Official English, Nationalism and Linguistic Terror: A French Lesson

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OFFICIAL ENGLISH, NATIONALISM AND LINGUISTIC TERROR: A FRENCH LESSON

Leila Sadat Wexler*

Despite the preeminence of English in international discourse and census data indicating that ninety-nine percent of Americans speak English either very well or well, the Official English movement has garnered significant political support over the last ten years. Divorced from its political polemic, the objective of the Official English movement is the adoption of an "English Language Amendment" (ELA) to the Constitution that would require the use of English in public discourse as a matter of law. This Article approaches the question of what legal difference an ELA would make by studying the French experience under a recently adopted constitutional amendment to officialize its national language and comparing the French linguistic regime to its American counterpart. The Article demonstrates that the French approach to language regulation has not been particularly successful. Moreover, the degree to which France has gone to protect its language requires a level of government intrusion into speech that would not be tolerable under the U.S. Constitution. The Article concludes that the French approach is both futile and unnecessarily repressive and suggests that the proposed ELA is similarly ill-conceived and unwarranted.

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The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.

_Meyer v. Nebraska_¹

I. INTRODUCTION

There recently have been several attempts to make English the official language of the United States, both at the state and federal levels. This may seem surprising given the rising preeminence of English in international discourse² and the fact that ninety-nine percent of Americans speak English anyway.³ Nevertheless, this has become an issue for presidential hopefuls,⁴ and the Official English movement has garnered significant political support

1. 262 U.S. 390, 401 (1923).

2. Indeed, Braj Kachru estimates that by the year 2000, non-native speakers of English will outnumber native speakers. Braj Kachru, _Introduction to The Other Tongue: English Across Cultures_ 3, 3–4 (Braj Kachru ed., 1992). Indeed, although there are an estimated 350 million persons whose mother tongue is English, English is generally accepted to have status as an official language for 1,400,000,000 persons (making it the single most spoken language in the world). David Crystal, _The Cambridge Encyclopedia of Language_ 287 (1987). For a classic, more sophisticated study on the use of English in non-English mother-tongue countries, see Joshua Fishman et al., _The Spread of English_ 6–76 (1977).

3. Bureau of the Census, U.S. Dep’t of Commerce, _1990 Census of Population Social and Economic Characteristics_ 13–15 (1993) (reporting that 99% of residents say they speak English only, or speak English “well” or “very well”). Of course, the percentage of persons of _English linguistic heritage_ has been declining in the United States since the American Revolution. Walter J. Landry, Comment, _The Question of an Official Language: Language Rights and the English Language Amendment_, 60 Int’l J. Soc. Language 129, 130–31 (1986) (reporting decline from 49% in 1783 to 13% in 1986). Landry defines “linguistic heritage” as “the language tradition of a resident’s ancestors upon their arrival on U.S. territory or at the time the United States acquired territory on which their ancestors were residing.”_Id._ at 134 n.1. _See also infra note 210.

4. For instance, former Senator Robert Dole has stated: With all the divisive forces tearing at our country, we need the glue of language to help hold us together. And if we want to ensure that all our children have...the same opportunities in life, alternative language education should stop and English should be acknowledged once and for all as the official language of the United States of America.

over the last ten years or so: Twenty-two states now recognize English as their official language either by statute or constitutional amendment.\(^5\)

Proponents of Official English assert that making English the "official language" of the United States is essential to prevent America's "balkanization."\(^6\) Pointing to waves of immigrants who allegedly refuse to learn English, and ignoring evidence that language differences in and of themselves do not lead to the disintegration of national identity, they argue that the elimination of bilingual government services (in particular, bilingual education and voting ballots) is necessary to prevent the decay and eventual collapse of American society.\(^7\) Proponents seek not simply to officially consecrate the symbolic importance of the English language

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7. This argument was made during the 1984 Senate hearings on the English Language Amendment (ELA). See, e.g., The English Amendment: Hearing on S.J. Res. 167 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 98th Cong., 2d Sess. 8 (1984) [hereinafter Senate Hearings] (statement of Sen. Jeremiah Denton) ("[W]e are witnessing a steady erosion in the use of the English language."); id. at 21 (statement of Sen. Walter D. Huddleston, co-sponsor of S.J. Res. 167) ("The United States is presently at a crucial juncture. We can either continue down the same path we have walked for the last 200 years, using the melting philosophy to forge a strong and united nation, or we can take the new path, that leads in the direction of another Tower of Babel."); id. at 44 (statement of Sen. Steven D. Symms, co-sponsor of S.J. Res. 167) ("Without a common tongue, the United States faces the prospect of balkanization and linguistic separatism. Nowhere is this trend more ominous than in the case of bilingual ballots and so-called bilingual education.").

in American life, but to eliminate the use of other languages—transforming the "Official English" campaign into one for "English Only." Divorced from its political polemic, what proponents of Official English ultimately wish to achieve is to require the use of English (which is essentially the country’s official, but not its only, language already) in public discourse as a matter of law. This would be accomplished by amending the U.S. Constitution. Since 1981, several versions of an official English law have been introduced in the U.S. Congress, each with different provisions and levels of support. The debate over Official English is complex and multifaceted, involving issues of language policy, cultural diversity, and political ideology. The proponents of Official English argue that it is necessary to maintain the integrity of the English language as the nation’s official language, while opponents contend that it would be a violation of constitutional rights and a threat to linguistic diversity. The issue has sparked significant public debate, with hearings and discussions in both the House and Senate. The most recent versions of the bill have sought to provide greater flexibility in their implementation, recognizing the importance of recognizing and accommodating the linguistic needs and rights of all Americans. Understanding the nuances of the debate and the constitutional issues involved is crucial in forming an informed opinion on the matter.
English Language Amendment (ELA) have been proposed; none have been reported out of committee.  

Linguists and sociologists have extensively studied the “Official English/English Only” movement, examining its causes, its effects, its “ghosts, myths, and dangers.” Their studies suggest that the movement’s assertions about the nonassimilation of current immigrants (particularly Hispanic) and the evils of multilingualism are largely unsupported by the facts. Indeed, facts appear to have little to do with the politics of language. As James Crawford points out in discussing

(6) provide that the Act applies to all official acts by all employees and officials of all branches of Government; and

(7) exempt certain acts, such as those protecting health or safety, from the law.


A joint resolution proposing a constitutional amendment to require “conversant” English as a condition of U.S. citizenship also was introduced last year. See H.R.J. Res. 87, 104th Cong., 1st Sess. (1995).

11. See infra part III.C.1.


13. Geoffrey Nunberg argues that there are probably “fewer speakers of foreign languages in America now than there were [in prior times], in both absolute and relative numbers. But what matters symbolically is the widespread impression of linguistic diversity, particularly among people who have no actual contact with speakers of languages other than English.” Geoffrey Nunberg, The Official English Movement: Reimagining America, in Language Loyalties, supra note 8, at 479, 492. See also Suzanne Oboler, Ethnic Labels, Latino Lives 144–50 (1995) (noting that, of the 22 immigrants interviewed for her doctoral study of Latino experiences in the United States, all emphasized the importance of learning English); Calvin J. Veltman, The Future of the Spanish Language in the United States (1988) (concluding that Hispanic immigrants assimilate and learn English at least as quickly as other linguistic groups).

14. Joshua Fishman writes:

The “English Only/English Official” movement may largely represent the displacement of middle-class anglo fears and anxieties from the difficult if not intractable real causes of their fears and anxieties to mythical and simplistic and stereotyped scapegoats.

....

It is the classical wrong solution to the wrong problem. Indeed, even were English in America being threatened by other languages, the “English Only/English Official” forces have failed to
the furor over bilingual education, "amid all the outrage over symbols, there was little awareness of the practicabilities of bilingual education—for example, its role in teaching English (which is demonstrably superior to the brutal, sink-or-swim methods of the past) or its potential to nurture vital skills in other languages."

What has not been studied in any systematic or satisfactory fashion is what legal difference an ELA would make. Writers who have addressed the issue have generally employed either an equal protection analysis or recognize that such a language conflict, like all other language conflicts wherever they arise, merely represents the tip of the iceberg of interethnolinguistic conflict based upon economic, political, and cultural grievances. These grievances represent the real problems and not their linguistic concomitants.

Fishman, supra note 12, at 132–34 (emphasis added).


It is undeniable that large numbers of non-English speaking individuals have immigrated to the United States in recent years and that their integration into American political, economic, and cultural life presents challenges. What is questionable, however, is the assertion that a constitutional amendment making English the nation's official language will make that integration easier. Crawford writes:

Bilingual education figures nowhere in the immigrant myth: the bootstraps rise to success, the fight for social acceptance, the sink-or-swim imperative of learning English. For many Americans today, the idea of teaching children in other languages is an affront to sacred traditions. Yesterday's immigrants allegedly prospered without special programs; glad to blend into the Melting Pot, they struggled to master the language of their adopted homeland. Operating in English only, public schools weaned students from other tongues and opened a new world of opportunities.

Ancestral legends die hard. Undoubtedly, some early newcomers were quick to assimilate and to advance themselves. But more often, "melting" was a process of hardships that lasted several generations. The immigrants' children were typically the first to achieve fluency in English, their grandchildren the first to finish high school, and their great-grandchildren the first to grow up in the middle class. Moreover, language minorities who were also racial minorities never had the option of joining the mainstream—whether they learned English or not—before the civil rights reforms of the 1960s.


16. See, e.g., Antonio J. Califa, Declaring English the Official Language: Prejudice Spoken Here, 24 Harv. C.R.-C.L. L. Rev. 293 (1989); Laura A. Cordero, Constitutional Limitations on Official English Declarations, 20 N.M. L. Rev. 17, 53 (1990) (evaluating state declarations on official English and arguing that "they must be strictly scrutinized and narrowly construed to limit their effect to the domain of symbolism"); Juan F. Perea, Demography and Distrust: An Essay on American Languages, Cultural Pluralism and Official English, 77 Minn. L. Rev. 269 (1992); Andrew Averbach, Note, Language Classifications and the Equal Protection Clause: When Is Language a Pretext for Race or Ethnicity?, 74 B.U. L. Rev. 481 (1994). The major problem with the equal protection cases and the commentaries based on those cases is that they attempt to equate
a rights-based analysis,\textsuperscript{17} neither of which has proven very satisfactory.\textsuperscript{18} Many of these critiques are themselves colored by the polemic characterizing the debate and cast the problem of language regulation either in terms of discrimination on the basis of national origin or affirmative rights to governmental services. Yet, what is really at stake is the right to be free from governmental interference in spheres involving fundamental freedoms: "The state cannot achieve unity by prescribing orthodoxy."\textsuperscript{19}

language with national origin in order to fit it into the suspect classification scheme adopted by the Supreme Court. This is particularly true in the Title VII context. But these arguments are rather like fitting a square peg (language) into a round hole (national origin). The fit is bad and the resulting analysis artificial.


\textsuperscript{19} Yniguez v. Arizonans for Official English, 69 F.3d 920, 946 (9th Cir. 1995) (en banc), cert. granted, 1995 WL 761639 (U.S. Mar. 25, 1996) (No. 95-974). Indeed, I would suggest that most treatments of the subject unwittingly fall into a doctrinal trap. By employing classical constitutional analysis, they are automatically obliged to adopt a language developed on the basis of cultural uniformity and universalism, when what they are really trying to achieve is cultural recognition. Although the treatment of this problem is beyond the confines of this article, the question is elegantly and persuasively treated in James Tully, \textit{Strange Multiplicity, Constitutionalism in an Age of Diversity} (1995). Professor Tully puts it thus:

\begin{quote}
No one reasonably doubts that . . . claims for cultural recognition constitute one of the most dangerous and pressing problems of the present age. The racial, linguistic, national, ethnic and gender tensions of these struggles are a dimension of almost every social relation of modern societies. . . . Culture is a way of relating to others in any interaction, a way of following or challenging a social rule, and so a dimension of any social relation, from a cultural slur in the workplace to the relations among nations. . . . What we need to understand today is the extent to which solutions advanced by . . . modern theorists of constitutionalism are now part of the problem.
\end{quote}
This article approaches the question of what legal difference an ELA would make by studying the results in France, a country which recently adopted a constitutional amendment to officialize its national language, and by comparing the French linguistic regime to its American counterpart. Like the United States, France has had large numbers of

Id. at 14–15.

20. This Article, the first in a series on this topic, is not an article about language planning; that is, it does not claim to set out a blueprint for a U.S. language planning policy. Nor, admittedly, does it completely address the legal, and particularly the constitutional, framework in which American language planning might take place; again, that topic is best addressed separately. Finally, this Article is not about why certain minority groups use language as a political rallying cry; thus, it does not explore why Spanish-speaking elites, unlike elites of other language groups, have focused on language as a political issue (although it has often been suggested that it is largely because Spanish-speaking Americans have been unsuccessful in reaping the economic gains that previous immigrant groups did when they abandoned their native tongues. See, e.g., Fishman, supra note 12, at 131–32). My goals are more modest: to compare the majoritarian language regimes of two largely monolingual nations and to comment on the proposed constitutional amendments in the United States that would, in my opinion, effectuate an unfortunate rapprochement between the two nations.

21. Proponents of Official English often refer to Québec as the comparative example to avoid. See, e.g., Gingrich, Citing Québec Referendum, Calls Bilingualism Divisive, Int’l Herald Trib., Oct. 31, 1995, at 8. Indeed, I am often asked why I do not compare the United States to Québec, rather than to France. But the comparison to Québec is much less appropriate than one might think. Francophone Canadians are a linguistic minority with respect to Canada as a whole; thus, in terms of political status and position, the best analogy to Québec is probably Puerto Rico. Within the province of Québec, francophones are a linguistic majority, of course, and a strong argument can be made that their demands for a unilingual Québec are largely due to many years of repressive anglophone policies. Those wishing to read further might consult Frank M. Lowrey, IV, Comment, Through the Looking Glass: Linguistic Separatism and National Unity, 41 Emory L.J. 223 (1992). Lowrey suggests that the potential exists for a linguistic separatist movement to arise in regions of the United States where extensive Hispanic settlements exist. Id. at 308–09. His own study suggests, however, that linguistic separatism is not the inevitable result of language differences, but is attributable to underlying social and political problems. Indeed, although language differences may lead to challenges to national unity, they do not necessarily do so; rather, it is the “presence of a perceived inequality of social status, and unequal access to economic rewards or political power due to language use which is crucial for the politicization of language use and its degeneration into conflict.” William R. Beer & James Jacob, Introduction to Language Policy and National Unity 1, 3 (William R. Beer & James Jacob eds., 1985). Lowrey also does not fully explore the diversity found within the Spanish-speaking peoples of the United States: as has been explored elsewhere, the ethnic label “Hispanic” masks the diversity of persons whose origin is South or Central America, the Caribbean, or Mexico; Suzanne Oboler prefers “Latino,” but even this may be overinclusive or underinclusive, depending on the situation. Oboler, supra note 13, at 16. For more on Québec, see G.J. Brandt, Parties and Participants in Constitutional Litigation: The Minority Language Rights Issue in Québec and Manitoba, 35 U.N.B. L.J. 201 (1986); Henri Brun, Le territoire du Québec: à la jonction de l’histoire et du droit constitutionnel, 33 Les Cahiers du Droit 927 (1992); Jacques Maurais, A Sociolinguistic Comparison Between Québec’s Charter of the French Language and the 1989 Language Laws of Five Soviet Republics, 12 J. Multilingual & Multicultural Dev. 117 (1991); Raymond Mougeon, Interventions Gouvernementales en Faveur du Français au Québec et en Ontario, 1994 Langage et société 37; Daniel Proulx, La Loi 101, la clause-Québec et la Charte canadienne devant la Cour suprême: un cas d’espèce?, 16 Revue Générale de Droit 167 (1985); Alain Prujiner, Les décisions de l’Office de la langue française en vertu de l’article 46 de la “Charte
immigrants in recent years and is suffering from a tarnished world image and troubled economy. Ironically, if the target of the American movement is primarily the Spanish language, the French have taken aim at English. The French have erected a linguistic regime that would shock many Americans—requiring not only the use of French in public, and sometimes private, discourse (the nonrespect of which may be sanctioned by criminal prosecutions), but policing the words used, in order to eliminate foreign (mostly American) borrowings. They have created Commissions on Terminology to eradicate foreign borrowings that corrupt the language, and have attempted, with some exceptions, to limit or to ban foreign tongues from, *inter alia*, advertising, television, conferences and colloquia, employment contracts and offers, the schools, and French universities.

Part II of this Article addresses language regulation in France; part III, language regulation in the United States. Both parts discuss in some detail the histories of the French and English languages as well as their places in the culture and political structure of France and the United States, respectively. Although the history of language regulation and the place of language in national culture are quite different in France and the United States, there are enough similarities to make comparison worthwhile. While the mythology of linguistic purity held dear by many French is not part of American (English) culture, for many Americans, English has become a kind of "truth language," considered the only appropriate vehicle for the expression of the political ideals of American democracy.

22. That is not to say that many of the motivations behind the *loi Toubon*, the French law regulating language, would not receive a sympathetic hearing in the United States: the need to put forth an alternative to the "Anglo-Saxon model of the world"; the need for the French language to remain vibrant and vigorous; the need for a national language to maintain national unity; etc.

23. While neither treatment purports to be exhaustive, both hope to center the discussion of language in context so that the ensuing legal analysis does not take place in a factual vacuum.

other; and both official language movements have a nationalistic\textsuperscript{25} and xenophobic\textsuperscript{26} bent, although they nevertheless appeal to a broad cross-section of the population.

