13, 1870, ch. 68, § 16, 1870 Tex. Gen. Laws 117, *reprinted in* 6 Tex. Gen. Laws 287, 291 (Gammel 1898).

751. EBY, *supra* note 201, at 162.

752. Act of Aug. 13, 1870, § 16, 1870 Tex. Gen. Laws 117, *reprinted in* 6 Tex. Gen. Laws 287, 291 (Gammel 1898).

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.

[T]he 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?"⁷⁵⁷

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[.]"⁷⁵⁸ in 1876—the year the current Texas Constitution was adopted—English-language requirements were limited to the teaching of English grammar.⁷⁵⁹ Teachers were authorized to determine the books of instruction, subject only to the approval of their community trustees.⁷⁶⁰ This permitted a teacher to select textbooks in a language other than English.⁷⁶¹ 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-

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

757. Carl H. Moneyhon, *Public Education & Texas Reconstruction Politics, 1871-1874*, 92 Sw. Hist. Q. 393, 398 (1989).

758. Act of May 2, 1874, ch. 156, § 4, 1874 Tex. Gen. Laws 209, 210, reprinted in 8 Tex. Gen. Laws 209, 210 (Gammel 1898) (emphasis added).

759. Act of Aug. 19, 1876, ch. 120, § 43, 1876 Tex. Gen. Laws 207 (requiring teachers to be examined in "Orthography, reading, writing, English grammar, composition, geography and arithmetic"), reprinted in 8 Tex. Gen. Laws 1035, 1043 (Gammel 1898).

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 Jesús 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. LITIG., 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 Jesús Prado to City Council (Nov. 12, 1866), *microformed on Laredo Archives, supra* note 106, Folder 209, Document 3.

765. MILO KEARNEY, ALFONSO GÓMEZ ARGUELLES, & YOLANDA Z. GONZÁLEZ, *A BRIEF HISTORY OF EDUCATION IN BROWNSVILLE & MATAMOROS* 8-9 (1989).

766. *Id.* at 9.

767. See BIESELE, *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. Bieseles, *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).

day.⁷⁶⁹ Teachers Adolf Schlameus and Heinrich Guenther opened the New Braunfels City School, or *Stadtschule*, in 1853.⁷⁷⁰ German and English were taught.⁷⁷¹ German-language schools opened in German communities throughout Texas.⁷⁷² German language textbooks were used in these schools.⁷⁷³ In bilingual schools such as the German-English School in San Antonio, "German was the dominant language."⁷⁷⁴ 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."⁷⁷⁵ Even Tejanos attending segregated schools in German communities were provided instruction in German.⁷⁷⁶

769. See BENJAMIN, *supra* note 646, at 114 (noting that as early as 1860 New Braunfels had the state's first tax-supported schools).

770. See BIESELE, *supra* note 631, at 212.

771. BENJAMIN, *supra* note 646, at 114; NUHN, *supra* note 691, at 82 (showing a photograph of Ms. Emma Toepperwein in her New Braunfels Academy classroom in 1897 with a caption indicating that "Classes were taught in English and German at that time").

772. Jordan, *supra* note 630, at 61 (describing school in Galveston in 1849 giving instruction in German and English); SEELE, *supra* note 627, at 12 (describing school in Blumenthal conducted regularly in German); *id.* at 35 (noting the schools in Texas cities in which "trained teachers give thorough instruction in English and German"); ETHEL HANDER GEUE, *NEW HOMES IN A NEW LAND: GERMAN IMMIGRATION TO TEXAS, 1847-1861* 27-29 (1970) (describing and listing German schools); WAUGH, *supra* note 432, at 49 (describing school taught by Abbé Dubuis in the 1840s which offered instruction in Catechism, French, English, and German; fewer than 12 of the 66 pupils spoke English); BIESELE, *supra* note 631, at 211-17 (describing German schools); LICH, *supra* note 629, at 131 (reporting Comfort, Texas schoolmaster Hubert Heinen's schooling in the 1880s: "One half of the lessons were supposed to be in English, the other half in German."); GUIDO E. RANSLEBEN, *A HUNDRED YEARS OF COMFORT IN TEXAS: A CENTENNIAL HISTORY* 69 (Naylor Co. 1974) (1954) (commending the "insistence of the patrons of the Comfort school to provide a thorough course in German grammar and reading"); HUDSON & MARESH, *supra* note 720, at 177 (noting German-English school at Flatonia in 1871).

773. Bieseles, *supra* note 669, at 86-87 (describing the use of readers brought by German immigrants as well as of Webster's spelling book in New Braunfels in 1845); BIESELE, *supra* note 631, at 214 (noting that the Boerne, Texas school in 1860 used a series of German books published in Cincinnati, as well as McGuffey's *Speller* and *Reader*); RANSLEBEN, *supra* note 772, at 69 (showing photograph of German and English textbooks "used in the Comfort school from 1865 through 1910").

774. Heinen, *supra* note 646, at 167-68; Keeth, *supra* note 651, at 197 (1972) (noting that courses at German-English School included German and English, and later included Spanish); HAAS, *supra* note 512, at 6-7 (noting that the San Antonio School Union maintained "a German-English school of six grades with efficient teachers").

775. EBY, *supra* note 201, at 251 (1925). See also SCHMIDT, *supra* note 506, at 66 (stating that "[i]n a few of the predominantly German communities German was taught both in the elementary and in the high schools as a regular part of the public school curriculum").

776. NUHN, *supra* note 691, at 144 (describing classes taught in English, Spanish, and German by Prof. José Luz Saenz at Dittlinger ("Las Caleras")).

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 1844.⁷⁷⁷ 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.⁷⁷⁸ These grandiose plans for a university were never realized.⁷⁷⁹

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.'"⁷⁸⁰

As early as 1855, Reverend Bergman taught the children at Kašprlink (Cat Springs) in Czech and in German.⁷⁸¹ Josef Mašik taught in Czech at Wesley, Texas after 1859.⁷⁸² In 1872, Mašik was replaced by a teacher brought from Czechoslovakia.⁷⁸³ Between 1874 and 1881, Rev. J.L. Chlumsky "received the support of the State to teach the Czech language" in Wesley.⁷⁸⁴ Seven Czech school houses were built west of the Colorado River in Fayette County, "all of which were supported by the State School Fund."⁷⁸⁵ 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."⁷⁸⁶ The teacher at Grief, Texas taught "three languages, German, English and Czech with lessons in all grades."⁷⁸⁷ Just as German language textbooks were used in the German schools, Czech-language textbooks were used in the Czech schools.⁷⁸⁸

777. 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).

778. *Id.* § 7, at 949.

779. BIESELE, *supra* note 631, at 216.

780. CZECH VOICES, *supra* note 723, at 128.

781. HUDSON & MARESH, *supra* note 720, at 172 (*quoting* early settler Josef Holec).

782. *Id.*

783. *Id.* at 173.

784. *Id.* at 214.

785. *Id.* at 174. For a description of the state support for private schools, *see supra* note 764 and accompanying text.

786. *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).

787. HUDSON & MARESH, *supra* note 720, at 178. For a history of the Czech schools in Texas, *see also* CZECH VOICES, *supra* note 723, at xxi-xxii and 125-30.

788. HUDSON & MARESH, *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 1858.⁷⁸⁹ In 1869 two teachers were hired: a Polish teacher and an English teacher.⁷⁹⁰ The parochial school also taught in both English and Polish.⁷⁹¹

In February, 1856, the Wends at Serbin established a parochial school that was conducted in Wendish.⁷⁹² It operated until 1916.⁷⁹³ Wendish children continued to speak Wendish at home, but learned German in the schools; English was learned in adulthood.⁷⁹⁴

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.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."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."⁷⁹⁷

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

789. BAKER, *supra* note 730, at 35-36.

790. EDWARD J. DWORACZYK, *THE CENTENNIAL HISTORY OF PANNA MARIA, TEXAS* 73 (1936).

791. *Id.* at 85.

792. GRIDER, *supra* note 732, at 51.

793. *Id.* at 52.

794. *Id.*

795. MONTEJANO, *supra* note 253, at 28.

796. JOSE MARIA RODRIGUEZ, *MEMOIRS OF EARLY TEXAS* 75 (1913) (*quoted in* MONTEJANO, *supra* note 253, at 31).

797. MONTEJANO, *supra* note 253, at 39 (*quoting Corpus Christi Ranchero and Fort Brown Flag*).

798. Act of Nov. 10, 1866, ch. 128, § 2, 1866 Tex. Gen. Laws 131, *reprinted in* 5 Tex. Gen. Laws 1049 (Gammel 1898). Section 1 of this Act provided African Americans with rights similar to those protected by 42 U.S.C. § 1983.

799. *See, e.g.*, Act of Apr. 15, 1905, ch. 124, § 93, 1905 Tex. Gen. Laws 263, 288 (providing that "[w]hite 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.⁸⁰⁰ 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.”⁸⁰¹

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

800. For a description of the rise of nativism in the United States in the 1880s and 1890s, see JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860-1925* 35-74 (2d ed. 1963).