The results of this comparison are fascinating. Would we wish for language laws backed by criminal sanctions? Should we adopt legislation not only requiring that English be spoken or written in certain contexts, but defining the kind of English we speak? Shall we, like the French, have governmental commissions defining appropriate and inappropriate (read: "legal and illegal") vocabularies for certain situations?\textsuperscript{27} If Official English has any practical effect (i.e., if it is not purely symbolic\textsuperscript{28}), it would require a fundamental restructuring of the protections now offered by the Bill of Rights in a way that would be antithetical to the American constitutional tradition. Perhaps by temporarily removing the debate from American soil it is possible to see Official English/English Only for what it is: a movement, based largely on half-truths, that is at best misguided; at worst, dangerous.

\textsuperscript{25} This is nothing new: At least since the nineteenth century, there has been an intimate connection between language and nationalism. I Alexander Ostrower, Language, Law, and Diplomacy 41 (1965). See also Benedict Anderson, Imagined Communities: Reflections on the Origin and Spread of Nationalism (1983); Ernest Gellner, Nations and Nationalism (1983).

\textsuperscript{26} For example, Dr. John Tanton, Chairman of the Board of U.S. English, a political organization that advocates officializing the English language, has suggested that among the problems facing the United States are the high birthrate, lack of respect for law, and Catholicism of "Latin American migrants." Eleanor Bergholz, Bad Language over Official U.S. Tongue, Pittsburgh Post, Nov. 5, 1988, at S. Tanton, one of the founders of U.S. English, also founded the Federation for American Immigration Reform, which advocates immigration restriction. James Crawford, Official English attracting bizarre followers, Mesa Trib. Oct. 22, 1988, at A11.

\textsuperscript{27} I do not suggest that current proposals go this far, only that, if an English Language Amendment were enacted, they arguably could. See infra notes 359–70 and accompanying text.

\textsuperscript{28} Symbolism has an undeniable importance in the political life of a nation, but its treatment is beyond the scope of this Article.
II. LANGUAGE REGULATION IN FRANCE

"En France, la langue est une affaire d'Etat" \(^{29}\)

A. Language Regulation and Development Prior to the French Revolution

It is tempting to believe that modern languages, like modern nations, always existed in current form. That is, of course, not so. The history of modern French is one of conquest and change. What we now refer to as “French” is a language essentially produced by a transformation of Latin. \(^{30}\) Latin came to the territory that is now France with the conquest of Gaul by the Romans. \(^{31}\) It took hold in the south and spread through the north of a country then populated primarily by the Gaels, who, for the most part, spoke Celtic. \(^{32}\) With the subsequent invasion of the now-romanized territory of Gaul by peoples speaking germanic languages, Germanic elements were introduced. \(^{33}\) Gaul disappeared and “France” came into existence, at least in nascent form, with the ascendance to the throne of Charles le Chauve (the Bald), grandson of Charlemagne, following the battle of Fontenoy in 841 and the Treaty of Verdun in 843. \(^{34}\) Under Charles’s reign and in the eight centuries that followed,


\(^{32}\) Celtic is also an indo-european language. It has survived in Scots and Irish Gaelic, Welsh, Cornish, and Breton. Crystal, supra note 2, at 298–99. The manner in which Latin spread throughout Gaul is chronicled in 1 Brunot, supra note 30, at 17–37 and Caput, supra note 31, at 12.

\(^{33}\) 1 Brunot, supra note 30, at 57–60; Cohen, supra note 30, at 66–69. The people who most influenced the French language were the Francs, who spoke Frankish, a germanic dialect (also derived from Indo-European). Crystal, supra note 2, at 298–99. They eventually unified most of Gaul in the fifth and sixth centuries A.D. Atlas, supra note 30, at 12.

\(^{34}\) Janet L. Nelson, Charles the Bald 1–18 (1992); Pierre Goubert, The Course of French History, 2–3 (Maarten Ultee trans., 1988). The ascent of Charles the Bald to the throne of Western Francia was chronicled by Nithard (a cousin of Charles) in Histoire des fils de Louis le Pieux. This work, written in Latin, nevertheless contains a text written in Romane (a proto-French), the celebrated Serments de Strasbourg (oaths of Strasbourg). Nithard recounts that three grandsons of

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Latin continued to be spoken and to be written, particularly by the educated elite and the clergy. Alongside, the latinitization of the country produced the langue d'oc in the south and the langue d'oil in the north. The latter, and more particularly, the Parisian dialect of the latter, rose to preeminence and was adopted in the seventeenth century as "correct" classical French. Several other languages continued to exist (and do to this day) in regions of modern France—some of Latin or Celtic derivation, others not.

As political power in France became increasingly centralized, France's rulers manifested a desire to impose the French language (i.e., the Parisian dialect of the langue d'oil) to the detriment of Latin and the other languages spoken in France. Thus, in 1539, in the ordonnance of Charlemagne, the sons of Louis the Pious, were to share his empire. Charles was to keep the Western frankish domain, Louis was to take the germanic region, and Lothair was to keep an intermediary region stretching from Wallonia to Italy. Lothair, however, wanted the entire empire for himself and the other brothers allied against him. Louis and Charles brought their armies together at Strasbourg on February 14, 842 to pledge their mutual fealty. Louis le Germanique read the text of a mutual alliance and assistance pact to Charles's army in Romane; Charles pronounced the same discourse to Louis's army in Germanic. Nithard, seeing the use of the language as important in and of itself, recorded the oaths in the spoken languages (Germanic and Romane) rather than Latin. This text is considered the oldest writing of French and one of the oldest writings of high German. 1 Brunot, supra note 30, at 142–45; Cohen, supra note 30, at 71. The only known manuscript remaining of this text is a copy made at Soissons around 1000 A.D. Cohen, supra note 30, at 432. See also Jacques Chaurand, Histoire de la Langue Française 7 (Paris: Presses Universitaires de France, 1972) (also discussing "La Séquence de sainte Eulalie," the other early French text dated to this period); 1 Brunot, supra note 30, at 145 (discussing "La Séquence de sainte Eulalie," often referred to as "la Cantilène"); Caput, supra note 31, at 22–26. Even prior to the Serments de Strasbourg and the Cantilène de sainte Eulalie, the common tongue was making headway against Latin in France, as shown by the decision, in 813 A.D. of the Council of Tours that religious sermons should be translated from Latin into either German or the "langue romane rustique." 1 Brunot, supra note 30, at 142; David C. Gordon, The French Language and National Identity 22 (1978).

35. 1 Brunot, supra note 30, at 304–31. The names are derived from the different fashions of pronouncing "ou" ("yes") in the two regions. By 1000 A.D., "[French] simply meant the sum of the various dialects derived from Latin spoken by the peoples of today's France." Gordon, supra note 34, at 22. Not for another eight centuries would a form of standardized "French" come to be accepted as a common form of communication. Id.


37. Atlas, supra note 30, at 19–20; see also Maryon McDonald, We Are Not French! 6–7 (1989); William R. Beer, The Unexpected Rebellion xvii–xxv (1980). There are seven regional minority languages in France: Alsatian (about 1,260,000 speakers), Basque (80,000 speakers), Breton (about 550,000 speakers), Catalan (200,000 speakers), Corsican (about 162,500 speakers), Flemish (about 100,000) and Occitan (about 1,500,000 speakers). Instituto della Enciclopedia Italiana, Comm'n of the European Community, Linguistic Minorities in Countries Belonging to the European Community 119 (1986) [hereinafter Linguistic Minorities].

38. Early efforts to eliminate Latin apparently did not attempt to impose a single version of French. Thus, the ordonnance of 1510 required only that criminal trials and investigations be held in the "vulgaire langue du pays" (which one can translate roughly as "regional common tongue")
Villers-Cotterêts, a text that is still in force today, François I proclaimed "French"\(^3\) the official language of the courts, prohibiting the use of Latin.\(^4\) Article 111 of the ordonnance provides:

It is . . . ordered that [all legal acts (arrests)] shall be written so clearly that there be no ambiguity, uncertainty or need for interpretation. . . .

Since [misunderstandings] have often occurred regarding the meaning of the Latin words contained in these acts, from now on it is ordered that all acts (arrests) and all other procedures either of royal, subordinate or inferior courts (cours souveraines ou autres subalternes ou inferieures) or of registers (registres), surveys (enquestes), contracts, commissions, sentences, testaments or any other judicial acts or writs (exploits), or that which depends thereon, shall be pronounced, registered and delivered to the parties in the maternal French tongue and not otherwise.\(^4\)\(^1\)

The ordonnance covered all official and administrative documents,\(^4\)\(^2\) judicial proceedings and judgments, trials, and arguments, requiring that they be in French, or, if presented in another language, translated into French. This included the requirement that attorneys (avocats) present their arguments in French.\(^4\)\(^3\) Failure to comply with the ordonnance was, rather than Latin. Vincent Delaporte, *La loi relative à l'emploi de la langue française*, Revue Critique de Droit International Privé [R.C.D.I.P.] 447, 451–52 (1976). See also Richard Grau, *Le Statut Juridique des droits linguistiques en France*, in *Les Minorités en Europe* 93, 93–94 (Henri Gordon ed., 1992).

39. At that time, French was not yet standardized, and scholars debate whether the reference to the "langue maternelle française" permitted the use of a regional dialect (other than that of the king). It is generally thought not. Cohen, *supra* note 30, at 159–60; Renée Balibar & Dominique Laporte, *Le Français National: Politique et pratiques de la langue nationale sous la Révolution française* 32–33 (Paris: Hachette, 1974) (pointing out that the inability to draft an act, a request, or any notarial act in patois obliged those who were not of the “dominant” class to use translators in dealing with the government or the legal system, creating a caste system); Jacqueline Picoche & Christiane Marchello-Nizia, *Histoire de la Langue Française* 29 (Paris: Nathan, 3d ed. 1994).


41. 2 Ferdinand Brunot, *Histoire de la Langue Française* 30 n.1 (Paris: Armand Colin, 1967). Not only are there many versions of the original in French writings, but there are many possible translations of this text because it is written in old French.

42. Anne Judge, *French: A Planned Language?*, in *French Today* 7 (Carol Sanders ed., 1993). Most of the legal scholars who have commented on the text confine its application to judicial proceedings. Judge does not. She extends it to administrative and other texts. Her interpretation appears consistent with the text itself which refers to "arrests."

in principle, sanctioned by the invalidity of the offending act or procedure,\textsuperscript{44} but it does not appear that the law was rigorously applied.\textsuperscript{45}

The stated purpose of the \textit{ordonnance} was to avoid ambiguity and uncertainty in the application of the law. Yet it was, above all, adopted for political reasons—to reinforce as well as to symbolize the power of the King.\textsuperscript{46} These provisions were extended over time (and with varying degrees of ruthlessness) to new French territories: the Béarn in 1621, Flanders in 1694, and Alsace in 1685.\textsuperscript{47} Thus, the formation of the modern French state entailed “the invasion and suppression of peoples, who, in language and customs, had little in common with the French.”\textsuperscript{48}

By the seventeenth century, and particularly under the aegis of Louis XIV, French became standardized and defined.\textsuperscript{49} The establishment of the French Academy (\textit{l'Académie française}) by Royal Charter in 1635 is

\textsuperscript{44} None of the authorities consulted cite any cases prior to 1830 for this proposition. The cases which are cited generally make reference to both the \textit{ordonnance} and the laws passed during the Revolutionary period, such as a few cases from Corsica, where Italian was in general use even for public acts until the nineteenth century. The general approach of the French Court of Cassation, when presented with the question, was to find invalid public acts written in Italian, where those acts issued from a public official, see, e.g., Judgment of Aug. 4, 1859, Cass. req., 1859 Recueil Périodique et Critique [D.P.) I 453 (nullité d’un exploit d’ajournement fait en italien par un huissier corse); Judgment of Jan. 15, 1875, Cass. crim., 1875 D.P. I 240 (nullité d’un procès verbal rédigé en italien par un garde champêtre corse); Delaporte, supra note 38, at 453, n.18, but to uphold the validity of notarial private acts such as wills or marriage contracts, see, e.g., Judgment of Jan. 22, 1879, Cass. req., 1879 D.P. I 219, (contrat de mariage); Judgment of Aug. 12, 1868, 1872 D.P. I 133 (testament authentique). See also Malaurie, supra note 40, at 583 (approving the court’s solution as required by national linguistic unity and the administration of justice); Grau, supra note 38, at 96–97, (disapproving the court’s solution and pointing out that the texts themselves do not require the invalidity of the offending act, unlike other statutes which applied to certain French territories).

\textsuperscript{45} It was apparently difficult to stop judges and lawyers from using Latin, as such had been their custom for a long time. Delaporte, supra note 38, at 452. The universities continued to use Latin in teaching and for books. 2 Brunot, supra note 41, at 31.

\textsuperscript{46} Philippe Malaurie writes: “[F]or France under the monarchy, national unity could not allow for the diversity of official languages—nor of religions—although it left a multiplicity of laws to flourish.” Malaurie, supra note 40, at 578. This may, however, be a reconstruction of the past influenced by the present. This image of nation-building grows out of concepts of nationality which did not exist until some 200 years after the adoption of the \textit{ordonnance}. Moreover, it seems clear that in 1539 the \textit{ordonnance} was not directed towards the masses (the “ruled and uncultivated”) but the elite. McDonald, supra note 37, at 5. See also Delaporte, supra note 38, at 451 (agreeing with Malaurie that this text was designed not only to eliminate Latin but also regional dialects).

\textsuperscript{47} Grau, supra note 38, at 94. See also Judgment of Aug. 4, 1859, Cass. req., 1859 D.P. I 453, 454.

\textsuperscript{48} Beer, supra note 37, at 2; see also Lars Olsson, \textit{La Politique Culturelle de la France à l’égard de ses minorités linguistiques}, 74 Moderna Språk 237, 240 (1980).

perhaps the best known result of this effort.\textsuperscript{50} Article 24 of the Academy’s charter (\textit{statuts}) provides that its mission is to “work, with all possible care and diligence to give clear rules to our language, and to render it pure, eloquent and able.”\textsuperscript{51}

To accomplish its task, the 40 members of the Academy were to produce a dictionary of the French language, as well as works on grammar, rhetoric, and poetics.\textsuperscript{52} The first two volumes of the first edition of the \textit{Dictionnaire} were presented to the King on August 24, 1694; the first volume of the ninth edition (\textit{A-Enzyme}) was published in 1992 by the national printing office of France.\textsuperscript{53} As the official commemoration of three centuries of Academy dictionaries put it in 1994:

Even though the notion of usage rests on a broader basis today than [it did] in the 17th century, respect for proper usage (\textit{le bon usage}) is needed more than ever. It is not the Academy’s intention either simply to reflect the language or to reflect just any language. [Rather,] the Academy reminds us that there is a community of human beings who share the French language and are therefore responsible for it. . . . If, three hundred years after being presented to the king, the \textit{Dictionnaire de l’Académie} has remained a living work, it is because it symbolizes the rather exceptional link that unites a nation to its language, many nations to their common tongue.\textsuperscript{54}

While the Academy has virtually no legal control over the French language, other than its own status as a public institution, its moral

\textsuperscript{50} The Academy was at first unofficial, being a literary society that met at the home of Valentin Conrart (who became the Academy’s first permanent secretary). It was Cardinal Richelieu who decided to officialize the Academy, out of a love of literature, certainly, but more importantly to further his political desire to unify and centralize the government of France. The Academy was granted its letters patent in 1635 by the King, who named Richelieu as its head and protector, and was registered with the \textit{Parlement} in 1637. \textit{Le Dictionnaire de l’Académie Française: 1694–1994 sa naissance et son actualité} (Paris: Institut de France, 1994).

\textsuperscript{51} Id. at 23.

\textsuperscript{52} Id. (citing art. 26 of the \textit{Statuts}).


authority and symbolic value to the French people are clear. Its creation during the seventeenth century coincided with a period in which French became more than simply "a medium of personal self-expression"; indeed, French elites came to see their language as "a function of civilization, a weapon against nature." And, although the rules of bon usage may not have been legally enforceable, they were certainly indirectly enforceable "through access to posts of influence." This preoccupation with language has remained particularly strong in French culture. Indeed, this view of French as pure, as civilized, as supreme, has not only been held by the French. Classical French spread throughout Europe, becoming the language of diplomacy and the educated elite. It was thus in 1783 that Antoine Rivarol could write his famous essay on "The Universality of the French Language" for which he was awarded the Prize of the Academy of Sciences and Letters of Berlin.

B. The "Linguistic Terror" of the French Revolution

The importance attached to language took a different turn during the French Revolution. No thorough synthesis of the complex relationship between law and language can be made in so short a space as this Article,

55. Joseph Harriss writes:

Apart from tinkering interminably with a dictionary to keep the French language pure, [the Academy] serves no visible purpose. Yet, it seems to fulfill a French need for grandeur. Its coveted, theatrical uniform has long symbolized the crowning achievement of a distinguished career for the country's writers, academics, scientists, jurists and other Establishment figures. Its 40 members constitute the officially recognized fine fleur of French civilization, though the French themselves are hard put to say why.

Harriss, supra note 53, at 145.

56. Gordon, supra note 34, at 4.

57. Judge, supra note 42, at 12.

58. Gordon, supra note 34, at 4, 7; Harriss, supra note 53, at 145 (noting that "Paris is still the only city that I know of where until fairly recently you could list your profession in the phone book as 'Homme de Lettres'"); Nunberg, supra note 13, at 481 (noting that:

[i]t strikes the French as perfectly natural that government should pass laws to limit the amount of airplay given to foreign-language songs; that it should spend fully half its foreign-service budget to subsidize the teaching of the French language abroad; or that recent spelling reforms should have been announced at prime-ministerial press conferences.)


What is it that has rendered the French language universal?

Why does it deserve this prerogative?

May one presume that it will keep it?

Id. at 27.
but linguistic questions of both vocabulary and idiom preoccupied the revolutionaries.\textsuperscript{60} Both as a celebration of the Revolution and as part of the generally anticlerical tendency of the Revolution’s philosophy, the Revolutionaries abolished the gregorian calendar in 1793: The new year starting in September had twelve months of thirty days each, with evocative names such as “brumaire,” “floréal,” and “fructidor.”\textsuperscript{61} They also abolished the French Academy during the Terror\textsuperscript{62} (it was reestablished in 1795)\textsuperscript{63} and adopted their own set of language laws, to make French a “national” language. The report of Jacobin leader Barère concluded that the aristocracy had erected a linguistic barrier between the masses and themselves, thereby controlling access, in particular, to the legal system and all the organs of government. Barère wrote:

Despotism maintained the multiplicity of languages: a monarchy must resemble the Tower of Babel; there is only one universal language for the tyrant: that of force, to be obeyed and that of taxes, to collect money. On the contrary, in a democracy, control of the government is a task entrusted to each citizen; to control [the government] one must know it, and most of all, one must know its language. . . . To leave citizens ignorant of the national language is to betray the country; to let the flow of the enlightenment be poisoned or obstructed; to ignore the benefits of the printing press, each printer being a public teacher of the language and of the


\textsuperscript{61} Or, “foggy,” “flowery,” and “fruity.” The five days left over were originally known as the “sansculottides,” and later “complementary” days. The names of the months were intended to “evoke the seasons, but defy easy translation. Scornful British contemporaries, however, rendered them: “Slippy, Nippy, Drippy; Freezy, Wheezy, Sneezy; Sh owery, Flowery, Bow ery; Heaty, Wheaty, Sweezy.” William Doyle, The Oxford History of The French Revolution 442-43 (1989). See also A Critical Dictionary of the French Revolution 538-47 (François Furet & Mona Ozouf eds., 1989).

\textsuperscript{62} It was said to be infected with “the incurable gangrene of aristocracy.” Harriss, supra note 53, at 147. Three members were guillotined on the Place de la Concorde, two committed suicide, and three died in prison. Id. See also George A. Kelly, Victims, Authority, and Terror 208–10, 289 (1982) (describing the decision to destroy the Academies).

\textsuperscript{63} Judge, supra note 42, at 12 (noting that “[the Academy] was reconstituted in a diminished form in 1795 and re-established in its original form in 1816”).
law. . . . Citizens, the language of a free people must be one and the same for all.

As soon as men think, as soon as they can share their thoughts, the empire of despots, priests and conspirators is close to its ruin.

Let us thus give to the citizens the instrument of public thought, the surest revolutionary agent, the same language.64

If Barère attacked foreign and regional languages, the Abbé Grégoire saw the *patois* (dialects) of France as barbaric at best, subversive at worst (and to be eliminated).65 According to the report he prepared for the Revolutionary Convention, at the time of the Revolution twelve million people, being one-half of the population of France, still did not speak “French” and only three million were capable of speaking it “correctly,” i.e., according to the rules set forth by the grammarians under the monarchy.66

The Convention essentially agreed with its reporters and promulgated the law of 2 thermidor an II (July 20, 1794), providing:

Article 1. As of the date of publication of this law, no public act may, in any part of the territory of the Republic, be written other than in the French language.

Article 2. [forbids the registration of any documents, even private acts (*sous seing privé*), not written in the French language]

Article 3. Any civil servant or public officer . . . who from the date of publication of this law, draws up, writes or subscribes, in the

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64. *Le Rapport Barère, Rapport du Comité de Salut Public sur les Idiomes*, Archives Parlementaires, 1ère série, T. LXXXIII, séance du 8 pluviôse an II, n°18, at 713–17 (Paris, Ed. C.N.R.S., 1961), reprinted in Certeau, supra note 60, 291, 296–97. Barère directed his attacks mostly against regional and foreign languages that were then spoken in France: “Federalism and superstition speak Breton; emigrant aristocracy and hatred of the Republic speak German; counterrevolution speaks Italian; and fanaticism speaks Basque.” *Id.* at 295. Barère did not consider it necessary to attack the “patois” (dialects of French) spoken mostly in the countryside: “[Patois] did not prevent knowledge of the national tongue. If [the national tongue] is not equally well-spoken everywhere, at least it is easily understood.” *Id.* “Patois” is a term that is difficult to define. Bell uses it to refer to regional (provincial) languages as well as dialects, but Barère did not. *See* Bell, supra note 60, at 1404–05.

65. Grégoire’s objective was to totally eliminate *les patois*, because of his belief that, among other things, “knowledge and use of the national language [French] are important to the maintenance of freedom.” *Le Rapport Grégoire, Convention Nationale, séance du 16 prairial an II Rapport sur la Nécessité et les Moyens d’Anéantir les Patois et d’Universaliser l’Usage de la langue Française*, reprinted in Certeau, supra note 60, at 300, 303.

66. Balibar & Laporte, supra note 39, at 32.

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exercise of his duties, any minutes, judgments, contracts or other acts . . . in dialects (idiomes) or languages other than French, will be brought before the criminal court (le tribunal de police correctionnelle) of his domicile, sentenced to six months in prison, and discharged from his office.

Article 4. [applies the punishment of article 3 to registrations of documents].

Although this law was later suspended, it was subsequently reenacted (in less severe form) by the arrêté of 24 prairial an XI and remains in force today. The Jacobin philosophy of “one people, one nation, one language” has been extraordinarily successful: In the few cases presented to it on this question, the Court of Cassation has consistently held that the ordonnance of Villers-Cotterêts and the Revolutionary texts require that any public act not drafted in French be invalidated, the mandatory use of the French language being an “essential principle of public law” (and a matter of ordre public), required for the sound administration of justice and national linguistic unity.

C. The Law of 1975 on the Use of the French Language (loi Bas-Lauriol)

French in the “Century of English”—“[le] juge pénal . . . devenu l’arbitre du langage”

The ordonnance of Villers-Cotterêts and the texts adopted during the French Revolution had as their effect the official imposition of French as the language of the law. French became mandatory for the courts, for the

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67. Reprinted in Balibar & Laporte, supra note 39, at 96–97. See also Delaporte, supra note 38, at 452; Malaurie, supra note 40, at 583–84.
68. By the decree of 16 fructidor an II. See also Delaporte, supra note 38, at 452.
70. Olsson, supra note 48, at 241.
72. Fishman, supra note 12, at 129.
73. “The criminal judge as arbiter of the language.” Delaporte, supra note 38, at 466.
government (l'administration), and even for notarial acts. Yet, unlike many other European nations, there was no constitutional provision making French the official language of France nor, other than the Academy’s tireless surveillance, was there any attempt to legislate the content of French. As one French writer notes:

There is no sovereign body that determines what is or what is not the true language; notably, the Académie française is only, according to the proverbial saying, the traditional guardian and scribe of the language; [the Académie] does not exercise any public authority when it collects words or creates grammatical rules. . . . Our language is not codified. . . . [P]idgin French (le petit nègre), low class French (le style concierge), gibberish (le charabia), franglais, are bad French, but French nevertheless.

This changed abruptly during the last thirty years.

During the nineteenth century and the early part of this century, French had enjoyed an international hegemony as the language of international affairs and conferences—of “cosmopolitan conversations” of all kinds. But as France’s position in geopolitics eroded, so did the perceived utility of its language, and English quickly replaced French as the chief language of international discourse, particularly as the United States assumed a leading role in the world economy.

74. Malaurie points out that it was notarial acts, and particularly wills, which created the biggest problem, for, unless the notary was completely bilingual (and could therefore hear the will in a foreign language, write it in French, and then read it back to the testator in the foreign language) the formalities of the notarial act, requiring that the testator dictate and read the will, could not be complied with. Indeed, because the notary had to control the accuracy of the testament, no translator or interpreter was permitted to intervene, leaving the testator without a remedy. Malaurie, supra note 40, at 584–85 (citing Judgment of May 4, 1807, Cass. civ., Jur. Gen. V° Disposition No. 2874; Judgment of Aug. 3, 1891, Cass. Civ., D.P. 1893.1.31; Judgment of Dec. 18, 1956, Cass. Civ., J.C.P. 57, II, 9718, note de M. Jacquillard; Code Civil [C. civ.] art. 972).

75. Malaurie, supra note 40, at 567–68 (pointing out that one cannot have a legal definition of French because “the laws which govern it are not those of any State”).

76. Id. at 569.

77. The phrase is Herbert Shenton’s. See Shenton, supra note 9.

78. Although French was one of the only two languages made official by the League of Nations and was the dominant language of the League, Shenton, supra note 9, at 378, it was not originally proposed as a working language of the conference convened to Organize the United Nations in San Francisco in 1945. When the Heads of Delegation met to organize the conference, the French delegation requested that both English and French be used as working and official languages because “it was essential not to give support to the efforts which have been made to eliminate as an international language, French, the traditional language of diplomacy, and one of the great languages of civilization, by any action taken at [the] Conference.” U.S. Dep’t of State, The United Nations Conference on International Organization 7 (1946). Some countries then stated that they would be willing to accept French in addition to English as a working language but requested that their own
As English began to dominate international commerce and affairs, English words increasingly appeared in French. This is not an unusual linguistic phenomenon, but as early as the 1950s the French began to fight back. Dubbed “franglais,” this French laced with anglicisms was the subject of newspaper articles and books denouncing this “pollution” of the French language. The call to arms came in 1964 with Professor Etiemble’s work, Parlez-vous franglais?, which argued that the appearance of franglais was a symptom of the cultural and economic imperialism of the United States following World War II. He wrote, for example, about the “liberation”:

The yankee soldiers distributed everything liberally, with a varying mix of generosity, childishness and imperialistic afterthoughts.

Language be included as an official language. Id. Eventually, English, Russian, Chinese, French, and Spanish were adopted as the official languages of the conference, French and English being the only working languages. Id. at 265. The rules adopted at the conference were later adopted as provisional rules of procedure of the U.N. General Assembly, 1946-47 U.N.Y.B. 63, 311, U.N. Sales No. 1947.I.18. The provisional rules became final, so that French and English are now the only two working languages of the U.N. Nevertheless, only one-tenth of the documents produced by the Secretariat of the United Nations are in French, and almost all of its computer programs are now in English. Mind Your Language: France, The Economist, Mar. 23, 1996, at 54.

Shenton collected some interesting information on the linguistic practices of the League of Nations. According to his data, obtained by counting the speeches made in plenary sessions in 1920, 1924, and 1927, the use of English declined over time, so that:

[A]lthough the League [was] legally bilingual, a situation exist[ed] in practice which amount[ed] to a virtual control by French. Outside of the English-speaking group, almost all other countries express[ed] themselves in French. . . . Delegates to the League Assemblies [were] trained experts and diplomats, and apparently the knowledge of French [was] not a major difficulty in selection of delegates.

Shenton, supra note 9, at 381.

79. Etiemble, Parlez-vous franglais? (Saint-Amand: Gallimard, 1964). Etiemble raged against what he referred to as the “sabir atlantique, cette variété new look du franglais” (roughly translated as “jargon from the [other side of the] Atlantic, this new look variety of franglais”). Id. at 33. Thus, he cited with approval a study on “clandestine americanisms and anglicisms”:

The truly pathological anglicisms and americanisms do not appear in their natural state, completely raw or completely naked, which would already denounce them and put us on our guard against their use, but under a mask which disguises their hideousness from us. With their innocuous air, who would believe them to be so frightening? The more insidicus they are, the more they are harmful, because we are less suspicious.

Id. at 36–37 (quoting from a study by M. Victor Barbeau, Cahiers de l'académie canadienne—française (1960)).

80. Thus he wrote that the American “liberators” of Paris would never have entered the war had not millions of Russians already died in fighting the Nazis, and had not the American economy, ruined during the Great Depression, needed shoring up. Id. at 289–90.
At the last minute, the Americans agreed not to assume direct administration of the country. They thus presented themselves as disinterested liberators. The Marshall plan, an idea that was in effect open and generous, aggravated the generally favorable prejudice [toward the Americans].

Apart from brief interludes our purported governors, our so-called leaders, were only, after the resignation of General [Charles] de Gaulle, the agents of the will of Washington.81

The solution, he argued, was to struggle against, to become allergic to, this "yanquisation."82

Although controversial, Etiemble’s work struck a sensitive chord. The French government responded to combat the “invasion” in two ways. First, government committees were established to devise ways to defend the language83 and to recommend the replacement of English borrowings by French words.84 Second, legislation was adopted in 1975 requiring the

81. Id. at 290–99.
82. Id. at 296.

Finally, the amended 1966 decree was abrogated by Decree No. 84-91 of Feb. 9, 1984, J.O. Feb. 10, 1984, at 554. Decree No. 84-91 created a Consulting Committee of the French Language, as well as a General Commissariat. Art. 1. The Consulting Committee’s mission was to study questions relative to the use and diffusion of the French language, as well as questions relative to la francophonie, languages in France, and France’s policy with respect to foreign languages. Art. 2. The Commissariat’s function was to create and coordinate the actions of administrative agencies and public and private entities that participate in the diffusion and defense of the French language. Art. 6.

84. A few years after the creation of the High Committee for the Defense and Expansion of the French language by Decree No. 66-203 of Mar. 31, 1966, J.O. Apr. 7, 1966, at 2795, Decree No. 72-19 of Jan. 7, 1972, relative to the enrichment of the French language, J.O. Jan. 9, 1972, at 388, was enacted. This decree created commissions on terminology, attached to each administrative agency, which would establish an inventory of gaps in French vocabulary and propose new terms either to “designate a new reality” or to replace “undesirable borrowings from foreign languages.” Art. 2. These commissions would report to the High Committee, which would coordinate their activities. Art. 4. Eventually, each minister would establish official lists of either mandatory (“list 1”) or recommended (“list 2”) expressions and terms. Art. 5. Terms appearing in list 1 had to be used in all legal documents and correspondence issued by the State, in all contracts to which the State (or a
use of French in certain contexts, and prohibiting the use of foreign (read: "English") terms to the extent that officially approved terms had been created to replace the offending words or phrases. 85

The 1975 law, also known as the law of Bas-Lauriol after its legislative sponsors, requires the use of French in areas that were thought to have been particularly corrupted 86 by the influence of English: Article 1 covers the marketing of goods and services, and advertising in

public institution) was a party, and in all educational materials or research publications used in institutions either operated or controlled by the State or receiving State funding of any kind. Art. 6.

The 1972 decree was abrogated in 1983 by a decree that provided that commissions on terminology would be created on the proposal of the “High Committee of the French Language,” after consultation with the Minister of National Education. Decree No. 83-243 of Mar. 25, 1983, art. 1, J.O. Mar. 29, 1983, at 955. The commissions would still establish an inventory of gaps in vocabulary and propose new terms for new situations, but their missions no longer included the task of proposing new terms to replace undesirable foreign terms. The commissions’ new tasks were to harmonize terms by taking advantage of French as spoken outside of France and also to encourage diffusion of new terms among the population (the users). This 1983 decree was abrogated by a 1986 decree that was virtually identical to the previous one. See Decree No. 86-439 of Mar. 11, 1986, J.O. Mar. 16, 1986, at 4255. The commissions are still functioning and have been very busy. A list of the terminology established by their decrees can be found in the 462-page Dictionnaire des Termes Officiels de la Langue Francaise published by the Journal Officiel de la République Française in January 1994.


86. According to popular wisdom in France, only certain kinds of borrowings from foreign languages are “permissible.” See, e.g., Delaporte, supra note 38, at 455; see also infra note 99. That is, some are compatible with the morphology, lexicography, and syntax of French, but others are not. Thus “hamburger” or “sandwich” is permissible, but “minivan” is not. (The official French term for the latter is “monospace.”) Dictionnaire des Termes Officiels de la Langue Française, supra note 84, at 260. Although Etiemble and others have attempted to explain why this is so, and why English borrowings corrupt more than, for example, Arabic borrowings, their explanations appear tied to a concept of the purity of the classical French language, a theory of dubious linguistic validity. This point was eloquently made by Senator Françoise Seligmann during the debates on the loi Toubon. Quoting from Fénelon, she stated: “Of what importance is it whether a word is born in our country, or comes to us from a foreign land? . . . Let us borrow from all sides all that we require to render our language clearer, more precise, more concise and more harmonious.” J.O., Débats Parlementaires, Sénat, Sess. of Apr. 12, 1994, at 967. A more scholarly treatment of the subject can be found in George Thomas’s excellent work on linguistic purism. Thomas writes:

[P]urism [is] an attitude to language which labels certain elements as “pure” (therefore desirable) and others as “impure” (therefore undesirable). For the professional linguist . . . even this basic distinction is questionable. Equally dubious is the assertion that to remove the ‘impure’ elements is to render the language “pure.”

George Thomas, Linguistic Purism 19 (1991). As Professor Thomas adds, however, the interesting question is “not whether purists are right or wrong to structure their thinking about language in this way, but rather why they do so, and what actions stem from this thinking.” Id. One of the clear links that Professor Thomas makes is between nationalism and linguistic purism. He writes: “[N]ationalism and purism share many core features. . . . Both phenomena seek to affirm or discover what is truly native by the exposure, eradication or diminution of precisely those elements which threaten to undermine the prestige, unity or autonomy of native institutions.” Id. at 136.
particular, articles 4 and 5 address offers of employment and employment contracts covering work to be performed in France; article 6 addresses signs in public buildings, and article 8, contracts entered into by public entities or collectivités in France. The constitutionality of the law was assumed. After all, the lack of a constitutional provision notwithstanding, ever since the ordonnance of Villers-Cotterêts, it has been a fundamental principle of public law that French is the language of the Republic of France.

Even without questioning the practicality of the 1975 law, one immediately sees that it presents many legal difficulties in its application. First, many of the law's commands lack sanctions. This is the case with respect to the provisions on employment contracts. For example, if an employment contract were drafted by an employer in English, in violation of article 4, and the employee sought to enforce the contract,

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87. Article 1, paragraph 1, line 1, provides:

Use of the French language is compulsory with respect to the name, the offer, the presentation, the advertising, written or spoken, the instructions for use, the description of the scope and the conditions of [the] warranties of a good or a service, as well as with respect to invoices and receipts. The use of any foreign term or expression is prohibited if there exists any term or expression approved according to the conditions set out by Decree No. 72-19 of 7 January 1972 relative to the enrichment of the French language.