801. BAKER, *supra* note 730, at 97.

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.⁸⁰³ Mistreatment of Tejanos was justified by the war against Mexico. "Killing a Mexican was like killing an enemy in the independence war."⁸⁰⁴ 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.⁸⁰⁵

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[?]"⁸⁰⁶

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.

803. MONTEJANO, *supra* note 253, at 83.

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 Rodríguez 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 Rodríguez*, 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 *Rodríguez* 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.

805. MONTEJANO, *supra* note 253, at 225. For a description of the development of racist attitudes towards Tejanos, see DE LEON, *supra* note 572, at 36.

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

807. Act of Apr. 29, 1879, ch. 154, art. 3766, 1879 Tex. Gen. Laws 174, *reprinted in* 8 Tex. Gen. Laws 1469, 1474 (Gammel 1898); Act of Feb. 4, 1884, ch. 25, § 48, 1884 Tex. Gen. Laws 38, 48 (same), *reprinted in* 9 Tex. Gen. Laws 570, 580 (Gammel 1898); Act of April 28, 1891, ch. 116, § 3(e), 1891 Tex. Gen. Laws 183, 184 ("Such examinations shall be conducted in the English language and in writing."), *reprinted in* 10 Tex. Gen. Laws 184 (Gammel 1898); Act of April 28, 1891, ch. 116, § 8(c), 1891 Tex. Gen. Laws 184 ("All examinations shall be conducted in the English language in writing."), *reprinted in* 10 Tex. Gen. Laws 186 (Gammel 1898); Act of May 20, 1893, ch. 122, § 78, 1893 Tex. Gen. Laws 182, 205 (requiring teacher examinations to "be conducted in the English language"), *reprinted in* 10 Tex. Gen. Laws 612, 635 (Gammel 1898); TEX. REV. CIV. STAT. ANN. art. 3981(b) (1895) (requiring English for "[a]ll examinations authorized under this chapter"); Act of Apr. 15, 1905, ch. 124, § 110, 1905 Tex. Gen. Laws 263, 291 (same); TEX. REV. CIV. STAT. ANN. art. 2789 (1911) (same); Act of Mar. 23, 1911, ch. 96 § 105, 1911 Tex. Gen. Laws 189 (same); Act of Mar. 31, 1921, ch. 129, § 7, 1921 Tex. Gen. Laws 242, 250 (providing that "[a]ll examinations provided for herein and elsewhere in the Texas School Laws shall be conducted in writing and in the English language"); TEX. REV. CIV. STAT. ANN. art. 2879 (1925) ("All examinations . . . shall be conducted in writing and in the English language.")

808. Act of Apr. 29, 1879, ch. 154, art. 2766, 1879 Tex. Gen. Laws 169, 174, *reprinted in* 8 Tex. Gen. Laws 1469, 1474 (Gammel 1898); Act of April 28, 1891, ch. 116, § 3(e), 1891 Tex. Gen. Laws 183, 184 ("[n]o applicant shall receive a certificate unless the board of examiners be satisfied that he is competent to teach the branches prescribed for the grade of certificate applied for in the English language"), *reprinted in* 10 Tex. Gen. Laws 185, 186 (Gammel 1898); Act of April 28, 1891, ch. 116, § 3(f) (providing the "board of examiners shall examine each applicant as to his competency to teach the branches named in the preceding clauses in the English language"), *reprinted in* 8 Tex. Gen. Laws 1474 (Gammel 1898); Act of May 20, 1893, ch. 122, § 78, 1893 Tex. Gen. Laws 182, 205 ("no applicant shall receive a certificate unless the board of examiners be satisfied that he is competent to teach the branches prescribed for the grade of certificate applied for, in the English language"), *reprinted in* 10 Tex. Gen. Laws 612, 635 (Gammel 1898); TEX. REV. CIV. STAT. ANN. art. 3981(b) (1895) (same); TEX. REV. CIV. STAT. ANN. art. 2789 (1911) (same); Act of Mar. 23, 1911, ch. 96 § 106, 1911 Tex. Gen. Laws 189 (same).

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.⁸¹⁰

In 1893, as xenophobia increased throughout the United States,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.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."⁸¹³ These statutes succeeded in decreasing

183, 186 (same), *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"), *reprinted in* 10 Tex. Gen. Laws 612, 617 (Gammel 1898); TEX. REV. CIV. STAT. ANN. art. 3909a (1895) (same); TEX. 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); TEX. REV. CIV. STAT. ANN. art. 2783 (1911) (same); TEX. REV. CIV. STAT. ANN. art. 2911 (1925).

810. See *supra* part VII.D.3.

811. See *supra* note 800.

812. Act of May 20, 1893, ch. 122, § 70, 1893 Tex. Gen. Laws, 182, 202-03, *reprinted in* 10 Tex. Gen. Laws 612, 632-33 (Gammel 1898); TEX. REV. CIV. STAT. ANN. art. 3976d (1895); Act of Apr. 15, 1905, ch. 124, § 102, 1905 Tex. Gen. Laws 263, 290; TEX. 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." 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." 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 Texans 50 years before.

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,⁸¹⁴ 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)."⁸¹⁵ 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."⁸¹⁶

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.⁸¹⁷ 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 de-

mining his grades upon the branches upon which he is examined."), *reprinted in* 10 *Tex. Gen. Laws* 612, 629-30 (Gammel 1898); *TEX. REV. CIV. STAT. ANN.* art. 3973a (1895) (requiring the teacher to show "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 for the class of certificate for which he applies. 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 . . . and the examiners shall also consider it as an element in determining his grades upon the branches upon which he is examined."); Act of Apr. 15, 1905, ch. 124, § 115, 1905 *Tex. Gen. Laws* 263, 292 (same); *TEX. REV. CIV. STAT. ANN.* art. 2788 (1911) (same); Act of Mar. 23, 1911, ch. 96, § 106, 1911 *Tex. Gen. Laws* 189 (same, but deleting requirement that English ability be considered in the grading process); *TEX. REV. CIV. STAT.* art. 2880 (1925) (same).

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.⁸¹⁸ 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.⁸¹⁹ 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 . . ." ⁸²⁰ 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.⁸²¹ 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."⁸²² 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."⁸²³ In 1918, the provision of texts for elementary grades not printed in the English language was made a misdemeanor.⁸²⁴

818. Act of Apr. 16, 1907, § 93, 1907 Tex. Gen. Laws 204.

819. See *supra* text accompanying notes 773 and 788 (describing the use of German-language and Czech-language texts).

820. Act of May 14, 1907, ch. 9, § 1, 1907 Tex. Gen. Laws 448-49; TEX. REV. CIV. STAT. ANN. art. 2905 (1911); Act of June 15, 1917, ch. 44, 1917 Tex. Gen. Laws 183 (creating Texas State Textbook Commission); TEX. REV. CIV. STAT. ANN. art. 2843 (1925).

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").

822. Act of May 14, 1907, ch. 9, § 1, 1907 Tex. Gen. Laws 448, 449; Act of June 5, 1917, ch. 44, § 6, 1917 Tex. Gen. Laws 183, 186.

823. Act of Aug. 31, 1911, ch. 11, § 4, 1911 Tex. Gen. Laws 88, 90; Act of June 5, 1917, ch. 44, § 5, 1917 Tex. Gen. Laws 183, 185; TEX. REV. CIV. STAT. ANN. art. 2843 (1925).

824. Act of Apr. 3, 1918, ch. 80, § 2, 1918 Tex. Gen. Laws 170; TEX. PENAL CODE art. 293 (1925) (repealed 1969). See Act of June 21, 1969, ch. 889, § 51.203, § 2(b), 1969 Tex. Gen. Laws 2735, 3025 (repealing TEX. PENAL CODE art. 293).

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).

826. Act of Mar. 28, 1917, ch. 112, 1917 Tex. Gen. Laws 302-03 (codified at TEX. PENAL CODE art. 290 (1925)) (repealed 1969).

827. Schools were not given the duty to report suspected child abuse until 1971. In 1969, the Legislature permitted, but did not require, school teachers to report suspected child abuse. Act of May 14, 1969, ch. 219, §§ 1-2, 1969 Tex. Gen. Laws 637. In 1971, the Legislature made it mandatory for any person to report suspected child abuse or neglect. Act of June 15, 1971, ch. 902, § 1, 1971 Tex. Gen. Laws 2790 (codified at TEX. FAM. CODE ANN. § 34.01 (West Supp. 1994)); see also TEX. EDUC. CODE ANN. § 21.936 (West Supp. 1994) (requiring the Central Education Agency to develop a policy for school districts to cooperate with law enforcement in child abuse investigations).

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 1969.⁸²⁹

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

edge and mastery of any foreign language, it is imperative that instruction in such language be begun at the earliest possible period." The Texas Legislature was not ready, however, to extend these benefits to the rest of the state.

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.

829. See *infra* text accompanying notes 936-39.

830. Act of Mar. 23, 1923, ch. 121, § 2(a), 1923 Tex. Gen. Laws 255 (exempting from compulsory attendance in the public schools children "in attendance upon a private or parochial school which shall . . . make the English language the basis of instruction in all subjects"); TEX. REV. CIV. STAT. ANN. art. 2893 (1925) (same).