Line 2 provides that one or more translations into foreign languages may accompany the French text, and paragraph 2 applies these rules to advertising or presentations of programs on the radio or television.

88. Article 4 requires employment contracts to be drafted in French, and like article 1, forbids the use therein of any foreign terms or expressions if there exist officially authorized French equivalents. It does permit a foreign worker, however, to request a translation of his or her employment contract, and states that in the case of conflict between the two texts, the text in the language of the worker prevails.

Article 5 completes article 4 by requiring that offers of employment be written in French (without the use therein of any foreign terms or expressions if there exist officially authorized French equivalents). It specifies that even if the job requires a perfect knowledge of a foreign language, and even if the employer is not of French nationality, the job description must still be in French. Two exceptions are permitted: publications principally in a foreign language may receive offers of employment in that language, and offers of employment expressly intended for foreign residents may be written in a foreign language.

89. In buildings and locales frequented by foreigners, however, as well as in public transportation which could be used by foreigners, foreign language translations may accompany the mandatory French inscriptions. Art. 6.

90. "Collectivités" is a term referring to regionally based local governmental entities such as départements (somewhat akin to counties) or communes (which resemble municipalities). They have legal personality and are entrusted with local government administration. Gérard Cornu, Vocabulaire Juridique 148 (Paris: Presses Universitaires de France, 1987).

91. See Grau, supra note 38, at 94–95.

92. See April Senate Report, supra note 29, at 35.
could the employer defend itself by arguing that the contract was invalid because it violated article 4? What a curious result for a law purportedly intended to protect French consumers and workers!

Second, the sanctions that are indicated are difficult to apply. Article 3 provides that anyone failing to comply with article 1 will be punished under the law applicable to commercial fraud, i.e., could be subject to a significant fine. The problem, of course, lies in the fact that it is a criminal court (le juge pénal) that will determine whether or not a text is drafted “in French.” But what criteria will the judge apply? The legislature stopped short of requiring that the text be drafted in “good French,” thus, a certain number of foreign borrowings ought to be permissible (as long as they are not officially prohibited by the Terminology Commissions). But how is the judge to know?

93. For an excellent analysis of how one might handle this sort of problem, see Delaporte, supra note 38, at 469–70. Thomas Carbonneau points out that the law would not require an employment contract between a French company and French employee who was to work abroad to be written in French, but would require that an employment contract between a foreign employer and foreign employee who was to work in France be written in French—even if the employee did not speak French! Thomas E. Carbonneau, Linguistic Legislation and Transnational Commercial Activity: France and Belgium, 29 Am. J. Comp. L. 393, 404 (1981).

94. As Delaporte points out, the law does not actually ask whether the person whose protection is invoked (i.e., the worker or consumer) actually speaks or understands either French or the prohibited foreign language. Thus, because the law does not distinguish between, for example, offers of sale made to the public at large, and offers to individuals, the latter would presumably have to be made in French. This would be true even if the particular individual in question did not understand French. Delaporte, supra note 38, at 474. In any event, the consumer protection rationale was, to some extent, a legislative afterthought. Although certain aspects of the law were interted to have as their result protection of the French consumer, the bill started out as an “attempt to thwart the ‘degradation’ and ‘contamination’ of the French language.” Carbonneau, supra note 93, at 398.

95. See supra note 87.

96. It is no easy task to establish what the precise fines were under the 1975 law. The Law of 1975 refers one to article 13 of the Law of August 1, 1905 on commercial fraud. (This law is now incorporated in an appendix to the Code de Consommation). This law, in turn, punishes infractions as third class contraventions. Prior to the enactment of the new criminal code in 1992, which entered into force on March 1, 1994, third class contraventions were punishable with fines ranging from 600 to 1300 francs. Code Pénal art. R.25, J.O. Mar. 30, 1993, at 5559 (incorporating Decree No. 85-956 of Sept. 11, 1985, art. 3). Perhaps one reason that the law has been so infrequently applied is that the fines are cumulative, so that if an article is labeled or advertised in violation of the law, each offending article (of which there might be hundreds or thousands) would give rise to a separate offense. This possibility is discussed by Paul Pigassou, V° Fraudes et falsifications, in Rep. Pénal Dalloz §§ 370–371 (1995).

97. Early drafts of the law did not. They would have prohibited any words “derived from foreign words” or “linguistic forms not in conformance with French syntax.” Delaporte, supra note 38, at 466.

98. Id. at 466–67. Delaporte also points out that, although such was not the legislature’s intent, by prohibiting use of anything other than the “French language,” the law technically outlaws the use of the regional languages of France. Id. at 467–68. To this author’s knowledge, no such application of the law was ever made, however, and during the law’s reenactment and expansion in 1994, its
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Because of its difficulties in application, the 1975 law was very infrequently applied—indeed, it was generally ignored. A few cases were brought by private citizen groups, in particular AGULF (the Association Générale des Usagers de la Langue Française), which challenged companies that failed to use French in selling their products. Thus S.E.I.T.A., a French national tobacco company, was successfully prosecuted for advertising a brand of cigarettes called "NEWS" in English only, even though the packets themselves were in both French and English. Similarly, in the "Quick Affair," the Belgian restaurant company "Quick" was successfully prosecuted for using English words (such as "giant," "big," "bigcheese," "Fishburger," "beefsteak" or "bifteck," "golden" (apple), "sandwich," "spaghetti," "toast"); with respect to textile products: "blue-jean," "short; . . ."

Circulaire of Mar. 14, 1977, J.O. Mar. 19, 1977, at 1483. Article 2 of the Circulaire adds that "When there are gaps in French vocabulary, it may be enriched according to the procedures [set out in] Decree No. 72-19 of 7 January 1972 concerning the enrichment of the French language." Id. As has been noted elsewhere, this "explanation of the role of the work of the commissions on terminology is elliptical." Carbonneau, supra note 93, at 400.

Prosecutions under the law have been few. In the years 1990 to 1993, 963 infractions were reported, 487 warnings were issued, 476 cases were sent to prosecutors, but only 37 convictions were obtained. April Senate Report, supra note 29, at 37. Even though some prosecutions were successful, the courts were not generally favorably disposed towards the law. For example, a sewing machine company, Fox France, was prosecuted for importing sewing machines that included two notices in English only, a "Parts list" and an "Instruction Book," in violation of article 1. Because the discovery of the offending material was made during a customs inspection prior to the marketing or sale of the machines to French consumers, however, the Court of Appeals of Rouen held that as article 1 was intended to protect French consumers, it would not apply as the machine had not yet been put on the domestic market. This decision was upheld by the Court of Cassation. Judgment of Oct. 22, 1985, Cass. Crim., available in LEXIS, Privé Library, Casscr File.


The advertising used only the English words "20 Filter-tip cigarettes." The French would be "20 cigarettes à bout filtrant," or at least "20 cigarettes filtres."
“cheeseburger,” "softdrink," etc.) to designate the foods and beverages it offered for sale, even though each customer was given a menu in which the words were accompanied by pictures of the items for sale, as well as a description in French of the exact composition of the items and their prices. Interestingly, the court of appeals overturned the conviction (rélaxer) on the basis that the photos and description of the products sufficed to protect the consumer and thus effectuated substantial compliance with the law. The Court of Cassation reversed, however, holding that:

In reducing the aim of the law of December 31, 1975 to consumer protection . . . whereas this text, of a general character and which is intended to safeguard the French language contains no such limitation, the Court of Appeals has misunderstood the sense and the scope of [this law] . . . .

One would not be complete without mentioning the tendency for the law to be used, occasionally in bad faith and generally unsuccessfully, to challenge otherwise valid contractual obligations. For instance, a French company sought (unsuccessfully) to avoid payment for advertisements it had placed in a Swiss professional journal on the basis that the contracts between the two companies (as well as the advertisements themselves) were written in English rather than French.

104. Jacques Neher, Ad Firms Meet French 101, Int'l Herald Trib., June 29, 1994 ("Cheeseburger" cannot be used because it is not French, but "hamburger" is fine). See supra note 99.

105. Judgment of Oct. 20, 1986, Cass. Crim. (l'affaire Quick), available in LEXIS, Privé Library, Casscr File. In a followup decision, the High Court was presented with the issue whether the correct approach would not have been to research whether in fact there were any equivalent French terms to replace the offending Americanisms, or, in the alternative, whether they were trademarks (which would not be subject to the law). The Court did not reach the issue, holding that it had not been preserved for appeal. Judgment of Apr. 25, 1989, Cass. Crim., available in LEXIS, Privé Library, Casscr File.

106. Judgment of Apr. 3, 1987, Court of Appeals of Lyon, available in LEXIS, Privé Library, Appel file. In a similar vein, a company was prevented from relying on the fact that manuals accompanying the sale of a computer were in English to avoid payment of the purchase price, the court holding that although the 1975 law does require the manuals be in French to avoid criminal sanction, this requirement is not "an element of the validity of the contract entered into between individuals." Judgment of Mar. 14, 1985, Court of Appeals of Lyon, available in LEXIS, Privé Library, Appel File. (The court may have been influenced by the fact that a French translation of the manual was made available and that the company did not protest until two months after delivery.) In another case, an insurance company was prohibited from relying on an exclusion clause to avoid payment where the clause was not drafted in French. Judgment of Nov. 24, 1993, Cass. Crim., available in LEXIS, Privé Library, Casscr File.
D. The Law of 1994 on the Use of the French Language (loi Toubon)

We currently see more English words in Paris than we saw German words under the Occupation.

Michel Serres¹⁰⁷

Linguistic protectionism remained on the back burner for some time after the adoption of the loi Bas-Lauriol, but several factors coincided in the late 1980s and early 1990s to once again make linguistic legislation a "hot" political item. While an exhaustive enumeration is beyond the scope of this article, a brief recapitulation follows.

To begin with, the domination of English in the fields of science and computers had become increasingly apparent.¹⁰⁸ International scientific colloquia held in France often used English as the only official language. Although this was certainly a practical solution, given the expense of translation and the fact that, often, few of the participants were French-speaking (and virtually all could communicate in English), it understandably rankled the French.¹⁰⁹ To add insult to injury, in 1989, the prestigious Institut Pasteur (located in Paris) decided to change the title of its journal from “Annales de l’Institut Pasteur” to “Research in Microbiology, Immunology and Virology,” and to publish in English.¹¹⁰

¹⁰⁸ As Brian Weinstein put it:
Since France’s traumatic defeat in 1940 and the divisive and humiliating years following that disaster, French elites have feared the decline in the instrumental value of their language would mean they would be cut off from useful information; that French would be a poor vehicle for the expression of their own ideas and discoveries; and that it would be an inadequate qualification for employment. By 1970, for example, it was a well known fact that less than 10 percent of all scientific publishing was in French; another sign came from NATO where 90 percent of the technical documents are now written in English, the language which also dominates commercial aviation and satellites.
¹⁰⁹ Of course, one might take as a compliment the fact that people from all over the world would like to use one’s capital city as a conference site, in spite of the fact that they did not speak the language.
¹¹⁰ Jean-Paul Dufour, M. Alain Decaux veut inciter les scientifiques à utiliser le français dans leurs travaux, Le Monde, Jan. 12, 1990. This provoked an outcry. Thus, the institute announced it would also issue a review destined for a larger audience and entitled “Annales de l’Institut Pasteur-Actualités” which would be in French. See Jean-Pierre Peroncel-Hugoz, La défense de la science en français: En dépit de l’émotion soulevée en 1989 par la rédaction en anglais des publications de l’Institut Pasteur, le déclin du français comme langue scientifique se poursuit, Le Monde, Mar. 25, 1992 (complaining that French scientists cannot be promoted unless they publish in English).
On the artistic front, American movies and television programs had been inundating French screens for decades. At the same time and for a variety of reasons, the French cinema was in trouble. The French made this an issue both at the European Community level and in multilateral trade negotiations, eventually obtaining a watered down "cultural exception" in the latest round of GATT negotiations.

Third, and perhaps most importantly, European integration was proceeding at a pace which was frightening to some. The narrow approval of the Treaty of Maastricht by the French people in the popular referendum held in 1992 evidenced a certain schizophrenia about l'Europe, although France's political leadership at the time was strongly pro-European. With the reunification of Germany and its increased leadership role in the European Union (EU), as well as the proposed accession of new Member States that would presumably prefer English

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111. Led by the French, the audiovisual industries of Europe successfully petitioned the European Parliament to pass a resolution supporting the inclusion of a general "cultural exception" clause in the 1994 GATT Uruguay round. This clause would allow member states broad discretion in protecting their audiovisual industries in order to "preserve and promote the sub-national, national or regional cultural identities." GATT/Audio-Visual: European Parliament "Supports" Cultural Exception, Tech Europe, Oct. 5, 1993, available in LEXIS, EURCOM Library, ECNEWS File. However, faced with strong opposition from America, European Community negotiators abandoned their insistence on a general "cultural exception" clause and settled for the exclusion of the audiovisual industry from GATT rules. EU: EP Approves Changes to Community Trade Regulations, Reuter Textline Agence Europe, Dec. 16, 1994, available in LEXIS, EURCOM Library, ECNEWS File. For an explanation of the various strategies considered to exempt the audiovisual industry in Europe, see GATT/Audio-Visual: Update on an Increasingly Controversial Dossier, Tech Europe, Nov. 4, 1993, available in LEXIS, EURCOM Library, ECNEWS File. The French protest against the American film industry goes back to the 1920s, according to a study by Diana Quintero, American Television and Cinema in France, 18 Fletcher F. of World Aff. 115 (1994).

to French as a second language, it also became clear that French was losing the hegemony it once had in the Community Institutions.113

These factors combined to create a perception to some of a French Republic that had not only lost any vestiges of empire it once had, but was being Americanized,114 invaded by immigrants, and attacked by Eurocrats in Brussels (who were not only taking more and more power away from national governments, but were talking about giving more power to regions within nation states). This view was held not only by right wing fanatics, although they may have had more militant ideas about what to do about it. On July 11, 1992, an appeal to the government to “do something” appeared in the French newspaper Le Monde. Entitled “The future of the French language” and signed by 300 well-known individuals, the notice read:

There exist in France fanatics of le tout-anglais [English for everything] who are more and more daring. They are making the French doubt their own language and . . . are weakening its worth in other countries.

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These angloglottes . . . forget, above all, that language is not a varnish, a merchandise, is not a material like any other; it is what carries and structures thought. It is through language that we experience the world and [have] the simple pleasure to be oneself.115

Thus attacked from without and from within, politicians eager to capitalize on these feelings of insecurity fought back.

I. La Francophonie

On the one hand, the loose grouping of French-speaking states and regions known as la Francophonie116 was proferred once again as a new cultural (and, eventually, political and economic) empire. Perceived as a

113. Although French remains an official language of the EU and is still the working language of the European Court of Justice, many new institutions, such as the European Monetary Institute, use English as their working language.


116. The term, according to Le Monde, can be attributed to French geographer Onesime Reclus, who coined it in 1880. Depuis plus de cent ans, Le Monde, Nov. 20, 1991. It translates roughly as “French-speaking nations”.

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sort of French "commonwealth," the idea behind *la Francophonie* is that French-speaking nations should cooperate in international affairs to increase the prestige and use of the French language and culture and, in the process, raise their own political and economic status.\(^{117}\) President Charles de Gaulle had been particularly instrumental in taking up the leadership of this movement in 1965, with his promotion of "*le Québec libre.*"\(^{118}\) Since the creation of the "*Haute Comité de la langue française*" in 1966 by de Gaulle and Georges Pompidou (then his Prime Minister),\(^{119}\) the movement has become increasingly institutionalized, culminating in the elevation of the Secretary of State for *la Francophonie*, a post created in 1986,\(^{120}\) to a cabinet position, the Minister for Cultural Affairs and *la Francophonie*.\(^{121}\)

Had the *Francophonie* movement become organized and cohesive, it probably could have taken on an important transnational role in world politics.\(^{122}\) It did not, however, probably because the movement attempts to ally many individuals and groups with different, often competing, interests. For example, there is an obvious competition between France and her ex-colonies, the elites of which often speak French, but who wish to pursue goals independent of France.\(^{123}\) To constitute a cohesive

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119. See *supra* note 83; see also Atlas, *supra* note 30, at 118; *Depuis plus de cent ans*, Le Monde, Nov. 20, 1991.

120. This position was attached to the Minister of Foreign Affairs and charged with the orientation, support, and coordination of the governments and organizations of francophone countries. Decree No. 86-730 of May 2, 1986, J.O. May 6, 1986, at 6045.


123. Weinstein writes:

[S]ome ethnic francophones such as Québecois and Walloons resent any implications that Francophonie is a way for France to bring enlightenment to the French-speaking world. They are proud of themselves as North Americans and Belgians and many express strong dislike for French "arrogance" and disdain for French technical "backwardness." Further, although de Gaulle's "*Vive le Québec libre*" and later attempts to help minorities were viewed with enthusiasm by many Walloons, Jurassians, and Valdostains, the Africans perceived such slogans to be a call for division which, translated to the African stage, could have disastrous finales.

... * .

Another potential and deeper crack in Francophone solidarity widens when *the* ethnic French complain about being lumped together with Africans [i.e., non-whites].
political movement, *la Francophonie* has had to construct a belief system based on the purity of French, on the superiority of French (notably over English), and on sentimental attachment to French as the shared language of a community of states many of which have nothing in common other than the fact that some of their citizens speak French (or some version thereof). Finally, promoters of *la Francophonie* have conveniently overlooked the inconsistencies between France's often ruthless suppression of minority languages in France and its promotion of French as a minority language in states such as Canada or Belgium. All this has made it difficult for France to create out of *la Francophonie* a French "commonwealth" having any kind of real political or economic clout.  

2. *The Constitutional Amendment of 1992 and the loi Toubon*

"*La France aux Français!*"

As part of the package of amendments to the French Constitution necessitated by the ratification of the Treaty of Maastricht, article 2 of the Constitution was amended in 1992 to make "French" the official language of France. Inserted between the national flag (*le tricolore*) and the definition of the French Republic as "indivisible, secular, democratic and social," the addition of this provision, while having

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124. And, Weinstein adds, on the standardization of French, a proposition that is demonstrably incorrect. *Id.*

125. President Jacques Chirac's controversial decision to resume testing nuclear weapons in the South Pacific symbolizes this French desire to set an independent "French" course in world politics. Ironically, however, President Chirac distressed many of his compatriots by recently appearing on the Larry King television talk show to demonstrate his fluent English. (It is reported that François Mitterand never spoke English to anyone.) See Jim Hoagland, *Sacred Blue! The French President Spoke English*, Int'l Herald Trib., Oct. 26, 1995.


128. Article 2, after the amendment of 1992, read:

The French Republic is indivisible, secular, democratic and social. It ensures equality before the law for all its citizens regardless of origin, race or religion. It respects all [religious] beliefs.

The language of the French Republic is French.

The national symbol is the *tricolore* flag, blue, white and red.

The national hymn is "the *Marseillaise.*"

The Republic's motto is "Liberty, Equality, Brotherhood."

Its principle is: government of the people, by the people and for the people.
little direct legal effect, nevertheless raises to a constitutional principle what was already the law under the *ordonnance* of Villers-Cotterêts and the law of 2 thermidor—that all public acts of the French Republic must be in French. It remains to be seen how this provision will affect the status of the regional languages of France. It is also not clear how it will interact with the provisions of the Constitution protecting the liberty of expression, although the decision of the Constitutional Council on the *loi Toubon*, discussed below, suggests that its effect will certainly be more than just symbolic. It is also interesting to note the similarity between this provision and the constitutional amendments proposed by the Official English movement in the United States.

Most significantly, the Minister of Culture and *la Francophonie*, Jacques Toubon, (nicknamed “Jack Allgood” by irreverent members of the French Press!) proposed revisions to the 1975 law in order to try, once more, to eliminate the creeping use of English from French life and French commerce and science, in particular. Public support for such a move was far from unanimous, particularly given the lacklustre

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129. In a recent response to a parliamentary question as to the effect of the Constitutional amendment declaring French to be the official language of the Republic on the status of legal texts in German in Alsace-Lorraine, the Minister of Justice stated that neither legislation nor governmental decrees may be promulgated or published in a foreign language anymore. Ministerial Response No. 21345, Nov. 27, 1995, available in LEXIS, Loireg Library, Repmin File. Notwithstanding, as the constitutional amendment did not have as its aim to invalidate pre-existing legislation, such would remain in force, although it would necessarily have to be translated. See infra part I.D.3.

130. See infra notes 296–312 and accompanying text.

132. Toubon is a close ally of Jacques Chirac, who was, at the time, mayor of Paris, and who became President of France. Toubon’s goal is to develop French culture abroad—to propose an alternative to the Anglo-Saxon model of the universe. Edward Mortimer & David Buchan, *Mind Your Language—Jacques Toubon*, The Fin. Times, Nov. 29, 1994, at 20.

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performance of the loi Bas-Lauriol,\textsuperscript{134} and the British and American press had a field day with Toubon’s proposal.\textsuperscript{135} Toubon nevertheless moved his legislation forward, receiving the approval of the Council of Ministers on February 23, 1994,\textsuperscript{136} and introducing the bill to the French Senate on January 27, 1994.\textsuperscript{137}

The legislation, known as the “loi Toubon,”\textsuperscript{138} went through various drafts and was extensively debated by both the Senate and the National Assembly, but there were few fundamental differences in either the law’s overall structure or philosophy between the version introduced in January and the law finally approved July 1, 1994.\textsuperscript{139} The principles

\textsuperscript{134} Jean-Pierre Peroncel-Hugoz, Mme. Tasca va demander une session extraordinaire du Parlement pour examiner son projet de loi sur “l’emploi du Francais en France,” Le Monde, Dec. 10, 1992 (noting that public opinion was divided on the advisability of Mme. Tasca’s projet de loi, especially with respect to the sanctions). The permanent secretary of the French Academy agreed that there had been significant “pollution” of the French language but recommended better education rather than legislation. Jean-Claude Lamy, Le “j’accuse” de Maurice Druon, Le Figaro, Mar. 16, 1993 (“Let it be known that I am not fighting against English, which is an allied language, but against Anglo-American gibberish (un sabir anglo-ricain).”) (quoting the secretary). See also Paul Bogaards & Johan Matter, Le français mal illustré, mal défendu, Libération, July 1, 1993 (The authors point out that they have never met any of the fanatics of the tout-anglais. They also bemoan the isolationism of French linguists who will not attend linguistic conferences in either Greece or the Netherlands and will publish only articles written in French in their linguistic journal, Etudes de linguistique appliquée, which excludes those who can read but not write French from participation in the journal, making it in fact a journal franco-française.); Laurent Lemire, Dictionnaires: Du nouveau pour le Petit Robert, La langue française n’a jamais été aussi inventive, La Croix, Sept. 14, 1993 (interviewing Josette Rey-Debove and pointing out that French has become very inventive lately, creating many new words such as “enarque,” which means someone who graduated from the École Natîonale d’Administration (ENA) and which combines an acronym and a Greek root).

\textsuperscript{135} One British politician proposed a law banning words like croissants and baguettes from everyday use and included a provision to fine anyone 10 pounds if they were caught speaking French in public. Paul Gould, British Lawmaker Seeks French Ban, UPI, July 5, 1994, available in LEXIS NEWS Library, UPSTAT File. The Economist wrote:

If the French laws on speeding, smoking in public places or dog dirt are anything to go by, the critics [of the law] should have little to worry about. The new law on the French language is likely to be blithely ignored by the vast majority of French people—just as the radical changes in French spelling, announced three years ago, have been. General de Gaulle always said that his countrymen were an ungovernable lot—Dieu merci.


\textsuperscript{139} The bill was first debated by the Senate on April 12-14, 1994. J.O., Débats Parlementaires, Sénat, Sess. of Apr. 12, 13, 14, at 948–73, 982–1007, 1078–97, 1137–49. It was presented to the
underlying the law’s adoption were clear: (i) to protect the French language by mandating its use in French territory and (ii) to ensure its “linguistic purity” by outlawing the introduction of foreign (read: “English”) elements into its lexicon. Not content merely to make French the official language of France, which was presumably achieved by the law of 2 thermidor and the ordonnance of Villers-Cotterêts, the 1994 law attempts to do what the 1975 law was unable to do: require that French be used by private citizens in France in all aspects of public discourse. Moreover, not just any French will do. The government (indeed, the criminal courts) will be the arbiter of what will be considered “French” or not.

To support the legislation, the government cited the need to protect France’s identity and the identity of the French people; to maintain French participation in the sciences and the world economy; and to eliminate the “contamination” of French culture by the English language and American ideas. In the words of the Commission on Cultural Affairs:

Today, according to fashionable magazines, the young and energetic modern executive encounters “les challenges” in the course of “le meeting” where he spends his time “dispatchant” his appointments, his schedule being “surbooké” between “un concert live” and “un happening” at the theater. . . . Laziness, indifference and also very often a desire to look cool (“dans le coup”) are responsible for the increasing degeneration of our language,


140. The supporters of the legislation claim that they are not “anti-English,” rather, that they are against the English generally used in international affairs, which they refer to as “basic American,” Rapport fait au nom de la Commission des affaires Culturelles, Familiales et Sociales sur le projet de loi relatif à l’emploi de la langue française, Rapport No. 1158, A.N., Apr. 21, 1994, at 13 [hereinafter April Assembly Report], and which they claim is contributing to the decline of the French language (and by implication, the decline of France).

141. Secondary justifications were also presented: First, a need to act prior to the enactment of any EU legislation that might be less favorable to the French language; second, a need to stop the French from relying too heavily on English, which the April Senate Report predicted would take a backseat to Spanish by the year 2010. April Senate Report, supra note 29, at 26–28.
through a complex mix of snobbery, pseudo-culture and fear of looking old-fashioned because of one’s inability to juggle foreign words.\(^\text{142}\)

Although both Minister Toubon and the Commission claimed that the bill’s real purpose was multiculturalism,\(^\text{143}\) the law contains very little in the way of protection for or promotion of the minority languages of France.\(^\text{144}\) Indeed and rather ironically, both the government and the legislators relied on a somewhat distorted account of the successes of the American “Official English” movement to support the proposition that it is both necessary and appropriate for nations to “protect” their national languages from contamination by foreign tongues.\(^\text{145}\) Citing the need to lead the francophone countries in their quest to create a French-speaking commonwealth, as well as the need to force private individuals to cherish their language (and ignoring the well-reasoned criticism of the law, in particular from the Socialists),\(^\text{146}\) Toubon made a passionate appeal for protection of the French language on the Senate floor: “The French language is a language of liberty, of democracy. It is the language of dreams for many persons imprisoned, who, for years, have dreamed of democracy, of liberty, of independence.”\(^\text{147}\)

\(^{142}\) April Assembly Report, supra note 140, at 9.

\(^{143}\) See April Senate Report, supra note 29, at 7; Speech of Jacques Toubon to the Senate, J.O., Débats Parlementaires, Sénat, Sess. of Apr. 12, 1994, at 949; see also April Assembly Report, supra note 140, at 15. The legislative history suggests, and subsequent government efforts do emphasize, a campaign favoring “le plurilinguisme européen,” see Etat de la francophonie dans le monde, supra note 121, at 42, and the 1994 law does make knowledge of two languages, in addition to French, a goal of French education. Art. 11(H).

\(^{144}\) Various attempts were made to amend the law to shore up protection for the minority languages of France. These were all rejected both by the government and the parliament. Article 21 of the law as adopted provides: “The provisions of this law apply without prejudice to the legislation and regulations in force concerning the regional languages of France.”

As various spokespersons for the regional languages of France pointed out, however, there is virtually no legislation in force on the status of minority languages in France except for the Law of January 11, 1951 (loi Deixonne). See Olsson, supra note 48, at 245–46. That law permitted for the first time an optional teaching of 1 hour per week of four regional languages: Basque, Breton, Catalan, and Occitan. Law No. 51-46 of Jan. 11, 1951, on the teaching of local languages and dialects, J.O. of Jan. 13, 1951, at 483. Corsican was also extended this privilege by decree in 1974. Olsson, supra note 48, at 245. The French government has refused to sign the European Charter on Minority Languages. Atlas, supra note 30 at 23, stating that it is “manifestly impracticable because of its complexity and the obligations it imposes.” J.O., Débats Parlementaires, Sénat, Sess. of Apr. 13, 1994, at 983 (statement of Minister Toubon).

\(^{145}\) See April Senate Report, supra note 29, at 6.

\(^{146}\) The Socialists abstained from voting when the Assembly adopted the bill and later brought a constitutional challenge to it. See infra part II.D.3.

\(^{147}\) J.O., Débats Parlementaires, Sénat, Sess. of Apr. 12, 1994, at 950.
The legislation substantially expanded the provisions of the 1975 law, which already required that private individuals and public entities use French in specific situations. Not only is the use of French mandated in offering goods or services to the public (article 2), but failure to comply with these requirements is punishable as a fourth class misdemeanor (contravention) by a significant fine. Obstruction of a

148. The text of the 1994 law is set out in the Appendix to this Article.

149. Although the legislature’s intent may have been to remedy the general ineffectiveness of the 1975 law by assuring that the provisions of the loi Toubon were associated with appropriate sanctions, in fact, very few articles of the new legislation are accompanied by specific sanctions, and those which are provided are not always clear. For example, one commentator has suggested that article 2 (which is accompanied by criminal sanctions, see art. 23) could be applied to international contracts for the sales of goods or international financings. Gilles Kolifrath, Les conséquences de la loi Toubon en matière de contrats de financement internationaux, 44 Banque & Droit 14, 17 (1995). Although he may be correct insofar as those contracts are to be carried out in France, one wonders whether it would be arguable nevertheless (and in spite of the proclamation in art cle 20 that the law is a matter of public policy (ordre public)) that the law could not be applied to international contracts under the jurisprudence of the Court of Cassation in Messageries maritimes (Cass. Civ., Judgment of June 21, 1950). Messageries maritimes suggests that international contracts may under certain conditions escape the application of French ordre public, or at least that the force of such ordre public would be lessened (attenué) in the international arena. Too, nothing in the legislative history suggests specifically that application of the loi Toubon to all the international financial contracts, for example, drawn up by international lawyers working in Paris law firms was intended, and the presence of article 5 (applying specifically to public sector contracts) suggests that had the legislature wished to address this problem, it would have done so directly. While a detailed discussion of this point is beyond the scope of this Article, given the inclusion of article 20 in the loi Toubon, and the fact that a violation of article 2, if found, would be punishable by criminal sanctions, caution may be advisable with respect to such matters.

150. Contraventions are divided into 5 classes of offenses according to the punishment imposed (which increases from first to fifth class). Currently, the penalties are:

1° a maximum fine of 250 francs for a 1st class contravention;
2° a maximum fine of 1000 francs for a 2d class contravention;
3° a maximum fine of 3000 francs for a 3d class contravention;
4° a maximum fine of 5000 francs for a 4th class contravention;
5° a maximum fine of 10,000 francs for a 5th class contravention, [and,] in case of repeated violations, the fine may be increased up to 20,000 francs.


When the 1994 law was originally introduced, the government proposed that violations of the requirement to use French be punished as second or third class contraventions, depending on the case, except for the requirement to use French in advertising goods or services, a violation of which would have been punishable as a fifth class contravention. This would have made the maximum penalty 10,000 francs (per violation), which could have been doubled to 20,000 francs for recidivists. April Senate Report, supra note 29, at 59. The implementing decree punishes infractions of the 1994 law as fourth class contraventions. Decree No. 95-240 of Mar. 3, 1995, J.O. Mar. 5, 1995.

As one commentator has noted, the criminal sanctions imposed upon private parties do not apply to public entities (or private persons acting in a public capacity) that violate the mandate of article 5.
police investigation into violations of the 1994 law is punishable by up to six months in prison and a fine of 50,000 francs. Although the intent of the new law was, at least in part, to clarify the existing law in order to render it more easily enforceable, the recent issue of an interpretive Circulaire by Prime Minister Alain Juppé attempting to explain various provisions of the 1994 law suggests that the new law will no less difficult to apply than the old.

The law also makes explicit that any public announcement (a notice of a concert, a meeting, or a job, for example) posted in a public place or in a place open to the public, such as a café, must be in French. Article 6 addresses conventions and colloquia held in France, providing that “[e]ach participant in a demonstration, colloquium or convention organized in France by . . . French nationals has the right to express himself in French” and requiring that any program distributed prior to or during the meetings be written in French. This provision was the subject of great debate by the legislature. The government’s initial position was that any non-French communications during a conference had to be accompanied by summaries in French. This was to use French in contracting with other parties. Line 4 of Article 5 provides that a party violating this requirement will be deprived of being able to rely on a provision in a foreign language if so doing would harm the other party. Also, pursuant to article 15, the violator would be required to refund any public subsidies received. Kolifrath, supra note 149, at 14–16.

151. Art. 17. See also April Senate Report, supra note 29, at 92.
153 Art. 3. The legislative history suggests that translations of such notices may be furnished, see, e.g., April Senate Report, supra note 29, at 65–66, as does the text of article 4 itself. Article 4 adds that any translations furnished by public entities or private persons performing a public service must be made in at least two languages. Art. 4. The requirement of two languages (as opposed to one) was an amendment proposed in the Senate and adopted over the objection of the Commission on Cultural Affairs and the government. J.O., Débats Parlementaires, Sénat, Sess. of Apr. 13, 1994, at 991–92. Its intent was to avoid favoring English. Finally, although this is not clear from the law, the implementing decree renders violations of article 3 punishable as a fourth class contravention. Decree No. 95-240 of Mar. 3, 1995, art. 1, J.O. Mar. 5, 1995, at 3514.

154. Art. 6. Paragraph 3 excepts conventions that involve only foreigners or which are held to promote French trade. Id. ¶ 3. Sanctions for failure to observe this law include the possible loss of government subsidies, art. 15, as well as substantial fines, Decree No. 95-240 of Mar. 3, 1995, art. 2, J.O. Mar. 5, 1995. For example, article 2 of the implementing Decree makes it a fourth class contravention to fail to include a French summary in the preparatory or working documents distributed to the participants of a conference covered by article 6 of the 1994 law. Art. 2. The provision is not limited to conferences held by public agencies, nor is it limited to conferences of any particular size. See id. Thus, a small, private conference that did not fall within the very limited exceptions of article 6 would presumably be subject to the law, even if all the participants were non-French-speaking residents of France (and therefore not foreigners within the meaning of the law). See Art. 6.