The repeal of this provision was attempted in 1969. The 1969 legislature passed four different statutes that addressed the provision. On May 22, 1969, the English language requirement was deleted. Act of May 22, 1969, ch. 289, § 3, 1969 Tex. Gen. Laws 871. However, on June 10, 1969, a bill retaining the English language requirement was approved. Act of June 10, 1969, ch. 532, § 1, 1969 Tex. Gen. Laws 1669. Two days later, still another bill retaining the English language requirement was approved. Act of June 12, 1969, ch. 664, § 1, 1969 Tex. Gen. Laws 1964. On June 21, 1969, the new Education Code was approved. That bill repealed Article 2893. Act of June 21, 1969, ch. 889, § 2(a), 1969 Tex. Gen. Laws 3024-25. However, section 5 of the bill enacting the Education Code provided, "If any act passed at the same session of the legislature conflicts with any provision of the Texas Education Code, the act prevails." *Id.* § 5, at 3026. The 1971 Legislature finally, and without contradictory legislation, removed the English language requirement. Act of May 26, 1971, ch. 405, § 43, 1971 Tex. Gen. Laws 1449, 1514 (permitting the governing board of any school district or private or parochial school to "determine when, in which grades, and under what circumstances instruction may be given bilingually"). This language was amended in 1973 to authorize "bilingual instruction when necessary to insure their reasonable efficiency in the English language so as not to be educationally disadvantaged." Act of June 13, 1973, ch. 392, § 4, 1973 Tex. Gen. Laws 860, 863 (codified at TEX. EDUC. CODE ANN. § 21.109 (West 1987)).

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).

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.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.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.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.⁸³⁵ Despite this statutory requirement, however, the Texas Supreme Court enforced Spanish-language deeds.⁸³⁶

3. English-Only Elections

The tradition of multilingual elections established by the Anglo-American immigrants to Mexican Texas persisted throughout

832. See TEX. PENAL CODE art. 298 (1925) (repealed 1969). See Act of May 22, 1969, ch. 289, § 4, 1969 Tex. Gen. Laws 872 (repealing art. 298).

833. SCHMIDT, *supra* note 506, at 66.

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).

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).

836. Mondragón v. Mondragón, 257 S.W. 215 (Tex. 1923) (enforcing an instrument written in Spanish in 1916).

the nineteenth century.⁸³⁷ As large numbers of Mexican immigrants settled in Texas in the early twentieth century,⁸³⁸ 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,⁸³⁹ intended to discourage Tejano voters "Who, with the potential naturalization of the Mexican immigrant, constituted a decisive bloc of voters in the state."⁸⁴⁰ 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:

1900-1904	2,259
1905-1909	21,732
1910-1914	82,588
1915-1919	91,075
1920-1924	249,248
1925-1929	238,527

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).

839. Act of Mar. 23, 1918, ch. 30, § 1, 1918 Tex. Gen. Laws 54. The act made assistance to a voter a misdemeanor.

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 loose [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).

844. Act of Apr. 1, 1903, ch. 101, § 2, 1903 Tex. Gen. Laws 133; Act of May 15, 1905, ch. 11, § 2, 1905 Tex. Gen. Laws 520 (same); TEX. REV. CIV. STAT. ANN. art. 2939 (1911) (same).

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,⁸⁴⁸ the Legislature in 1919 revised the statutes relating to public printing and deleted the authorization for the printing of laws in other languages.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 1910.⁸⁵⁰

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.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.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.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

848. See *supra* parts VI.A.2 & VII.A.2.

849. Act of Aug. 7, 1919, ch. 84, 1919 Tex. Gen. Laws 303-08.

850. See *supra* note 838.

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.).

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).

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.⁸⁵⁴ Tejano businesspersons were notified of wartime rationing regulations through Spanish-language notices in 1917 and 1918.⁸⁵⁵

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.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."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.⁸⁵⁸

854. Carole E. Christian, *Joining the American Mainstream: Texas's Mexican Americans During World War I*, 92 Sw. Hist. Q. 559, 573 (1989).

855. *Id.* at 585.

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).

857. *Shepherd*, 363 S.W.2d at 761 (Calvert, C.J., dissenting).

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.⁸⁵⁹ 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.⁸⁶⁰

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.”⁸⁶¹

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 resulted in the enactment of the wide range of multilingual governmental 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 apply the Texas Bill of Rights in a way that would have been consistent 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

862. *Terrell v. Middleton*, 187 S.W. 367, 373 (Tex. Civ. App. 1916, writ ref'd) (quoting THOMAS MCINTYRE 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, C.J., dissenting). See TEX. R. CIV. P. Ann. r. 483 (West 1993) (providing for refusal of 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.

864. Act of May 4, 1846, § 1, 1846 Tex. Gen. Laws 170, reprinted in 2 Tex. Gen. 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.

868. TEX. CONST. of 1845, art. III, § 2.

869. Act of Dec. 1, 1871, ch. 76, § 1, 1871 Tex. Gen. Laws 60 ("all the qualified voters of each county shall be qualified jurors of such county"), reprinted in 7 Tex. Gen. Laws 62 (Gammel 1898). See *Abrigo v. Texas*, 15 S.W. 408 (Tex. Ct. App. 1890) (rejecting appeal of conviction based on Starr County jury consisting of non-citizens who had declared their intent to become citizens of the U.S.).

870. Act of May 19, 1873, ch. 61, § 1, 1873 Tex. Gen. Laws 81-82, reprinted in 7 Tex. Gen. Laws 533-34 (Gammel 1898); cf. Act of Dec. 1, 1871, ch. 76, § 1, 1871 Tex. Gen. Laws 60 (providing that "all the qualified voters of each county shall be qualified jurors of such county"), reprinted in 7 Tex. Gen. Laws 62 (Gammel 1898).

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 householder 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).

872. *Abrigo v. State*, 15 S.W. 408, 410-11 (Tex. Crim. App. 1890).

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 river⁸⁷⁴

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 LEÓN, *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 *McC Campbell 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

be nothing less than a mockery"). There is, of course, a solution that ensures that the rights of the defendant and the right of the putative juror to serve on the jury are protected: providing the juror with an interpreter. Cf. *McCampbell*, 9 Tex. Crim. at 126 (noting that the error in permitting non-English-speaking jurors to serve was "magnified by a refusal to permit [defendant's] counsel to address them in a language they could comprehend, or to consume at least a part of the time allotted him for argument in that language").

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.

884. Cf. *Peters v. Kiff*, 407 U.S. 493, 503-04 (1972) (plurality opinion of Marshall, J.) (noting that the exclusion of any large and identifiable segment of the community removes "from the jury room qualities of human nature and varieties of human experience"); Perea, *supra* note 25, at 58-60 (describing the potential effect of the exclusion of bilingual Hispanics from juries).

885. TEX. CONST. art. I, § 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*,⁸⁸⁷ 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."⁸⁸⁸ 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.⁸⁸⁹

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.⁸⁹⁰ The Anglo Texans protested vigorously whenever they perceived the Mexican government was conditioning their participation in the Mexican legal system on an ability to speak Spanish.⁸⁹¹ 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.⁸⁹² When first

juries. Such exclusion was found to violate the Fourteenth Amendment in *Hernández v. Texas*, 347 U.S. 475 (1954).

887. 111 S.W. 927 (Tex. Ct. App. 1908).

888. *Id.* at 928 (emphasis added).

889. *Id.*

890. Ponton, *supra* note 4, at 99; *see supra* note 252.

891. *See supra* part V.E.

892. TEX. GOV'T CODE ANN. § 62.102 (West 1988) (providing that a juror must be "able to read and write"). Literacy was not required of jurors until 1876, and then only at the option of the parties. Act of Aug. 1, 1876, ch. 76, § 1, 1876 Tex. Gen. Laws 78 (providing 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). The requirement could be dispensed with if insufficient literate jurors could be found in the county. Act of Aug. 1, 1876, ch. 76, § 26, 1876 Tex. Gen. Laws 83 (providing that "where the requisite number of jurors, able to read and

presented with this question in *Nolen v. State*,⁸⁹³ 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.⁸⁹⁴ 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.”⁸⁹⁵ 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.”⁸⁹⁶ 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.⁸⁹⁷

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.⁸⁹⁸ Legislative proceedings had not been conducted solely in English since 1836.⁸⁹⁹ Finally, while the laws were written in English, those laws were

write, cannot be found, then the inability of a juror to read and write shall not be a good cause for challenge”), reprinted in 8 Tex. Gen. Laws 919 (Gammel 1898). This exception is now codified at TEX. GOV'T CODE ANN. § 62.103 (West 1988).

893. 9 Tex. Crim. 419, 423 (1880).

894. *Id.*

895. *Wright v. State*, 12 Tex. Crim. 163, 164 (1882).

896. *Id.* at 167.

897. *Nolen*, 9 Tex. Crim. at 423.

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.⁹⁰⁰ 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,⁹⁰¹ 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 *García v. State*⁹⁰² 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 *García*, 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.⁹⁰³

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.⁹⁰⁴

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.⁹⁰⁵ 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]").

902. 12 Tex. Crim. 335, 339 (1882).

903. *De Arman v. State*, 189 S.W. 145, 147 (Tex. Ct. App. 1916).

904. *Mercy Hosp. of Laredo v. Ríos*, 776 S.W.2d 626, 628 (Tex. Ct. App. 1989) (holding it "is not reversible error for a juror to lack the literacy qualification, especially when the juror possesses an understanding of the English language"); *Jenkins v. Chapman*, 636 S.W.2d 238, 240 (Tex. Ct. App. 1982) (same).

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.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, "[I]f 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."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."⁹⁰⁸ Similarly, a juror who does not understand English "too well" and can read English "just a little bit" is qualified.⁹⁰⁹ But when a challenge is properly raised, jurors who do not speak English sufficiently may be excluded.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

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." *Id.*

907. *Myers v. State*, 177 S.W. 1167, 1171 (Tex. Ct. App. 1915); *Van Dalen*, 789 S.W.2d at 336 (quoting *Myers*).

908. *Van Dalen*, 789 S.W.2d at 336.

909. *Coca Cola Bottling Co. v. Mitchell*, 423 S.W.2d 413, 418 (Tex. Civ. App. 1967).

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.⁹¹¹ After the Texas Supreme Court held, however, that court proceedings in Texas must be in English,⁹¹² 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.⁹¹³ Provision for paying for such interpreters, however, did not exist until 1918.⁹¹⁴

The same 1918 statute also appears to have authorized payment for interpreters in civil cases for the first time as well.⁹¹⁵ The Legislature had provided for interpreters in civil cases since 1879.⁹¹⁶ 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."⁹¹⁷

Although the Code of Criminal Procedure had provided for interpretation for witnesses who did not speak English,⁹¹⁸ no statute authorized interpretation for defendants who did not speak English. Until 1911, the response of the Texas courts was that criminal

911. See, e.g., *supra* note 680 (describing payment of interpreters for the Comal County courts).

912. *Lyles v. State*, 41 Tex. 172 (1874). See *supra* part VII.C.1.

913. TEX. CRIM. PROC. CODE ANN. art. 756 (1879). See also TEX. CRIM. PROC. CODE ANN. art. 796 (1895) (same); TEX. CRIM. PROC. CODE ANN. art. 816 (1911) (same); TEX. CRIM. PROC. CODE ANN. art. 733 (1925). This provision is now codified at TEX. CRIM. PROC. CODE ANN. art. 38.30(a) (West. Supp. 1995).

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).

916. TEX. REV. STAT. art. 2230 (1879) (providing for interpreters to facilitate the taking of depositions).

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.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.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."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,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. *This, of necessity, means they are entitled to*

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").

920. *Zunago v. State*, 138 S.W. 713, 719-20 (Tex. Ct. App. 1911). See also *Luera v. State*, 63 S.W.2d 699, 701 (Tex. Ct. App. 1933) (rejecting appeal when interpreter was not requested).

921. *García v. State*, 210 S.W.2d 574, 577 (Tex. Ct. App. 1948).

922. *Id.* at 578 (opinion on motion for rehearing) (citing TEX. CONST. art. I, § 10).

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.

. . . [I]n denying to appellant an interpreter, the trial court abused his discretion and appellant was thereby denied a right granted by the Constitution.⁹²³

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,⁹²⁴ 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.⁹²⁵

In *Western Union Telegraph Co. v. Olivarri*,⁹²⁶ 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.⁹²⁷ The Texas Supreme Court affirmed the judgment against Western Union.⁹²⁸

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).

927. *Western Union Telegraph Co. v. Olivarri*, 126 S.W. 688 (Tex. Civ. App. 1910) (rejecting argument), *aff'd*, 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 —⁹³¹

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:

[E]ven 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

929. *Travelers' Ins. Co. v. Machann*, 188 F.2d 828, 829-30 (5th Cir. 1951) (emphasis added).

930. 355 S.W.2d 87 (Tex. Civ. App. 1962).

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.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.⁹³⁶ Although English remains "the basic language of instruction,"⁹³⁷ the 1969 Education Code explicitly permitted bilingual instruction "in those situations when such instruction is educationally advantageous to the pupils."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 important⁹³⁹

community."); *id.* at 926 (Clinton, J., dissenting) (asserting the two sets of names are not "capable, under any standard dictionary pronunciation, of sounding the same").

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).

936. Act of May 22, 1969, ch. 289, § 4, 1969 Tex. Gen. Laws 872 (repealing TEX. PENAL CODE arts. 288 and 298).

937. *Id.* § 1, at 871, (codified at TEX. EDUC. CODE ANN. § 21.109(a) (West 1987)).

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.

939. Act of May 22, 1969, ch. 289, § 5, 1969 Tex. Gen. Laws 872. There is little documentation regarding the motivation of the Texas Legislature in removing the long-standing prohibition. Professor Rachel Morán argues that the enactment of the federal Bilingual Education Act of 1968 can be attributed largely to the enterprise of Texas Senator Ralph Yarborough. Rachel F. Morán, *The Politics of Discretion: Federal Intervention in Bilingual Education*, 76 CAL. L. REV. 1249, 1259-61 (1988).

With these important breakthroughs,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."⁹⁴¹ While some statutes require that particular activities take place in English,⁹⁴² others that formerly required

940. Local officials occasionally revert to the practices of the past. *English Only*, UPI, May 1, 1987, available in WESTLAW, UPI Database (reporting that Tornillo I.S.D. officials were forced to drop plans to discipline students who spoke Spanish in school). To the extent that the Texas Education Code authorizes bilingual education in a private school only when "necessary to insure [a student's] reasonable efficiency in the English language so as not to be educationally disadvantaged," TEX. EDUC. CODE ANN. § 21.109 (West 1987), it would appear to violate the holding in *Meyer v. Nebraska*, 262 U.S. 390 (1923). See *supra* text accompanying note 23.

941. TEX. AGRIC. CODE ANN. § 1.001(b)(4) (West 1982); TEX. ALCO. BEV. CODE ANN. § 1.01(b)(4) (West 1978); TEX. CIV. PRAC. & REM. CODE ANN. § 1.001(b)(4) (West 1986); TEX. GOV'T CODE ANN. § 1.001(b)(4) (West 1988); TEX. HEALTH & SAFETY CODE § 1.001(b)(4) (West 1992); TEX. HUM. RES. CODE ANN. § 1.001(b)(4) (West 1990); TEX. LAB. CODE ANN. § 1.001(b)(4) (West Supp. 1994); TEX. LOCAL GOV'T CODE ANN. § 1.001(b)(4) (West 1988); TEX. NAT. RES. CODE ANN. § 1.001(b)(4) (West 1978); TEX. PARKS & WILD. CODE ANN. § 1.001(b)(4) (West 1991); TEX. PROP. CODE ANN. § 1.001(b)(4) (West 1984); TEX. TAX. CODE ANN. § 101.001(b)(4) (West 1992); TEX. TAX CODE ANN. § 301.001(b)(4) (West 1992); TEX. WATER CODE ANN. § 1.001(b)(4) (West 1988); TEX. CODE CRIM. PROC. ANN. art. 101.001(b)(4) (West Supp. 1994).

942. TEX. AGRIC. CODE ANN. § 61.004(a) (West 1982) (requiring containers of agricultural seed to bear an English-language label); TEX. AGRIC. CODE ANN. § 61.005(a) (West 1982) (requiring containers of vegetable seed to bear an English-language label); TEX. AGRIC. CODE ANN. § 63.051(c) (West Supp. 1994) (requiring commercial fertilizer to bear an English-language label); TEX. AGRIC. CODE ANN. § 72.005 (West 1982) (requiring reports, notices, statements and records on the Mexican fruit fly to be in English); TEX. AGRIC. CODE ANN. § 141.051(b) (West Supp. 1994) (requiring commercial feed to bear an English-language label); TEX. ALCO. BEV. CODE ANN. § 39.21(j) (West 1978) (requiring holder of medicinal permit for sale of liquor to attach an English-language label); TEX. ALCO. BEV. CODE ANN. § 40.05(4) (West Supp. 1994) (requiring physician prescribing liquor to write prescription in English); TEX. CIV. PRAC. & REM. CODE ANN. § 21.005(a)(2) (West Supp. 1994) (requiring interpreter for deaf witness to repeat witness's answers in English); TEX. EDUC. CODE ANN. § 11.191(1) (West 1991) (requiring the Central Education Agency to finance pilot projects for primary students performing below grade level in English language arts); TEX. EDUC. CODE ANN. § 17.05(4) (West 1991) (requiring county school trustees and members of county boards of education to be able to read and speak English); TEX. EDUC. CODE ANN. § 21.101(a)(1) (West 1991) (requiring school districts to offer English language arts as part of curriculum); TEX. EDUC. CODE ANN. § 21.109(a) (West 1991) (providing that English "shall be the basic language of instruction in all schools"); TEX. EDUC. CODE ANN. § 21.451 (West Supp. 1994) (providing that "English is the basic language of the State of Texas"); TEX. EDUC. CODE ANN. § 22.05(1) (West 1991) (requiring common school district trustees to be able to read and write English); TEX. EDUC. CODE ANN. § 35.023(b) (West Supp. 1994) (requiring the Central Education Agency to adopt exit-level assessment instruments to assess a student's competency in English language arts); TEX. EDUC. CODE ANN. § 51.917(b)(2)