155. April Senate Report, supra note 29, at 69, 104.
subsequently attenuated\textsuperscript{156} as it became clear that its general effect would be to make France (and particularly Paris) a much less desirable location for international conferences.\textsuperscript{157}

Articles 8 through 10 of the 1994 law expand upon articles 4 and 5 of the 1975 law by requiring not only that employment contracts to be performed in France be written in French, but that all work-related documents, such as collective bargaining agreements and the company’s \textit{réglement intérieur},\textsuperscript{158} be written in French.\textsuperscript{159} Like the 1975 version of the law, a foreign employee may request his employer to provide him with a translation of his contract in his own language.\textsuperscript{160} And, to meet the criticism that the 1975 law was ineffective because it did not provide for appropriate sanctions for violations, article 8 of the 1994 law provides that if an employer does not comply with the linguistic regime governing employment contracts in France, the employer cannot “invoke against the employee [any] clauses of an employment contract written in violation of [article 8].”\textsuperscript{161}

Article 11 of the law is new. It provides: “French is the language of teaching, of examinations and competitions, and of theses and dissertations in public and private educational institutions, except where necessary for the teaching of regional or foreign languages and cultures or where the teachers are associated or visiting foreign professors.”\textsuperscript{162}

Although this provision appears to state the obvious, it prohibits the use of foreign languages in university courses, for example in medicine, where there might be large numbers of foreign students present (who might wish to study in English). It also, by its text, prohibits a professor

\begin{footnotesize}
\begin{enumerate}
\item 156. French summaries are required only at the publication stage under article 6 of the law as finally adopted.
\item 157. \textit{April Senate Report}, supra note 29, at 70–71. The Socialists tried to further reduce the scope of article 6, by limiting its application to publicly funded colloquia, but they were outvoted. \textit{J.O., Débats Parlementaires, Sénat}, Sess. of Apr. 13, at 996–1007.
\item 158. A \textit{réglement intérieur} is an official company document setting forth the company’s internal working rules. \textit{See Cornu}, supra note 90, at 675.
\item 159. Arts. 8–10.
\item 161. Art. 8.
\item 162. Art. 11, ¶ 1. Paragraph 2 of article 11 excepts from this requirement: foreign schools, schools for foreign students, and educational institutions where the instruction is intended to be of an international character (such as the International Lycée at St. Cloud). \textit{April Assembly Report}, supra note 140, at 47.
\end{enumerate}
\end{footnotesize}
from accepting a thesis in a foreign language, even if he or she has a perfect understanding of the language. 163

Finally, the 1994 law increased the restrictions on advertising job offers in any other language than French, 164 on the registration of non-French trademarks by government entities, 165 and on the use of protected marks (such as Nike's "Just do it" slogan) to avoid the ban on the use of English in advertising. 166 And, to encourage private enforcement actions, the new law codified the jurisprudence of the French Courts, 167 by providing that private associations could, under certain circumstances defined by decree, 168 bring an action as a partie civile 169 to enforce the obligations imposed by certain of the law's provisions. 170

163. The law is thus regrettable because it closes the door to students from other EU countries who cannot complete their studies in French (and is in direct contrast to other member states who have attempted to provide education in other languages, particularly English, to attract students from other EU countries). Responding to criticism that what is wrong with French is not the invasion of English but the failure of the French education system to adequately instruct students in French, the Senate included a final paragraph in article 11 providing that mastery of the French language and knowledge of 2 other languages were part of the fundamental objectives of education. The 1996 Circulaire, art. 2.4.2, supra note 152, does permit foreign language dissertations in a certain number of cases.

164. Art. 10.


166. Art. 2, ¶ 4. The legislative history indicates that a main concern for the supporters of the bill was the use of anglicisms by French Public Services and the French government itself. See April Assembly Report, supra note 140, at 9. The Report notes that in recent years many new services offered were given "English-sounding" names, such as "Chronopost" (spelled without a silent "c," whereas the French word for "post" is spelled "poste"), "France Telecom" (removal of the "accent aigu" from the letter "e" in the word "Telecom," an abbreviation of the word "télécommunications"), "le Shuttle" (name given to the train traversing the Channel Tunnel), and "Authentics" (name given to securities issued by the French Postal Service). Id. at 9-10.

167. See April Senate Report, supra note 29, at 93-95.

168. Decree No. 95-240 of Mar. 3, 1995, arts. 9-14, J.O. Mar. 5, 1995 (decreeing that associations will be approved, taking into consideration, inter alia, the number of members, purpose, and activities of the association).

169. The French criminal code specifically permits private parties and certain groups to bring a civil action for damages (action civile) based on a criminal offense and to initiate a criminal prosecution if the state fails to do so. In the civil action, the private citizen must choose between bringing the action separately in civil court or "piggybacking" it on a criminal prosecution. The private citizen (or group) must have an interest in the case and may, but need not, ask for damages. See Leila Sadat Wexler, Reflections on the Trial of Vichy Collaborator Paul Touvier for Crimes Against Humanity in France, 20 Law & Soc. Inquiry 191, 213 n.118 (1995); 2 Roger Merle & André Vitu, Traité de Droit Criminel 78-97 (Paris: Éditions Cujas, 4th ed. 1979).

170. See art. 19 (allowing qualifying private associations to enforce articles 2, 3, 4, 6, 7, and 10).

There was substantial objection to many provisions of the 1994 law, particularly by the Socialists, who abstained from its passage in the National Assembly. While all agreed with the general goal of the government (increasing the prestige of French and France in the world), many thought that the legislation was simply not an effective means of doing so and would, in fact, be counterproductive. In addition, members of the opposition pointed out that the legislation appeared to go hand in hand with other measures to which they were opposed, in particular the tightening of immigration and nationality laws and the generally restrictive attitude towards foreigners often exhibited by the Balladur government. Finally, the reliance of the 1994 law, like the 1975 law, on words officially approved by governmental commissions on terminology was too much for many: The recently published "*Dictionnaire des Termes Officiels de la Langue Française,*" with its often turgid neologisms, proved uninspiring at best, and Orwellian, at worst. It was not surprising, then, that a challenge was brought pursuant

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171. They also abstained from the votes on earlier versions in the Senate. See J.O. Débats Parlementaires, Sénat, Sess. of Apr. 14, 1994, at 1147; J.O.A.N., Sess. of May 4, 1994, at 1490 (abstentions by the Socialists in the National Assembly and the Senate on the bill's first reading); for the vote on the second reading, see J.O. Débats Parlementaires, Sénat, Sess. of May 26, 1994, at 1916–19 (Socialists abstain); J.O.A.N., Sess. of June 30, 1994, at 3898 (Socialists and Communists abstain); for the final vote, see J.O.A.N., June 30, 1994, at 3898 (Socialists abstaining); J.O. Sénat, Sess. of July 1, 1994, at 3338 (no abstentions recorded).

172. J.O. Débats Parlementaires, Sénat, Sess. of Apr. 14, 1994, at 1146–47. Indeed, each side tried to claim French nationalism as its own, producing some very acrimonious debate. See, for example, the colloquy between Senator Seligmann and Minister Toubon during the second reading of the law on May 26, 1994, J.O. Débats Parlementaires, Sénat, Sess. of May 26, 1994, at 1897–99. Too, the debate was often not without a certain irony. At one point, Minister Toubon accused the Socialists of fracturing the "social fabric" of France in the name of diversity or minority rights, suggesting a parallel between the "political correctness" (he used both the English phrase and a French translation) movement in the United States and the objections of the Socialists to the proposed language legislation. J.O.A.N., Sess. of May 3, 1994, at 1383. In a similar vein, the Senate’s Reporter of the bill, M. Jacques Legendre, professing surprise that the bill could evoke so much debate, suggested that the problem was perhaps the tendency known in the United States as "le politiquement correct." J.O. Débats Parlementaires, Sénat, Sess. of May 26, 1994, at 1894 (another Senator intervened to instruct him to "Speak french, please!" Id.). Senator Seligmann retorted that the Minister's law sanctioned the use of certain words—today English, tomorrow slang, or some other novelty—indeed, she suggested that Toubon's bill was its own form of "political correctness." *Id.* at 1897.


174. See supra note 84.
to article 61 of the French Constitution, by sixty deputies of the National Assembly.\footnote{175}

The challengers raised several objections, the most important of which, for our purposes, were that the law violated article 11 of the Declaration of the Rights of Man\footnote{176} by (a) hampering the free communication of thoughts and opinions by prohibiting the use of certain words (i.e., by regulating the content of the French language) and (b) restricting freedom of expression in teaching and research.\footnote{177}

\footnote{175. This possibility has only existed since 1974. Gilles Lebreton, *Libertés publiques et droits de l'homme* 189–93 (Paris: Armand Colin, 1995). Previously, only the President of the Republic, the Prime Minister, the President of the National Assembly, or the President of the Senate could refer the question of an ordinary law's constitutionality to the Constitutional Council. \textit{Id.} The reform of 1974 has increased constitutional review of ordinary legislation enormously; from March 1959 (constitutional review of legislation was first possible in France under the 1958 Constitution) to the end of 1974, the Constitutional Council issued nine decisions, as opposed to 203 decisions (of which 200 were referred by the Parliament) during the period from the end of 1974 to March 1994. Louis Favoreu, *Origines et Bilan Statistique*, in \textit{Vingt ans de Saisine Parlementaire du Conseil Constitutionnel} 15, 19 (Paris: Economica, 1995). See also Bernard Poullain, *La Pratique Française de la Justice Constitutionnelle* 19–30 (Paris: Economica, 1990) (describing the evolution of constitutional controls on French legislation).

176. The French Declaration of the Rights of Man and of the Citizen was adopted by the self-proclaimed National Assembly in 1789. Lebreton, \textit{supra} note 175, at 69. Although not technically part of the French Constitution, it is essentially incorporated by reference into it (and has been since 1791, see Albert P. Blaustein, *Constitutions of the World* 19 (1993)) by the preamble of the Constitution of 1958 (France's current constitution) which provides: "The French people hereby solemnly proclaims their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, reaffirmed and complemented by the Preamble of the Constitution of 1946." Fr. Const., Pmbl., \textit{translated in VII Constitutions of the Countries of the World} 21 (Albert P. Blaustein & Gisbert H. Flanz eds., 1993). Although this reference has been considered sufficient to endow the Declaration with legal force, the use of the word "attachment" originally gave rise to some question of the legal efficacy of the preambular reference. Fortunately, the Constitution of 1958 also created the Constitutional Council and endowed it with the right to review laws for "constitutionality." French Const., art. 61. On July 16, 1971, the Constitutional Council, in a celebrated decision, endowed the word "attachment" in the preamble with legal effect. Thus, the word "Constitution" in article 61 gave the Council authority to review legislation with regard to four sources: the 1958 Constitution, the 1789 Declaration, the Preamble of 1946, and "fundamental principles recognized by the laws of the Republic." Judgment of July 16, 1971, Con. const., \textit{reprinted in} Jean Rivero, \textit{Le Conseil Constitutionnel et les Libertés} 24–26 (Paris: Economica, 2d ed. 1987). The decision's significance is noted in Rivero, \textit{id.} at 9–24, and in Lebreton, \textit{supra} note 175, at 92–94.

177. Judgment of July 29, 1994, Con. const., 1994 D.S.L., No. 94-345, at 2 (on file with author.) The challengers also argued that the law unconstitutionally infringed upon the freedom of commerce and industry, as well as violated the principles of proportionality and equality in imposing excessive punishments. \textit{Id.} These arguments were rejected along with various procedural infirmities alleged by the complainants. \textit{Id.}
a. Regulating the Content of the French Language

The version of the 1994 law that was originally presented to the French Senate differs from the text as promulgated. Several articles of the original text proposed that in addition to making French mandatory in various contexts (advertising, notices, etc.), foreign terms were to be forbidden. In a sense this was uncontroversial—the 1975 law had the same requirement. Article 1 of the 1975 law provided:

Use of the French language is compulsory with respect to the name, the offer, the presentation, the advertising, written or spoken, the instructions for use, the description of the scope and conditions of [the] warranties of a good or a service, as well as with respect to invoices and receipts. The use of any foreign term or expression is prohibited if there exists any term or expression approved according to the conditions set out by Decree No. 72-19 of 7 January 1972 relative to the enrichment of the French language.\textsuperscript{178}

The bill presented to the Senate in 1994 would have extended the scope of this provision by revising the last sentence as follows: "The use of any foreign expression or term is prohibited if there exists any French expression or term having the same sense, in particular an expression or term approved according to the conditions provided for in the regulations (dispositions réglementaires) on the enrichment of the French language."\textsuperscript{179}

The addition of the words "in particular" was, of course, crucial, for they would essentially outlaw any foreign term if a French equivalent existed, leaving to the judge the task of determining whether a particular word had a French equivalent or not. The Senate Commission on Cultural Affairs objected to the proposed change, pointing out that it would introduce uncertainty into the legal definition of the French language (which was the basis for the criminal sanctions imposed by the law).\textsuperscript{180} The government thereupon withdrew the proposed change and returned to the original text, and the law was passed as such. The requirement to use the terms approved by the Commissions on Terminology appeared in articles 2, 3, 8, 9, 10, and 12 of the 1994 law as finally adopted.

\begin{itemize}
  \item \textsuperscript{178} Law No. 75-1349 of Dec. 31, 1975, art. 1, J.O. Jan. 4, 1976, at 189.
  \item \textsuperscript{179} Projet de Loi relatif à l'emploi de la langue française, No. 291, Sénat, Sess. of Jan. 27, 1994, at 5 (emphasis added).
  \item \textsuperscript{180} April Senate Report, supra note 29, at 46-47.
\end{itemize}
The challengers alleged that this requirement violated article 11 of the Declaration of the Rights of Man and of the Citizen, by infringing on the right of free expression. The French Constitutional Council agreed. Pointing out that the rights protected under article 11 of the Declaration are fundamental freedoms (libertés fondamentales), the Council noted that article 34 of the French Constitution permits the legislature to regulate these liberties only in order to render their exercise more effective or to reconcile them with other constitutional principles. Significantly, the Council held that, as article 2 of the French Constitution proclaims French to be the official language of France, the legislature may reconcile that article with article 11 of the Declaration by imposing the use of French, even on private citizens. What article 11 forbids, however, is any regulation of the kind of French private citizens choose to speak or to write:

[Article 11] implies for everyone the right to choose the terms he judges the most appropriate to best express his thoughts; the French language evolves, as any living language does, in integrating into its normal vocabulary terms from different sources, whether they be regional expressions, popular sayings, or foreign words.

Thus, the Council held that the legislature could not impose the use of particular French terms and expressions, under penalty of sanctions, on private citizens. It was, however, entitled to impose a particular linguistic content upon public entities (personnes morales de droit public) or private individuals or entities undertaking a public service mission. Because the requirement in articles 2, 3, 8, 9, 10, and 12 of

181. Article 11 provides: "The free communication of thoughts and opinions is one of the most precious rights of man; every citizen may therefore speak, write and publish freely, provided he shall be liable for the abuse of this freedom in such cases as are determined by law."
183. Id.
184. Id. It also held that this provision was unconstitutional as applied to radio or television stations (whether public or private). Id.
185. Id. The public/private distinction made by the Council was not unusual in French law. What was interesting about the decision, however, was that this was the first time that the Council was forced to consider the application of article 2 of the Constitution in light of article 11 of the Declaration of the Rights of Man. Its holding (that it was essentially up to the legislature, within certain constraints of course, to reconcile the two provisions) was consistent with its prior jurisprudence. See Jean-Pierre Camby, Le Conseil constitutionnel et la langue française, Revue du Droit public et de la science politique 1663, 1669 (1994); Patrick Wachsmann, Note, 1994 L'actualité juridique—Droit administratif 734.
the law did not distinguish between the obligations imposed upon public entities and private individuals, it was unconstitutional.\textsuperscript{186}

\textbf{b. Restricting Freedom of Expression in the Context of Teaching and Research}

It is interesting to note that article 11 of the 1994 law, which affects teaching and education, was not challenged, nor did the Council refer to it in its ruling.\textsuperscript{187} What were challenged, however, were the requirements of article 7 that: (i) publications, reviews, and communications in a foreign language, distributed in France either by public entities or private persons receiving public funds or acting in a public capacity, be accompanied by a summary in French; and (ii) those receiving research and teaching grants from public entities ensure either that their work be published or distributed in French or, if their publications are in a foreign language, that they be translated into French.\textsuperscript{188}

The challenge to the first part of article 7 was not successful. The Council pointed out that if article 11 of the Declaration of the Rights of Man guaranteed freedom of expression and communication in teaching and in research, it nevertheless had to be reconciled with "other rights and principles of constitutional value."\textsuperscript{189} The second paragraph did not withstand constitutional scrutiny, however, the Council holding that:

[Whereas] even taking into consideration the dispositions of article 2 of the Constitution aforementioned the legislature has imposed, by the second paragraph of article 7, on teachers and researchers, whether they be French or foreign, constraints of such a nature so as to injure the free exercise of the freedom of expression and communication in teaching and research; and [whereas] the option to grant exceptions [to this rule] conferred upon the Minister of Research (\textit{ministre de la recherche}) to which are attached no conditions relative, in particular, to an evaluation of the scientific or educational interest of the work [in question] do not constitute enough of a guaranty to preserve this freedom; therefore the second

\textsuperscript{186} Judgment of July 29, 1994, at 5. Article 14's requirement, however, that French public institutions refrain from using foreign trademarks or tradenames (accompanied by the restriction that foreign terms or expressions could not be used if there exist officially designated French equivalents) was, by the same token, held to be constitutional. \textit{id.}

\textsuperscript{187} See supra notes 162–63 and accompanying text.

\textsuperscript{188} \textit{Projet de Loi relatif à l'emploi de la langue française}, No. 502, Sénat, Sess. of June 14, 1994, art. 5; Judgment of July 29, 1994, at 7.

\textsuperscript{189} Judgment of July 29, 1994, at 7.
paragraph of article 7 of the law must be regarded as contrary to the Constitution.\(^{190}\)

Although the decision of the Constitutional Council softened the impact of the *loi Toubon*, it did not touch the law’s basic structure or affect its fundamental premise: The French, whether private citizens or public employees, may be compelled by their government to use French in all aspects of their public life.\(^{191}\)

### III. LANGUAGE REGULATION IN THE UNITED STATES

#### A. The English Language

Whereas France used law to enshrine the French language with primacy as the language of public discourse, Britain took a different course. Like French, the English language has had a checkered history of conquest and change.\(^{192}\) Indeed, modern English was considerably

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190. *Id.* at 7–8. This was the first time the Council applied article 11 of the Declaration to protect the liberty of teaching and research, see Camby, *supra* note 185, at 1669, although it has protected this liberty in other contexts, see Rivero, *supra* note 176, at 85–99.