(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 trustee 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 trustee 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. § 232.008(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-

art. 1528n, § 7.06(A) (West Supp. 1994) (requiring foreign limited liability company to provide English translation of certificate of authority); TEX. REV. CIV. STAT. ANN. art. 4495b, § 3.05(a) (West Supp. 1994) (requiring all examinations for the license to practice medicine to be in English); TEX. REV. CIV. STAT. ANN. art. 4495b, § 5.035(a)(6) (West Supp. 1994) (requiring graduates of medical schools outside the United States and Canada to prove their ability to communicate in English); TEX. REV. CIV. STAT. ANN. art. 4569(c) (West Supp. 1994) (requiring examinations for license to practice podiatry to be in English); TEX. REV. CIV. STAT. ANN. art. 5069-3.19(1) (West 1987) (requiring lender to provide English-language statement to borrower); TEX. REV. CIV. STAT. ANN. art. 5069-4.03(1) (West 1987) (providing lender must deliver English-language statement to borrower); TEX. REV. CIV. STAT. ANN. art. 5069-5.04(1) (West 1987) (requiring lender of secondary mortgage loan to provide borrower with English-language statement); TEX. BUS. CORP. ACT ANN. § 8.06(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. art. 6166z8, § 1 (West 1970) (requiring prison-made goods to affix an English-language label); TEX. REV. CIV. STAT. ANN. art. 6673a, § 1(b) (West Supp. 1994) (requiring the State Highway and Public Transportation Commission to advertise the sale of abandoned routes in English); TEX. REV. CIV. STAT. ANN. art. 6687b, § 4(7) (West Supp. 1994) (requiring the Department of Public Safety to test a driver license applicant's ability to understand highway signs in the English language); TEX. REV. CIV. STAT. ANN. art. 6687-1, § 30(b) (West Supp. 1994) (requiring applicant for certificate of title for motor vehicle not previously registered in the United States to provide English-language documents); TEX. REV. CIV. STAT. ANN. art. 8606(a) (West Supp. 1994) (requiring inferior motor fuels to be labeled as such in English); TEX. REV. CIV. STAT. ANN. art. 9009, § 2(b) (West Supp. 1994) (requiring secondhand metal dealers to maintain English-language records); State Bar of Texas, Rules Governing Admission, Rule XIV(b), *available in* WESTLAW, TX-ST Database (requiring foreign legal consultant to provide English translation of certificate of admission to practice law); TEX. R. CIV. P. 647 (West 1966) (requiring notice of sale of real estate to be in English); TEX. R. CIV. P. 117a(3) (West Supp. 1994) (providing that citation in suits for delinquent *ad valorem* taxes must be published in English); TEX. R. CRIM. EVID. 203 (West Supp. 1994) (requiring party intending to rely upon materials in a language other than English to provide an English translation); TEX. R. CIV. EVID. 203 (West Supp. 1994) (same)

943. See, e.g., TEX. PROB. CODE ANN. § 110(f) (West 1980) (formerly precluding persons who do not speak English from being appointed as guardians), *amended by* Act of June 16, 1977, ch. 857, § 1, 1977 Tex. Gen. Laws 2142.

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 Perfumers 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.⁹⁴⁵ Recognizing that the population of Texas today continues to include many persons who do not speak English, provisions exist for interpreters.⁹⁴⁶ 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.⁹⁴⁷

land grants); TEX. REV. CIV. STAT. ANN. art. 5414a-1, § 3 (West 1962) (validating deeds of acquittance on Spanish and Mexican land grants).

945. TEX. LOCAL GOV'T CODE ANN. § 191.005 (West 1988) (providing that translation of Spanish archive has the same effect as the original record); TEX. LOCAL GOV'T CODE ANN. § 193.007 (West 1988) (authorizing the translation of county records in Spanish that relate to title to real property), *amended by* Acts 1989, ch. 1248, § 85(4); TEX. NAT. RES. CODE ANN. § 31.018 (West 1978) (requiring the Commissioner of the General Land Office to appoint a translator "who thoroughly understands the Spanish and English languages"); TEX. NAT. RES. CODE ANN. § 31.064 (West Supp. 1994) (authorizing commissioner to set and collect fees for Spanish translations). The authority for counties to require the county clerk to have translated into English any records which are in Spanish, TEX. REV. CIV. STAT. ANN. arts. 6580 and 6581 (West 1969), was repealed in 1987. Act of May 21, 1987, ch. 149, § 49(1), 1987 Tex. Gen. Laws 707, 1307.

946. TEX. CIV. PRAC. & REM. CODE ANN. §§ 21.021-21.023 (West 1986) (providing for the appointment of Spanish-language interpreters in counties bordering Mexico); TEX. CIV. PRAC. & REM. CODE ANN. §§ 21.031-21.032 (authorizing the appointment of interpreters for county courts at law); TEX. ELEC. CODE ANN. §§ 61.031-61.036 (West 1986) (authorizing interpreters for voters); TEX. FAM. CODE ANN. § 14.802(g) (West Supp. 1995) (requiring an interpreter for any party in a negotiation conference on child support); TEX. LAB. CODE ANN. § 202.064(a) (West Supp. 1995) (requiring the Texas Employment Commission to provide interpreters); TEX. LOC. GOV'T CODE ANN. § 143.113 (West 1986) (authorizing assignment pay for firefighters and police officers who translate while performing their duties); TEX. CRIM. PROC. CODE ANN. art. 38.30(a) (West Supp. 1995) (requiring an interpreter whenever a person charged or a witness does not understand and speak English); TEX. CRIM. PROC. CODE ANN. § 26.055, § 3(a)(1) (West Supp. 1995) (providing for interpreters for inmates accused of committing an offense while in the custody of the Texas Department of Criminal Justice); TEX. CRIM. PROC. CODE ANN. art. 104.003 (West Supp. 1995) (providing for interpreters for prisoners accused of committing an offense while in the custody of the Texas Department of Corrections).

947. TEX. AGRIC. CODE ANN. § 12.025 (West Supp. 1994) (Department of Agriculture); TEX. ALCO. BEV. CODE ANN. § 5.52 (West Supp. 1994) (Texas Alcoholic Beverages Commission); TEX. EDUC. CODE ANN. § 11.909 (West 1991) (State Board of Education); TEX. GOV'T CODE ANN. § 81.020(g) (West Supp. 1994) (Board of Directors of State Bar of Texas); TEX. GOV'T CODE ANN. § 411.0196 (West Supp. 1994) (Department of Public Safety); TEX. GOV'T CODE ANN. § 419.011(c) (West Supp. 1994) (Texas Commission on Fire Protection); TEX. GOV'T CODE ANN. § 461.061 (West Supp. 1994) (Commission on Human Rights); TEX. GOV'T CODE ANN. § 465.017 (West Supp. 1994) (Texas National Research Laboratory Commission); TEX. GOV'T CODE ANN. § 481.012(c) (West Supp. 1994) (Texas Department of Commerce); TEX. GOV'T CODE ANN. § 511.0071(b) (West Supp. 1994) (Commission on Jail Standards); TEX. GOV'T CODE ANN. § 571.072(b) (West 1988) (Texas Ethics Commission); TEX. GOV'T CODE ANN. § 801.206(a) (West 1988) (State Pension Review Board); TEX. GOV'T CODE ANN. § 815.111(f) (West 1988) (Board of Trustees of Employees' Retirement System of Texas); TEX. GOV'T CODE ANN. § 825.113(f) (West 1988) (Board of Trustees of Teacher Retirement System of Texas); TEX. GOV'T CODE ANN. § 2202.034(a) (West Supp. 1994) (Texas Surplus Property Agency); TEX. GOV'T CODE ANN. § 2205.011(a) (West Supp. 1994) (State Aircraft Pooling Board); TEX. GOV'T CODE ANN. § 2306.066(e)

Others consider the ability to speak English as a criterion in the extension of governmental services.⁹⁴⁸ Bilingual governmental

(West Supp. 1994) (Texas Department of Housing and Community Affairs); TEX. HUM. RES. CODE ANN. § 22.017 (West 1990) (Department of Human Services); TEX. HUM. RES. CODE ANN. § 50.0063 (West Supp. 1994) (Texas State Board of Social Work Examiners); TEX. INS. CODE ANN. art. 1.04C(a) (West Supp. 1994) (Commissioner of Insurance); TEX. INS. CODE ANN. art. 1.35A(6)(b) (West Supp. 1994) (Office of Public Insurance Counsel); TEX. TAX CODE ANN. § 5.14(b) (West 1992) (Comptroller); TEX. TAX CODE ANN. § 6.04(e) (West 1992) (Board of directors of county appraisal district); TEX. WATER CODE ANN. § 34.006(f) (West Supp. 1994) (Texas Natural Resource Conservation Commission); TEX. REV. CIV. STAT. ANN. art. 41a-1, § 5(i) (West Supp. 1993) (Texas State Board of Public Accountancy); TEX. REV. CIV. STAT. ANN. art. 135b-6, § 3(l) (West Supp. 1993) (Texas Structural Pest Control Board); TEX. REV. CIV. STAT. ANN. art. 249a(f) (West Supp. 1994) (Texas Board of Architectural Examiners); TEX. REV. CIV. STAT. ANN. art. 601b, § 2.10(c) (West Supp. 1994) (General Services Commission); TEX. REV. CIV. STAT. ANN. art. 4413, § 36(3.02)(b) (West Supp. 1994) (Texas Motor Vehicle Commission); TEX. REV. CIV. STAT. ANN. art. 4495b(2.09)(aa) (West Supp. 1994) (Texas State Board of Medical Examiners); TEX. REV. CIV. STAT. ANN. art. 4512b, § 4d(b) (West Supp. 1994) (Texas Board of Chiropractic Examiners); TEX. REV. CIV. STAT. ANN. art. 4512c, § 8C (West Supp. 1994) (Texas State Board of Examiners of Psychologists); TEX. REV. CIV. STAT. ANN. art. 4512c-1, § 14C (West Supp. 1994) (Texas State Board of Examiners of Marriage & Family Therapists); TEX. REV. CIV. STAT. ANN. art. 4512e, § 2J (West Supp. 1994) (Texas Board of Physical Therapy Examiners); TEX. REV. CIV. STAT. ANN. art. 4512e-1, § 22 (West Supp. 1994) (Executive Council of Physical Therapy & Occupational Therapy Examiners); TEX. REV. CIV. STAT. ANN. art. 4512g, § 6C (West Supp. 1994) (Texas State Board of Examiners of Professional Counselors); TEX. REV. CIV. STAT. ANN. art. 4512h, § 7F (West Supp. 1994) (Texas State Board of Examiners of Dietitians); TEX. REV. CIV. STAT. ANN. art. 4512i, § 8H (West Supp. 1994) (Midwifery Board of Texas Board of Health); TEX. REV. CIV. STAT. ANN. art. 4512j, § 5(j) (West Supp. 1994) (State Board of Examiners for Speech-Language Pathology & Audiology); TEX. REV. CIV. STAT. ANN. art. 4513, § 13 (West Supp. 1994) (Board of Nurse Examiners); TEX. REV. CIV. STAT. ANN. art. 4528c(q) (West Supp. 1994) (Board of Vocational Nurse Examiners); TEX. REV. CIV. STAT. ANN. art. 4529e(b)(10) (West Supp. 1994) (Texas State Board of Examiners of Perfusionists); TEX. REV. CIV. STAT. ANN. art. 4542a-1, § 17A(e) (West Supp. 1994) (Texas State Board of Pharmacy); TEX. REV. CIV. STAT. ANN. art. 4552-2.19 (West Supp. 1994) (Texas Optometry Board); TEX. REV. CIV. STAT. ANN. art. 4568(q) (West Supp. 1994) (Texas State Board of Podiatry Examiners); TEX. REV. CIV. STAT. ANN. art. 4582b, § 2(Q) (West Supp. 1994) (Texas Funeral Service Commission); TEX. REV. CIV. STAT. ANN. art. 6243e, § 21a(g) (West Supp. 1994) (fire fighters' pension commissioner); TEX. REV. CIV. STAT. ANN. art. 6573a, § 5(y) (West Supp. 1994) (Texas Real Estate Commission); TEX. REV. CIV. STAT. ANN. art. 6665a(f) (West Supp. 1994) (State Department of Highways & Public Transportation); TEX. REV. CIV. STAT. ANN. art. 6674v, § 5(p) (West Supp. 1994) (Texas Turnpike Authority); TEX. REV. CIV. STAT. ANN. art. 8407a, § 29(3) (West Supp. 1994) (State Board of Barber Examiners); TEX. REV. CIV. STAT. ANN. art. 8451a, § 4(j) (West Supp. 1994) (Texas Cosmetology Commission); TEX. REV. CIV. STAT. ANN. art. 8851, § 3J (West Supp. 1994) (Texas Board of Occupational Therapy Examiners); TEX. REV. CIV. STAT. ANN. art. 8890, § 6B(b) (West Supp. 1994) (State Board of Veterinary Medical Examiners); TEX. REV. CIV. STAT. ANN. art. 9100, § 16(e) (West Supp. 1994) (Texas Commission of Licensing & Regulation).

948. TEX. BUS. & COM. CODE ANN. § 3.305, Cmt. 7 (West 1968) (providing that the ability of a party to read or understand English should be considered in determining whether there was a reasonable opportunity to obtain knowledge so that his rights are not subject to those of a holder in due course); TEX. EDUC. CODE ANN. § 11.205(c) (West 1991) (requiring that students' limited English proficiency be considered in

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. § 81.079(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,⁹⁵⁰ while still others permit bilingualism.⁹⁵¹

prehensive medical rehabilitation services, or any child-care facility accepting a minor for treatment, to provide a bilingual bill of rights); TEX. HEALTH & SAFETY CODE ANN. § 402.088(b) (West Supp. 1994) (requiring the board of directors of the Texas Low-Level Radioactive Waste Disposal Authority to publish a bilingual notice of any hearing on a proposed disposal site); TEX. HEALTH & SAFETY CODE ANN. § 438.053 (West 1992) (requiring food service establishments to post bilingual signs depicting the Heimlich maneuver); TEX. HEALTH & SAFETY CODE ANN. § 485.017 (West 1992) (requiring any business selling abusable glue or aerosol paint to post bilingual signs); TEX. INS. CODE ANN. art. 21.07, § 4(a) (West Supp. 1994) (providing for the bilingual examination of an applicant for a license to write health and accident insurance); TEX. INS. CODE ANN. art. 21.07, § 4A(a) (providing for the bilingual examination of an applicant for a license to write life insurance); TEX. INS. CODE ANN. art. 21.07, § 5(a) (providing for the bilingual examination of an applicant for a license as a life insurance agent); TEX. INS. CODE ANN. art. 21.07, § 16(c) (providing for the bilingual examination of an applicant for a license as an accident and health insurance agent); TEX. INS. CODE ANN. art. 21.14, § 7 (requiring all examinations given by the State Board of Insurance to be bilingual); TEX. LAB. CODE ANN. § 202.064(a) (West Supp. 1994) (requiring the Texas Employment Commission to provide interpreters); TEX. LAB. CODE ANN. § 202.064(c) (West Supp. 1994) (requiring the Texas Employment Commission to print bilingual forms); TEX. CODE CRIM. PROC. ANN. art. 5.04(c) (West Supp. 1994) (requiring peace officers investigating a family violence allegation to provide the victim with a bilingual notice of legal rights and remedies and notice of the availability of shelter or other services); TEX. REV. CIV. STAT. art. 4542a, § 16 (West 1976) (prohibiting any display using the word "pharmacy" in English or any foreign language unless a registered pharmacist is continually employed and prescriptions are in fact filled there); TEX. REV. CIV. STAT. ANN. art. 5069-13.02(b) (West 1987) (requiring a merchant in any home solicitation transaction to provide a notice in the same language as that principally used in the oral sales presentation); TEX. REV. CIV. STAT. ANN. art. 5069-13.02(c) (West 1987) (requiring a merchant in any home solicitation transaction to provide a notice of cancellation in the same language as that used in the contract); TEX. REV. CIV. STAT. ANN. art. 6687b, § 10A (West 1977) (requiring the Department of Public Safety to provide an alternate examination for Spanish-speaking license applicants).

950. TEX. EDUC. CODE ANN. § 11.27(b)(15) (West 1991) (authorizing the State Board of Education to develop innovative programs relating to bilingual training); TEX. EDUC. CODE ANN. § 11.27(b)(25) (West Supp. 1994) (authorizing same for foreign language education); TEX. EDUC. CODE ANN. § 14.0451(b)(5) (West Supp. 1994) (permitting the Central Education Agency to consider special educational needs, including foreign language, English as a second language and bilingual education, that may be served by educational technologies for special projects); TEX. EDUC. CODE ANN. § 61.782(e) (West Supp. 1994) (establishing the Texas Academy of Foreign Languages and Culture to advance the study of foreign languages and cultures); TEX. EDUC. CODE ANN. § 147.003(b) (West Supp. 1994) (establishing the Texas-Mexico Educational Development Program, and providing funding for institutions of higher education that demonstrate exceptional capability to attract funding for programs "enhancing foreign language proficiency . . . [and] understanding of cultural diversity"); TEX. EDUC. CODE ANN. § 148.002(b) (West Supp. 1994) (establishing the Texas-International Educational Development Program for similar purposes).