191. Although it is too soon to know whether the 1994 law will be any more successful than its 1975 predecessor, the government, see Jean-Pierre Péroneel-Hugoz, *La politique de la langue française va être reprise en main par M. Douste-Blazy*, Le Monde, March 27, 1996, at 28, and private citizen groups have repeatedly reiterated their commitment to carry out the obligations imposed by the *loi Toubon*. For example, a brochure entitled, *Langue Française, Son Emploi en France, Guide de l’Usager*, was recently published by the non-profit group “Avenir de la langue française.” The brochure exhorts citizens to report violations of the *loi Toubon* to the group and promises to take action or to help the victim to do so himself. As an example of an actionable violation, the brochure cites a “no smoking” sign affixed to a restaurant wall. *Id.* at 21. The only successful prosecution reported to date is a case filed against a branch of “The Body Shop,” an English company. According to press reports, the Body Shop’s Chambéry store was fined 1000 francs (about $200) for failing to include French language instructions in its products. Péroneel-Hugoz, *supra.* Apparently, however, the magistrate refused to hold its decision applicable to the entire organization, holding instead that each store would have to be pursued individually. *Id.* This suggests that the French courts may still be reluctant to vigorously enforce language laws.

192. Like France before the coming of the Romans, the part of Britain now called England was inhabited by peoples speaking a variation of Celtic. As the territory was conquered by the Romans, then by Germanic tribes, Celtic died out and the Low West German dialects spoken by the Germanic tribes later fused to become Old English (although regional differences remained, and still persist today). England was subsequently conquered by the Danes, whose language also influenced Old English greatly. L.M. Myers & Richard L. Hoffman, *The Roots of Modern English* 55–107 (2d ed. 1979). There are suggestions that peoples speaking a language related to the Basques of modern Spain and France inhabited England even prior to the Celts. Albert C. Baugh & Thomas Cable, *A History of the English Language* 43–44 (3d. ed. 1978). Baugh & Cable write:

> We are so accustomed to think of English as an inseparable adjunct to the English people that we are likely to forget that it has been the language of England for a comparatively short period
influenced by French, which came to England with the Norman invasion in the eleventh century. French became the language of the aristocracy, the law, and the church, and it was not until 1362 that an act of Edward III provided that the official language of the English court system would be English (and Latin), as opposed to French.

in the world's history. Since its introduction into the island about the middle of the fifth century it has had a career extending through only fifteen hundred years. Yet this part of the world had been inhabited by man for thousands of years, 50,000 according to more moderate estimates, 200,000 in the opinion of some.

Id. at 42.

193. The conquest of England by William brought French to England, and English disappeared as an official language (and practically as a written language, although it was still spoken by a majority of the population). "For two hundred years after the Norman Conquest, French remained the language of ordinary intercourse among the upper classes in England." Baugh & Cable, supra note 192, at 113. See also Margaret M. Bryant, Modern English and Its Heritage 58–59, 290 (1948). When English writings reappeared, it was clear that French borrowings were extensive—indeed, "the French borrowings were so extensive that they changed the whole balance of the language and prepared the way for the incomparable hospitality to words from other languages that English has shown ever since. The English vocabulary is now much the largest in the world, and well over half of it comes from French and Latin sources." Myers & Hoffman, supra note 192, at 124. See also Otto Jespersen, Growth and Structure of the English Language 91, 107 (9th ed. 1960). Of course, one may recall, there was more than one version of "French" at that time. The French brought to England was Norman French, not a particularly prestigious dialect of French. Particularly with the loss of Normandy by John in 1204, Parisian French (the dialect spoken in the île de France region) rather than Norman French rose to preeminence, and its acquisition was sought after by English elites. For a wonderful exposé of this process from a linguist's perspective, see Barbara M. H. Strang, A History of English 218–19 (1970). See also Thomas Lounsbury, History of the English Language 75 (1907). French began to lose its hold in England with the loss of Normandy in 1204 and the ensuing separation of England and France.


195. The act provided, inter alia:

[A]ll pleas which shall be pleaded in [the King's] Courts whatsoever, before any of his justices whatsoever, or in his other Places, or before any of his other Ministers whatsoever, or in the Courts and Places of any other Lords whatsoever within the Realm, shall be pleaded, shewed, defended, answered, debated, and judged in the English Tongue, and that they be entered and enrolled in Latin.

Statute of Pleading, 1362, 36 Edw. 3, ch. 15 (Eng.), reprinted in 1 Statutes of the Realm 375–76 (London, 1810). Ironically, the original is in French. Like the ordonnance of Villers-Cotterêts, the Statute of Pleading referred to the "mischiefs" that had arisen due to the use of French as the language of the law. As was the case in France, custom died hard, and French continued to be used for some time as the unofficial language of the law. See, e.g., W.J. Jones, The Elizabethan Court of Chancery 193 n.5 (1967) ("Fifteenth-century bills were generally in law French or Latin. The first bill in English dates from around the time of Henry V."); see also English for Lawyer's Act, 1731, 4 Geo. 2, ch. 26 (Eng.), reprinted in 16 Statutes in Large 248–49 (1765): An Act Turning the Books of the Law and all Process and Proceedings in Court of Justice, into English, 1650, 2 Acts & Ordinances of the Interregnum 1642–60 (C.H. Firth & R.S. Rait eds., 1911).
Linguistic minorities in the British Isles fared no better than their French counterparts, and, although English was never formally purified by an Academy created for that purpose, certain dialects of English, in particular the West Saxon dialect spoken at Court, became "standard" English. Efforts to standardize and improve the English language led, in the eighteenth century, to the publication of Samuel Johnson's *A Dictionary of the English Language*. Grammars made their appearance around the same time and included the highly influential (and authoritarian) *Short Introduction to English Grammar*, published by Robert Lowth, the rules of which have governed American as well as English writing and have plagued writers ever since. In this way,

196. See infra note 215.

197. Although one might wish to attribute the failure to found an English Language Academy in Britain to some noble sense of respect for personal liberty, see Perea, *infra* note 16, at 283–84, the most probable reason is that the proposal for an English Language Academy, advocated by Dryden and formally proposed by Dean Swift in 1712, would have been adopted (and the Academy established) by Queen Anne, had she not died shortly after the plans had been made. Baugh & Cable, *supra* note 192, at 265–67. (George I, who succeeded her, "was not sufficiently interested in the English language even to learn to speak it himself. The movement accordingly died."") Myers & Hoffman, *infra* note 192, at 199.) Later proponents of an academy faced growing skepticism (the value of the French Academy's work was doubted) and vigorous public resistance from Samuel Johnson, who nevertheless wrote of his own dictionary that it was "a dictionary by which the pronunciation of our language may be fixed, and its attainment facilitated; by which its purity may be preserved, its use ascertained, and its duration lengthened." Baugh & Cable, *infra* note 192, at 272 (quoting Samuel Johnson, *The Plan of an English Dictionary*).

198. During the "English Renaissance," the period from 1500 to 1650, there were debates in England, as well as France, about the English language. The spread of education, the introduction of printing, the weakening of class distinctions, and a growing belief that the development of the language could and should be controlled all contributed to a flowering of writing. At the same time, while grammar essentially went unnoticed, spelling conventions were adopted. The general term often used to describe Renaissance English is "luxuriant." As Myers and Hoffman note, this "suggests both the richness of the language and its freedom from the sorts of restrictions that later came to be applied to it. Although Court English had become a national standard, it was in itself not nearly so rigid as it later became." Myers & Hoffman, *infra* note 192, at 193.

199. Published in London, in 1755. *Id.* at 205–10. Although not the first dictionary compiled in England, Johnson's work was so influential that "he came to be regarded as a sort of semi-official one-man academy." *Id.* at 205.

200. *Id.* at 217:

Lowth either invented or gave general currency to a number of . . . shibboleths that have been taking up a great deal of time in schools ever since, such as the distinction between will and shall . . . . The result was that in many schoolrooms the study of grammar became an exercise in fault-finding.
standardization of English was accomplished, not by an Academy or by the law, but by the schools.\textsuperscript{201}

B. Language Policy in the United States

1. Revolutionary Ideas

This article does not attempt to treat the history of language in the United States completely, but confines itself to two general observations. At the time of the first European immigration, over 500 Native American languages belonging to about fifteen language families may have been spoken in North America.\textsuperscript{202} In addition, many European languages, including French, Spanish, German, and Dutch, competed with and coexisted with English during the colonial period.\textsuperscript{203} To colonial and indigenous languages must be added the languages spoken by other immigrants and the languages of West Africa.\textsuperscript{204}

But, while the Americans of colonial times may have been a "polyglot people," English was the predominant language of public life.\textsuperscript{205} Native Americans continued using their languages in spite of enormous obstacles to doing so. Yet, there has always been an implicit (and sometimes explicit) assumption that Native Americans would exchange their indigenous languages for English.\textsuperscript{206} Colonial and immigrant


\textsuperscript{203} Dennis Baron, \textit{Federal English}, in \textit{Language Loyalties}, supra note 8, at 37.

\textsuperscript{204} Nancy Faires Conklin & Margaret A. Lourie, \textit{A Host of Tongues: Language Communities in the United States} 3-58 (1983).

\textsuperscript{205} Thus we have, for the most part, "conducted our public life as if we were all monolingual English speakers." \textit{Id.} at xiii.

\textsuperscript{206} The pressure exerted by the colonists on Native Americans was, with few exceptions, enormous. Assimilation techniques (linguistic or otherwise) included genocide, forced removal, and forced resettlement, followed later by the extremely rigid educational policies promoted by the Federal Bureau of Indian Affairs. Leap, supra note 202, at 134-35. The situation with respect to language has improved at least in law with the passage of the Native American Languages Act, which provides:

(1) the status of the cultures and languages of Native Americans is unique and the United States has the responsibility to act together with Native Americans to ensure the survival of these unique cultures and languages;

(2) special status is accorded Native Americans in the United States, a status that recognizes distinct cultural and political rights, including the right to continue separate identities;
languages have not fared much better over the long term, although the assimilation techniques used on their speakers were generally less draconian. While monolinguilism was not a necessary choice, and the emerging nation could have actively encouraged multilingualism, it did not: "[T]he imperative of American history and tradition has been an inexorable movement from multilingualism to monolingualism. *E Pluribus Unum.* The Tower of Babel in reverse."

The American revolutionaries, consistent with the attitude of the English before them, did not include an "official language" provision in their Constitution. Early American language policy was thus the absence of a policy, but it is hard to read much significance into this fact. The

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(7) it is clearly in the interests of the United States, individual States, and territories to encourage the full academic and human potential achievements of all students and citizens and to take steps to realize these ends;

(8) acts of suppression and extermination directed against Native American languages and cultures are in conflict with the United States policy of self-determination for Native Americans;

(9) languages are the means of communication for the full range of human experiences and are critical to the survival of cultural and political integrity of any people; and

(10) language provides a direct and powerful means of promoting international communication by people who share languages.


Section 104 of the act states that "it is the policy of the United States to preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages." Section 105 adds that "the right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including publicly supported education programs." The contrast between the sentiments expressed in the Native American Languages Act and those expressed by the sponsors of the ELA is remarkable, to say the least.

207. Although most citizens of the United States, like most citizens of France, assume that monolinguilism is the natural and ideal state of human society, monolingual societies are in fact the exception. Indeed, even officially monolingual countries such as the United States and France have large bilingual communities within them. François Grosjean, *Life with Two Languages* I-41 (1982).


209. Perea argues that the fact that the Continental Congress had the Articles of Confederation translated into French and German "explicitly recognized the linguistic and cultural pluralism within the new American realm." Perea, supra note 16, at 286. This, I think, proves too much. While the Continental Congress may have had the Articles of Confederation translated into French and German, it did so mainly "in local areas where members recognized a need for spreading information to promote loyalty to the cause of Independence," Shirley Brice Heath, *Why No Official Tongue*, in *Language Loyalties*, supra note 8, at 20–23. For example, the order to translate the documents into French was for the purpose of "conciliating the affections of the Canadians towards these United States." 9 *Journals of the Continental Congress 1774–1789*, at 981 (Worthington C. Ford ed., 1907) (1777). The record is silent as to why a German translation was made. Yet it is probably true that the "nationalism" of the American revolutionaries, directed against absolute rulers and deeming that the
reigning political elites of Revolutionary America were, with few exceptions, of Anglo-Saxon origin. They may have thought that the issue of an official language was self-evident—after all, the Constitution and Declaration of Independence were written in English, not some other tongue.

Some have argued that the failure to specify an official language was a deliberate, carefully thought out political strategy on the part of the founding fathers—that they did not adopt an official language policy because the English had not and because “they felt language to be a matter of individual choice.” This view simply reads too much into the record of the Continental Congress, relies on the fact that certain states with large immigrant populations, such as Pennsylvania and Louisiana, published their laws in second languages, and probably contains a major legal misconception—the idea that a country would have to have a statute (from a legislature) in order to have an official language. Although individual freedom was a concept deeply embedded in the American culture, and the Revolutionary period was clearly more

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nation was a community of equal citizens capable of determining their own fate, was not the cultural nationalism that became so important later in Europe. Cultural nationalism held that each person has a language, history, world view, and culture of their own to protect and that each nation has a national spirit (Volksgeist). A corollary of this was that national identity meant a sense of difference from other nations and a fear of foreigners. Cultural nationalism evolved into a new form of political nationalism during the nineteenth century. On this point, see R.R. Palmer & Joel Colton, A History of the Modern World Since 1815, at 432-37 (5th ed. 1978).

210. If one takes as examples the signers of the Constitution and the first members of the United States Supreme Court, for example, virtually all were of Anglo-Saxon origin. This follows from the fact that English-speaking settlers outstripped by far settlers speaking other languages. By 1700, the white English and African population of North America was 250,000 compared to 7500 French and Spanish speakers; by 1790, the white population of the new nation was 76 percent English-speaking (but not necessarily of English linguistic heritage, supra note 3). Conklin & Loudie, supra note 204, at 64-65.


212. Id. at 11. Shirley Brice Heath makes the same argument in her excellent article, A National Language Academy?, supra note 201. She argues that there was an ideological climate favoring linguistic diversity in the new nation, id. at 12-15, and that, “[w]hen political leaders recognized language as a problem, they did so most consistently in the institutional contexts of law and learning; and here they saw language as a pragmatic tool—not as an ideal or as an ideological symbol.” Id. at 11. I do not really disagree with Brice’s analysis, except to the extent that she ascribes an intent to promote multiculturalism (in the twentieth century sense) and diversity to the founding fathers.


linguistically tolerant than either the late nineteenth or twentieth centuries would prove to be, one must recall that the English adopted policies of anglicization towards all indigenous linguistic minorities of the British Isles. Gaelic, Welsh, Cornish, and Manx were all subjected to intense pressure from English and are now either extinct or endangered minority languages.¹²¹ These traditions are still present in British culture and were part and parcel of the founding fathers’ education and understanding of the world.²¹⁷

As has been noted elsewhere, political ideas about the role of the English language were, at that time, characterized by two major themes—pragmatism and universalism.²¹⁸ Pragmatism, because it was

²¹⁵ The English, particularly under the Tudors, actively anglicized Wales, imposing English as the language of government and the law; Welsh was maintained only as the language of the church. Linguistic Minorities, supra note 37, at 183–86. Irish was officially proscribed by the English (see, e.g., the “Act for the English order, habite and language” adopted in 1537 in which Irish was henceforth excluded from government, administration and the law). Id. at 198–99. This policy essentially continued until the twentieth century, when Irish began to make a comeback, particularly with the founding of the Irish Free State in 1922. Id. at 200. In Great Britain itself:

Inasmuch as a language policy existed in...the first half of the twentieth century, it focussed on the unacceptability of Celtic languages and non-standard dialects of English in education, and the importance of teaching the standard. British schools were monolingual, monocultural institutions, one of whose functions was to enlighten those who departed from received linguistic and cultural norms.

Viv Edwards, Language Policy in Multicultural Britain, in Linguistic Minorities, Policies and Pluralism 49, 49 (John Edwards ed., 1984). Manx (which was spoken on the Isle of Man) and Cornish (spoken in Cornwall) are now considered extinct, although Cornish language enthusiasts are attempting to revive Cornish. Irish, Scots, and Welsh are still spoken to various degrees. See, e.g., Adam J. Aitkin, The Good Old Scots Tongue: Does Scots Have an Identity?, in Minority Languages Today 72 (Einar Haugen et al. eds., 1980); Desmond Fennell, Can a Shrinking Linguistic Minority Be Saved? Lessons from the Irish Experience, in Minority Languages Today, supra, at 32; David Greene, The Atlantic Group: Neo-Celtic and Faroese, in Minority Languages Today, supra, at 1; Bedwyr Lewis Jones, Welsh: Linguistic Conservatism and Shifting Bilingualism, in Minority Languages Today, supra, at 40; Derick Thomson, Gaelic in Scotland: Assessment and Prognosis, in Minority Languages Today, supra, at 10. In light of this history, it is almost unbelievable that Marshall should point to Britain as an affirmatively multicultural, multilingual nation. See Marshall, supra note 212, at 10.

²¹⁶ Like the United States, Britain remains attached to its monolingualism. According to a recent report by the British Department of Trade and Industry, one British company in four surveyed last year lost business through difficulties with foreign languages. The report relates as an example the discovery of a letter written in German locked away in a filing cabinet of a bankrupt company, apparently because no one had been able to translate it. Had someone done so, the firm would have had the largest order in its history. Those Strange Languages, Int’l Herald Trib., May 3, 1966, at 6.

²¹⁷ As Dennis Baron points out, “[t]he English-first movement in America was reinforced by the political identification of the American language with Americanism, but it began locally at least a generation before the establishment of the United States, as a defensive reaction to German immigration in Pennsylvania.” Baron, supra note 213, at 64.