951. TEX. ALCO. BEV. CODE ANN. § 11.391(b) (West Supp. 1994) (permitting the administrator of the Texas Alcoholic Beverages Commission to require that the sign advising that alcoholic beverages are intended to be served on the premises be in English "and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language"); TEX. ALCO. BEV. CODE ANN. § 26.05(a) (West Supp. 1994) (permitting the Texas Alcoholic Beverages Commission to require a permit holder to display a bilingual warning sign "if it can be observed or determined that a substantial portion of

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.⁹⁵² State agencies have also begun to

the expected customers speak the other language as their familiar language"); TEX. ALCO. BEV. CODE ANN. § 61.11(a) (West Supp. 1994) (permitting the Texas Alcoholic Beverages Commission to require the display of a bilingual warning sign); TEX. ALCO. BEV. CODE ANN. § 61.381(b) (West Supp. 1994) (permitting the administrator of the Texas Alcoholic Beverages Commission to require a bilingual notice); TEX. ALCO. BEV. CODE ANN. § 106.115(d) (West Supp. 1994) (permitting alcohol awareness courses to be taught in languages other than English); TEX. EDUC. CODE ANN. § 11.18(c) (West 1991) (authorizing bilingual education "for students who do not function satisfactorily in English whenever it is appropriate for their optimum development"); TEX. EDUC. CODE ANN. § 13.036(b) (West 1991) (permitting the State Board of Education to allow additional credit hours for certification in bilingual education and English as a second language); TEX. EDUC. CODE ANN. § 14.0451(b)(5) (West Supp. 1994) (authorizing the Central Education Agency to consider foreign language, English as a second language, and bilingual education as special needs to be served by educational technologies); TEX. EDUC. CODE ANN. § 21.101(A)(2) (West 1991) (requiring school districts to offer a curriculum that includes "other languages, to the extent possible"); TEX. EDUC. CODE ANN. § 51.917(d) (West Supp. 1994) (permitting any faculty member at any institution of higher education to provide individual assistance to a non-English-speaking student in the native language of the student); TEX. ELEC. CODE ANN. § 61.031(b) (West 1986) (permitting an election officer to communicate with a voter in a language the voter and the officer understand); TEX. ELEC. CODE ANN. § 272.008 (West 1986) (authorizing political subdivisions to require the use of bilingual election materials in one or more election precincts); TEX. ELEC. CODE ANN. § 272.009 (West 1986) (requiring the presiding judge of an election precinct required by law to provide bilingual materials to "make reasonable efforts to appoint a sufficient number of election clerks who are fluent in both English and Spanish to serve the needs of the Spanish-speaking voters of the precinct"); TEX. DISCIPLINARY R. PROF. CONDUCT 7.01, cmt. 2 (1990), *reprinted in* TEX. GOV'T CODE ANN. tit. 2, Subtit. G app. A (West 1993) (STATE BAR RULES art. 10, § 9) (permitting attorneys to disseminate information concerning their foreign language ability); TEX. HEALTH & SAFETY CODE ANN. § 103.014(c)(2) (West 1992) (permitting Texas Diabetes Council to publish a bilingual handbook for diabetics); TEX. HEALTH & SAFETY CODE ANN. § 161.132(e) (West Supp. 1994) (requiring hospitals, inpatient mental health facilities, and treatment facilities to post a bilingual statement of the duty to report abuse and neglect, or illegal, unprofessional, or unethical conduct); TEX. HEALTH & SAFETY CODE ANN. § 501.023(b) (West 1992) (permitting the Texas Department of Health to require that the label on a hazardous substance be written in English and Spanish); TEX. HEALTH & SAFETY CODE ANN. § 777.004(b) (West Supp. 1994) (requiring a poison control center to "make available resources, if possible, to accommodate persons who do not speak English"); TEX. REV. CIV. STAT. ANN. art. 4552-5.10(b)(5)(C) (West Supp. 1994) (prohibiting the Texas Optometry Board from restricting any advertisement with a truthful statement regarding languages other than English fluently spoken in the office).

952. TEX. LABOR CODE ANN. § 202.064 (West Supp. 1994) (permitting the Texas Employment Commission to provide interpreters for persons whose primary language is "other than Spanish or English").

provide services in other languages.⁹⁵³ Local government also provides multilingual services.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.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."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

953. *Africanized Bee Warnings Now in Vietnamese; Printed Material Aimed at Fishermen Along Gulf*, Hous. Post, July 26, 1992, at A23 (describing provision of materials produced by Texas Agricultural Extension Service); *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).

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).

955. *Adjudication of Water Rights in the Medina River Watershed of the San Antonio River Basin v. Alamo Nat'l Bank Indep. Ex'r*, 645 S.W.2d 596, 604 n.3 (Tex. Ct. App. 1982) (*quoting* the Colonization Law of Coahuila & Texas, as well as an English-language translation), *rev'd sub nom. on other grounds, In re Adjudication of Water Rights in the Medina River Watershed of the San Antonio River Basin*, 670 S.W.2d 250 (Tex. 1984). In *State v. Valmont Plantations*, 346 S.W.2d 853, 866-67 (Tex. Civ. App. 1961), *aff'd*, 355 S.W.2d 502 (Tex. 1962), the court rejected a translation of Spanish law by looking to the original Spanish law.

956. *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.*, *Valmont Plantations*, 346 S.W.2d at 866-67 (rejecting translation of Spanish law and looking to original law in the Spanish language); *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*"; *id.* at 654-59 (opinion of Chief Justice Hemp-hill) (*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,"⁹⁵⁷ the texts of these specific provisions are "to be understood as people generally understood them at the time of the adoption of the Constitution."⁹⁵⁸ The Texas Supreme Court has long held that state constitutional provisions "should not be given a technical construction which would defeat their purpose."⁹⁵⁹ The court requires that the intent of the framers of the Texas Constitution be effectuated even when the plain language of the Constitution,⁹⁶⁰ the rules of statutory construction,⁹⁶¹ or the rules of grammar would require a different result.⁹⁶² 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,⁹⁶³ the fundamental right to raise a

957. *Davenport v. García*, 834 S.W.2d 4, 19 (Tex. 1992) (citing *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 394 (Tex. 1989)); *Damon v. Cornett*, 781 S.W.2d 597, 599 (Tex. 1989).

958. *Gallagher v. State*, 690 S.W.2d 587, 592 (Tex. Crim. App. 1985) (en banc).

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 Dep't 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,⁹⁶⁴ or the fundamental right to pursue an occupation.⁹⁶⁵ 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.⁹⁶⁶

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.⁹⁶⁷ 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).

965. Wichita Elec. Co. v. Hinckley, 131 S.W. 1192, 1193-94 (Tex. Civ. App. 1910) (holding that following a lawful occupation is one of the "privileges" protected by art. I, § 19, a due course clause of the Texas Bill of Rights).

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"); Pierson 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"); BOBBITT, *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 provision⁹⁶⁸ since the 1836 Constitution—long before enactment of the analogous equal protection clause of the Fourteenth Amendment to the United States Constitution.⁹⁶⁹ 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,"⁹⁷⁰ and has been used to strike down legislation that operated against a discrete and insular class of Mexican-origin persons.⁹⁷¹ The Texas equal rights clause requires that any classifications drawn by a statute be rationally related to the statute's purpose.⁹⁷² 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-

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 (201st 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.

972. Whitworth v. Bynum, 699 S.W.2d 194, 197 (Tex. 1985).

sis."⁹⁷³ 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 Amendment⁹⁷⁴ 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,⁹⁷⁵ "[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."⁹⁷⁶ 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.⁹⁷⁷

There is a close correlation between language and national origin.⁹⁷⁸ When language-based discrimination has a discriminatory effect on a national origin group, that discriminatory effect should

973. James C. Harrington, *The Texas Bill of Rights & Civil Liberties*, 17 TEX. TECH L. REV. 1487, 1517-19 (1986).

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.

975. *Washington v. Davis*, 426 U.S. 229, 242 (1976).

976. *Williams*, *supra* note 30, at 1211; *Harrington*, *supra* note 973, at 1512-16 (discussing broad protection of Texas Equal Rights Amendment). For an argument that the Texas Equal Rights Amendment proscribes private discriminatory conduct, see William Wayne Kilgarlin & Banks Tarver, *The Equal Rights Amendment: Governmental Action & Individual Liberty*, 68 TEX. L. REV. 1545 (1990).

977. *Mena v. Richards*, No. C-454-91-F (332nd Dist. Ct., Hidalgo County, Tex., Jan. 14, 1992), *appeal dismissed as moot*, 820 S.W. 2d 372 (Tex. 1991) (appeal of temporary injunction) (using the effects test in a challenge to legislative redistricting plans); *López v. Del Valle Indep. Sch. Dist.*, No. 475,874 (261st Dist. Ct., Travis Co., Tex., May 9, 1991) (using the effects test to invalidate at-large school board elections), *aff'd on other grounds*, 863 S.W.2d 507, 515 (Tex. Ct. App. 1993) (declining to decide whether district court erred in applying an effects test); *HARRINGTON*, *supra* note 52, at 76-77 (noting Texas courts may use disparate impact analysis in claims under the Texas Equal Rights Amendment); Rodric B. Schoen, *The Texas Equal Rights Amendment in the Courts—1972-1977: A Review & Proposed Principles of Interpretation*, 15 HOUS. L. REV. 537, 595-603 (1978) (discussing application of disparate impact analysis to Texas Equal Rights Amendment claims).

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

language discrimination as a proxy for national origin discrimination); Pacheco, *supra* note 34, at 53-76 (same); Ramos, *supra* note 34, at 97-98 (same).

979. See *supra* note 966 (gathering cases that recognize the need to interpret the Texas Constitution as a whole).

980. Cf. Schoen, *supra* note 977, at 561 (asserting that balancing of competing interests is not permitted under the plain language of the Texas Equal Rights Amendment); Rodric B. Schoen, *The Texas Equal Rights Amendment After the First Decade: Judicial Developments 1978-1982*, 20 Hous. L. Rev. 1321, 1358-66 (1983) (rejecting competing interest analysis and urging plain language analysis).

981. 868 S.W.2d 306, 311 n.3 (Tex. 1993).

982. *Oakley v. State*, 830 S.W.2d 107, 111 (Tex. Crim. App. 1982) (en banc) (holding that the court "should avoid a construction . . . which renders any provision meaningless or inoperative and must lean in favor of a construction which will render every word operative, rather than one which may make some words idle and nugatory") (emphasis omitted) (*quoting* *Hanson v. Jordan*, 198 S.W.2d 262, 263 (Tex. 1946)); see *Clapp v. State*, 639 S.W.2d 949, 951 (Tex. Crim. App. 1982) (en banc) (same); Schoen, *supra* note 977, at 560 (noting that specific guarantee of Texas Equal Rights Amendment was "hardly necessary if its purpose were merely to continue the prevailing test under the fourteenth amendment"); Linzer, *supra* note 51, at 1584 (noting that when the texts of the state and federal constitutions differ, "no apparent principled reason exists . . . for a state court to follow the reasoning of federal cases on this question just because they are federal decisions"); *id.* at 1610 (stating that "[i]f courts treat . . . a state ERA like the federal equal protection clause, each state provision is made a nullity"); Williams, *supra* note 30, at 1197 (noting that state and federal provisions were "drafted differently, adopted at different times, and aimed at different evils").

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 reunited 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

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.

990. *Yáñez v. Mofford*, 730 F. Supp. 309, 314 (D. Ariz. 1990) (striking down official English amendment to Arizona Constitution as a violation of the First Amendment to the United States Constitution), *appeal docketed*, Nos. 90-15546 and 90-15581 (9th Cir. 1990).

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).

993. See CONSTITUTION OF THE REPUBLIC OF TEXAS, Declaration of Rights (1836), reprinted in TEX. CONST., *supra* note 2, at 494.

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.⁹⁹⁵ Such 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.⁹⁹⁶

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.⁹⁹⁷

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 government⁹⁹⁸ has appeared in identical form in all Texas constitutions.⁹⁹⁹ This right of "remonstrance" requires the government at a minimum to "stop, look and listen."¹⁰⁰⁰ The existence of a right of remonstrance is particularly significant given that the Texans

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.

997. Texas Workers' Compensation Comm'n v. García, 862 S.W.2d 61, 75 (Tex. Ct. App. 1993) (en banc) (citations omitted), error granted (Apr. 20, 1994), *rev'd*, 1995 WL 64184 (Tex. 1995).

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 Inviolable. 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.¹⁰⁰⁷ Since language rights were recognized by the framers, the right-protective approach would require that these rights be protected today.

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.¹⁰⁰⁸ While the cost of such services is often exaggerated by English Only activists,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."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."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."¹⁰¹² When the courts find that a non-English-

1007. Louis Karl Bonham, Note, *Unenumerated Rights Clauses in State Constitutions*, 63 TEX. L. REV. 1321, 1328 (1985).

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).

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 Proffitt of the Texas Comptroller's office).

1010. *Le Croy v. Hanlon*, 713 S.W.2d 335, 342 (Tex. 1986).

1011. *Texas State Employees Union v. Texas Dep't of Mental Health & Mental Retardation*, 746 S.W.2d 203, 205 (Tex. 1987) (discussing infringement of the right of privacy).

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"¹⁰¹³—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.¹⁰¹⁴ 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*¹⁰¹⁵ 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*,¹⁰¹⁶ 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).

1014. *Lyles v. State*, 41 Tex. 172 (1874). See *supra* text accompanying notes 873-77.

1015. 8 S.W. 477 (Tex. Crim. App. 1888).

1016. 218 S.W. 765 (Tex. Crim. App. 1920).

*Borski v. State*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*,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*,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.

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,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, *Ex parte Nanes*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*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*,¹⁰²³ in which the Corpus Christi Court of Appeals recently

1017. 225 S.W.2d 180 (Tex. Crim. App. 1949).

1018. 782 S.W.2d 844, 849-50 (Tex. Crim. App. 1989).

1019. 572 S.W.2d 521, 523 (Tex. Crim. App. 1978) (holding that "[i]t is not the language of the instrument which is important, but whether the instrument itself constitutes a security").

1020. *García v. State*, 210 S.W.2d 574, 577 (Tex. Crim. App. 1948). See *supra* part VIII.C.2.

1021. 558 S.W.2d 893 (Tex. Crim. App. 1977).

1022. 586 S.W.2d 553, 559 (Tex. Crim. App. 1979) (en banc).

1023. 853 S.W.2d 170 (Tex. Ct. App. 1993).

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 Marez*¹⁰²⁴ 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.¹⁰²⁵ 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.¹⁰²⁶ 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."¹⁰²⁷ 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*,¹⁰²⁸ denying an interpreter to individuals who speak any English, are inconsistent with the framers' intent.¹⁰²⁹ Deci-

1024. 464 S.W.2d 866 (Tex. Crim. App. 1971).

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.¹⁰³⁰ 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.¹⁰³¹ Attorneys representing non-English-speaking defendants must protect these rights.¹⁰³² 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”).

1030. *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 (Elis, 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).

1031. 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”).

1032. 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 Texans 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. BOBBITT, *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 "[c]itizens 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. Martínez*, 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.¹⁰³⁷ While the number of children enrolling in "foreign language" courses has risen in recent years,¹⁰³⁸ and the Texas Legislature has encouraged the learning of other languages,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.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.¹⁰⁴¹ They fear that Hispanics don't want to learn English,¹⁰⁴² although seventy-four percent of Hispanic immigrants

1037. An oft-repeated joke makes this point:

Q: What do you call someone who speaks two languages?

A: Bilingual.

Q: Three languages?

A: Trilingual.

Q: One language?

A: American.

Guerra, *supra* note 852, at C1 (describing the joke as one he has heard in four languages).

1038. Lindsey Gruson, *U.S. Working to Close Foreign-Language Gap*, N.Y. TIMES, Dec. 2, 1986 (noting that Texas Education Department reported a 50% increase in foreign-language enrollment from 1981 to 1985).

1039. See *supra* note 950.

1040. Jo Ann Zúñiga, *Study Picks Bilingual Education, Minority Business as Top Issues*, 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.")

1041. Jennings, *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 McCURM ET AL., *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").

1042. Guerra, *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, *Democrats Reject Bid to Have English Declared Official Language*, 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,¹⁰⁴³ more than ninety percent of all Hispanics believe all citizens and residents of the United States should learn English,¹⁰⁴⁴ and today's immigrants are learning English as fast or faster than past immigrants.¹⁰⁴⁵ They fear separatism, although the long history of multilingual governmental services in Texas has not led to separatism.¹⁰⁴⁶ Many fear new, largely Asian and Hispanic immigrants.¹⁰⁴⁷ Some fear the political empowerment of the Hispanic community.¹⁰⁴⁸

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"; *Mattox 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 Decries "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.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 2070.¹⁰⁵⁰

There are important differences between German and Spanish in Texas. The use of Spanish predates the use of German in Texas by centuries.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-

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, *supra* note 19, at 417.

1050. Wilson, *supra* note 544, at 237.

1051. Flynn, *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, *New Mexicans Prefer Diversity to Official English*, UPI, Feb. 8, 1987, 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.¹⁰⁵² 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.¹⁰⁵³ 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.¹⁰⁵⁴ 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."

...

[T]he 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.¹⁰⁵⁵

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

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 "[a]long 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."); *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").

1055. *Id.* at 220 and 223; see also FALLON, *supra* note 66, at 1256 (noting that whatever force historical argument has stems from the recognition that a living constitution "is the product of a tradition in which the present cannot be understood independently of the past").

the judiciary of Texas is the stronghold and defender of those State constitutionally guaranteed rights.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."¹⁰⁵⁷

Texans have a "just pride" in their "unique Texas heritage, . . . Texas Constitution, and . . . Texas jurisprudence."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."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!"¹⁰⁶⁰ With the resurrection of the language rights asserted by the framers of the Texas Bill of Rights, all can agree: *Qué viva Texas!*

1056. *Low v. King*, 867 S.W.2d 141, 145 (Tex. Ct. App. 1993) (Brookshire, J., concurring) (discussing free speech guarantee), *writ conditionally granted*.

1057. *Valmont Plantations v. State*, 355 S.W.2d 502, 503 (Tex. 1962) (*quoting* Justice Story's opinion in *Vidal v. Girard's Executors*, 43 U.S. 127, 188 (2 How.) (1844).

1058. *Ex parte Tucci*, 859 S.W.2d 1 app. at 15 (Tex. 1993).

1059. *Davenport v. García*, 834 S.W.2d 4, 19 (Tex. 1992).

1060. Raunick, *supra* note 646, at 140 (*quoting* Victor Bracht "All for Texas and Texas above all!").