²¹⁸ Heath, supra note 201, at 17.
believed that English and, in particular, American English, would be a practical vehicle to disseminate scientific knowledge and political thought; universalism, because it was believed that English would spread American views of “liberty, prosperity, and glory.” Some leaders even proposed plans for purifying and standardizing the American English language. With some foresight, John Adams, who would one day be President, urged Congress to establish the “American Academy for refining, improving, and ascertaining the English Language”:

The honor of forming the first public institution for refining, correcting, improving, and ascertaining the English language, I hope is reserved for congress . . . . It will have a happy effect upon the union of the States to have a public standard for all persons in every part of the continent to appeal to, both for the signification and pronunciation of the language . . . .

. . . English is destined to be in the next and succeeding centuries more generally the language of the world than Latin was in the last or French is in the present age. The reason of this is obvious, because the increasing population in America, and their universal connection and correspondence with all nations will, aided by the influence of England in the world, whether great or small, force their language into general use, in spite of all the obstacles that may be thrown in their way, if any such there should be.

Adams’s proposal, like Swift’s, was never consummated. Instead, the United States had to rely on its “one-man academy,” Noah Webster,
for what standardization and purification of the American English language there would be.223

2. Nativist Movements and Naturalization Laws

The nineteenth century saw the beginning of what is now termed "nativism" in American politics.224 German, French, and Spanish continued to flourish (and remained official languages) in states in which they had been colonial languages. At the same time, however, an Anglo-Saxon cult developed which, particularly after the Civil War,225 led to calls to restrict the use of foreign languages in the United States and to restrict immigration and naturalization. By the end of the century, virtually all the states having official languages other than English no

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224. John Higham defines nativism as "intense opposition to an internal minority on the ground of its foreign (i.e., 'un-American') connections." Higham, *supra* note 214, at 4. He adds:

Continuous involvement in larger movements of American nationalism has meant that nativism usually rises and falls in some relation to other intense kinds of national feeling. The nationalist nexus has also meant that the nativist's most characteristic complaint runs against the loyalty of some foreign (or allegedly foreign) group. Seeing or suspecting a failure of assimilation, he fears disloyalty. Occasionally the charge of disloyalty may stand forth naked and unadorned, but usually it is colored and focused by a persistent conception about what is un-American.


longer did so, and in 1906, knowledge of the English language was made an explicit criterion for citizenship.

During World War I, the federal government undertook an extraordinary effort to reach foreign language speakers, encouraging them in their own languages to buy Liberty Bonds and to support the war effort. Much of this effort, however, was self-serving rather than some generous recognition of cultural pluralism, for there was formidable opposition to the war, opposition which the government sought to suppress or dissuade. Whatever tolerance there had been towards the foreign languages still being read, spoken, and written in the United States seemed to disappear after the war when anti-German hysteria surfaced. At that time, according to one study, twenty-three states enacted statutes that imposed restrictions upon instruction in (and of) foreign languages, particularly German. These statutes were generally

226. For example, Pennsylvania, Louisiana, New Mexico, and Hawaii are states that have been or are officially bilingual. New Mexico is an interesting case. It was predominantly Spanish-speaking when annexed by the United States with the Treaty of Guadalupe Hidalgo in 1848. When time came for the territory to become a state, however, language became an issue; indeed, the Spanish-speaking characteristic of its people was one of the reasons statehood was originally opposed by some members of Congress during the last quarter of the nineteenth century. Baron, supra note 217, at 94–101. When the enabling act for statehood was finally passed in 1910, it provided that there should be "a system of free public schools that 'shall always be conducted in English,'" and that all state officials would be proficient in English. Id. at 102 (quoting the act). The state nevertheless continued to be effectively bilingual for quite some time afterwards. Louisiana (in certain limited respects) and Hawaii continue to be bilingual—Pennsylvania does not.

227. Section 8 of the Naturalization Act of 1906 provided that "no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language." Naturalization Act of 1906, ch. 3592, § 8, 34 Stat. 596, 599. In 1950, the Subversive Activities Control Act added reading and writing to the speaking requirement. Pub. L. No. 831, ch. 1024, § 30, 64 Stat. 1018, 1018 (1950) (repealed 1952). The law currently in force conditions naturalization on the alien's demonstration of:

An understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: Provided, That the requirements of this paragraph relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable condition shall be imposed upon the applicant.


228. Heinz Kloss, supra note 213, at 33.


230. Ross, supra note 229, at 133. Even prior to the war, many states had laws mandating English as the language of instruction in schools. Frederick Luebke argues that:

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popular\textsuperscript{221} and supported by a broad cross-section of society, which perceived them as a necessary means of "Americanization"—English became "widely regarded as the key to fully realized citizenship."\textsuperscript{222} Several of those statutes were challenged and invalidated by the U.S. Supreme Court in \textit{Meyer v. Nebraska}\textsuperscript{223} and its companion case, \textit{Bartels v. Iowa}.\textsuperscript{224}

\begin{itemize}
\item \textbf{Meyer v. Nebraska}
\end{itemize}

Any study of language regulation in the United States would not be complete without an examination of the decision in \textit{Meyer}.\textsuperscript{225} Although \textit{Meyer} actually involved the statutes of several states, it is sufficient for our purposes to examine only the law that was ultimately challenged by

\begin{itemize}
\item [B]y the time World War I broke out in 1914, several separate trends in the regulation of foreign languages could be discerned. First, there were laws that provided a legal basis for instruction in foreign languages as a practical measure in communities dominated by non-English-speaking people; second there was an opposite trend that favored laws to establish English as the language of the schools; and third, some states passed laws that made foreign-language instruction possible for English-speaking pupils. Frederick C. Luebke, \textit{Legal Restrictions on Foreign Languages in the Great Plains States, 1917–1923}, in \textit{Languages in Conflict: Linguistic Acculturation on the Great Plains} 1, 3 (Paul Schach ed., 1980).
\item \textsuperscript{221} As Woodhouse points out, the Siman Act, see infra notes 236–38 and accompanying text, was "not solely a response to wartime panic but reflected preexisting tensions—political, educational, generational, and cultural—which the war had exacerbated but did not create." Woodhouse, \textit{supra} note 224, at 1009.
\item \textsuperscript{222} Woodhouse, \textit{supra} note 224, at 1010–11.
\item \textsuperscript{223} 262 U.S. 390 (1923).
\item \textsuperscript{224} 262 U.S. 404 (1923).
\item \textsuperscript{225} The specific holdings in \textit{Meyer} and \textit{Bartels} were followed in two similar cases: Farrington v. Tokushige, 273 U.S. 284 (1927) (holding that Hawaii's "[A]ct relating to foreign language schools and teachers thereof" violated the Fifth Amendment), and Yu Cong Eng v. Trinidad, 271 U.S. 500 (1926) (holding that the "Chinese Bookkeeping Act," which forbade the keeping of books of account in languages other than English, Spanish, or Filipino dialects, violated the due process clause of the Philippine Bill of Rights as a denial of equal protection). In addition, \textit{Meyer} has been cited literally hundreds of times in support of analogous propositions. Because the thrust of this article is the comparison of French and U.S. language legislation, a detailed analysis of \textit{Meyer}'s place in American Constitutional doctrine is not possible. Yet it is worth mentioning that \textit{Meyer}, a case typically cited for its tolerant view of intellectual freedom and liberal values, see, e.g., Peggy Cooper Davis, \textit{Contested Images of Family Values: The Role of the State}, 107 Harv. L. Rev. 1348, 1348, 1369–71 (1994) (stating that \textit{Meyer} stands for individual and social autonomy), also has what Barbara Bennett Woodhouse refers to as a "dark side": "Stamped on the reverse side of the coinage of family privacy and parental rights are the child's voicelessness, objectification, and isolation from the community." Woodhouse, \textit{supra} note 224, at 1000–01.
\end{itemize}
Robert Meyer—the Nebraska statute known as the Siman Act after the Senator who introduced the bill. The Nebraska law provided:

Section 1. No person, individually or as a teacher, shall in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.

Section 2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.

Section 3. Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine of not less than twenty-five dollars ($25), nor more than one hundred dollars ($100) or be confined in the county jail for any period not exceeding thirty days for each offense.

Section 4. Whereas, an emergency exists, this act shall be in force from and after its passage and approval.

The similarity between the Siman Act and article 11(I) of the loi Toubon is striking. Both attempt to control the language of education by imposing the use of one language in private as well as public institutions. In addition, both ban the use of foreign languages as a medium of instruction (subject to certain exceptions, in the case of the French law). Finally, while it is not clear that a teacher violating the loi

236. 1919 Neb. Laws ch. 249.
237. Ross, supra note 229, at 140–41 n.81. See also Luebke, supra note 230, at 12.
238. Nebraska Dist. of Evangelical Lutheran Synod v. McKelvie, 175 N.W. 531, 532–33 (Neb. 1919) [hereinafter McKelvie I] (quoting 1919 Neb. Laws ch. 249). While this statute did not specifically attack the German language, others did, such as a Louisiana law that provided:

[1] It shall be unlawful for any teacher, professor, lecturer, person, or persons, employed in the public or private elementary or high schools, colleges, universities, or other institutions in the State of Louisiana that in any way form a part of the public or private educational system, or educational work, in the State of Louisiana, to teach the German language to any pupil or class.

239. See supra note 162 and accompanying text. Although the loi Toubon does not ban the teaching of foreign languages as languages, it appears to prohibit the teaching of other subjects in a foreign language, subject to the exceptions listed in the statute.

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Toubon could be subject to criminal sanctions\(^{240}\) (as Robert Meyer was, although ultimately unsuccessfully), the use of the criminal law to enforce the use of a particular language is authorized by both legislative enactments.

The Siman Act was initially upheld by the Nebraska Supreme Court in *Nebraska District of Evangelical Lutheran Synod v. McKelvie* ("McKelvie I")\(^{241}\), which found the law within the state’s power to "protect the lives, liberty, and property of its citizens, and to promote their health, morals, education, and good order."\(^{242}\) The court explained:

It is a matter of general public information, of which the court is entitled to take judicial knowledge, that it was disclosed that thousands of men born in this country of foreign language speaking parents and educated in schools taught in a foreign language were unable to read, write, or speak the language of their country, or understand words of command given in English. It was also demonstrated that there were local foci of alien sentiment, and that, where such instances occurred, the education given by private or parochial schools in that community was usually found to be that which had been given mainly in a foreign language.\(^{243}\)

The court felt compelled to narrow the statute, however, by holding that it applied only to education given during the compulsory educational periods set out in state law.\(^{244}\) Thus, schools could offer foreign language instruction "provided that such instruction is given at such time that it will not interfere with the required studies."\(^{245}\)

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240. The absence of any penalties for violations of this article either in the *loi Toubon* or its implementing decree suggests that criminal penalties could not be imposed.

241. 175 N.W. 531 (1919).

242. *Id.* at 536.

243. *Id.* at 533. The court added that the law aimed to "[upbuild] ... an intelligent American citizenship, familiar with the principles and ideals upon which this government was founded, to imbue the alien child with the tradition of our past." *Id.* at 534. This implies, of course, that such ideals could only be transmitted in English and not some other language, a thesis of dubious validity.

244. *Id.* at 534.

245. *Id.* As Ross notes, this was a fairly tortured reading of the statute, designed to save it from unconstitutionality. *See* Ross, *supra* note 229, at 144–45. The court suggested that had the statute completely prohibited the teaching of a foreign language it would have been discriminatory as an unreasonable exercise of the police power and overly burdensome interference with individual liberty. *McKelvie I*, 175 N.W. at 535. The suggestion seems to be that because a more restrictive reading would allow the wealthy to instruct their children in foreign languages (by employing tutors) but deny that possibility to "poorer men" who would have to employ teachers to give such instruction in a class or school, the "obvious and necessary construction to be given is that which will uphold the statute." *Id.* at 534.
Following *McKelvie I*, German-American parochial schools began offering German language instruction during special hours beyond the school day. Thus, the board of education and congregation of the Evangelical Lutheran Zion Church authorized their schools to offer German instruction, on a voluntary basis, during recess. Robert Meyer was observed teaching reading in the German language to Raymond Parpart, a fourth-grader, during the recess period, which Zion's had extended by one-half hour. Meyer was charged and convicted of "unlawfully teaching German to a pupil who had not yet passed the eighth grade.") He appealed his conviction to the Nebraska Supreme Court and lost.

The U.S. Supreme Court reversed Meyer's conviction by a margin of seven to two. Writing for the Court, Justice McReynolds framed the issue to be decided as arising under the Due Process Clause of the Fourteenth Amendment: May the state, consistent with the liberty interests protected by the Fourteenth Amendment, ban the teaching of

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249. *Meyer v. State*, 187 N.W. 100 (Neb. 1922), rev'd, 262 U.S. 390 (1923). Meyer had argued that although he was teaching German, he was also giving religious instruction, as the text he used was a book of Bible stories. Thus, he argued that the statute interfered with religious freedom, pointing out in his brief that the children needed to be educated in German so as to be able to receive religious instruction from their parents and share in the devotional exercises of parents at home and in public worship. *Id.* at 101. The court's response was unsympathetic:

The law affects few citizens, except those of foreign lineage. Other citizens, in their selection of studies, except perhaps in rare instances, have never deemed it of importance to teach their children foreign languages before such children have reached the eighth grade.

The statute prohibits the study of the German language and may, to an extent, limit the younger children from as freely engaging in religious services, conducted in the German language, as otherwise might be the case, we cannot say that such restriction is unwarranted. The law in no way attempts to restrict religious teachings, nor to mold beliefs, nor interfere with the entire freedom of religious worship.

*Id.* at 102.

250. Justices Holmes and Sutherland dissented. *See* 262 U.S. at 403. It is ironic that *Meyer* was penned by Justice McReynolds, a justice not known for his tolerant views, and was an opinion from which Justice Holmes dissented (although he adhered to the decision in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)). For an analysis of Holmes's opinion in *Meyer*, see G. Edward White, *Justice Oliver Wendell Holmes: Law and the Inner Self* 438-40 (1993).

251. According to the Court, the liberties protected by the Fourteenth Amendment include:

[N]ot merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own
modern languages in schools prior to the eighth grade? Although the Court found that the state had the power to require instruction in English, it also found that the statute at issue was, as applied, “arbitrary and without reasonable relation to any end within the competency of the state.” Thus the statute violated the Fourteenth Amendment by unduly interfering with “the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own,” privileges that the Court felt were “long recognized at common law as essential to the orderly pursuit of happiness by free men.”

While a detailed discussion of the Meyer opinion must await another day, Meyer’s central thesis is that, although the use of English may be required in certain aspects of public life, our constitutional scheme forbids the legislature from interfering with fundamental liberties by coercing citizens to speak English or to abandon their native tongues. The implication, then, is that the legislature may not advance either the acquisition or the use of English by banning foreign tongues: “Mere knowledge” of a foreign language “cannot reasonably be regarded as harmful.” Perhaps more importantly, in a now famous passage, Meyer rejects the rationale upon which proponents of today’s Official English movement rely:

conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

Meyer, 262 U.S. at 399.

252. In a challenge to a successor of the Siman Act (the Reed-Norval Act, see Luebke, supra note 230, at 13–14), the Nebraska Supreme Court had limited the application of the law to modern languages, holding that “[t]he so-called ancient or dead languages, not being, strictly speaking, foreign languages, obviously do not come within the spirit or the purpose of the act.” Nebraska Dist. of Evangelical Lutheran Synod v. McKelvie, 187 N.W. 927, 928 (Neb. 1922), rev’d sub nom. Bartels v. Iowa, 262 U.S. 404 (1923) [hereinafter McKelvie II].

253. Meyer, 262 U.S. at 403. As has been noted elsewhere, the Court did not apply heightened scrutiny to the Nebraska law; rather, it applied a reasonableness test, much like its analysis in economic due process cases. See id. at 400; see also G. Sidney Buchanan, A Very Rational Court, 30 Hous. L. Rev. 1509, 1516–18 (1993). The multi-tiered approach to review came later in the court’s history. Id. at 1520–25. See also Robert M. Cover, The Origins of Judicial Activism in the Protection of Minorities, 91 Yale L.J. 1287, 1289–97 (1982).


255. Id. at 399 (citations omitted). See supra note 251.

256. What Meyer does not speak to, however, is the suggestion in the Nebraska Supreme Court’s decisions that one’s ability to express oneself is independent of the language in which one chooses to do so; thus, the court’s suggestion that the laws were not interfering with the freedom of religion (and arguably of expression) by prohibiting the teaching of bible studies in German, as those stories could be taught in English, arguably remains untouched by Meyer.

257. Meyer, 262 U.S. at 400.
It is said the purpose of the [Siman Act] was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and “that the English language should be and become the mother tongue of all children reared in this State.” It is also affirmed that the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled.

That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.258

There is, of course, much about the Meyer decision that weakens its force as constitutional doctrine: As a substantive due process case, it is tainted by the stigma of the economic due process theories articulated in Lochner v. New York259 and its progeny.260 Too, some have interpreted it, along with Pierce v. Society of Sisters,261 as an essentially conservative decision, rendered by a conservative Supreme Court that defended “traditions of private ownership, hierarchical structures, and individualist values against claims of collective governance.”262 Finally, although many Supreme Court decisions have relied on it to support protection of

258. Id. at 401.
259. 198 U.S. 45 (1905).
260. See David P. Currie, The Constitution in the Supreme Court: 1921–1930, 1986 Duke L.J. 65, 80–82. But see, e.g., Robert E. Riggs, Substantive Due Process in 1791, 1990 W.s. L. Rev. 941, 943 (arguing that proponents of substantive due process may find support in history for their position); Stephen A. Siegel, Lochner Era Jurisprudence and the American Constitutional Tradition, 70 N.C. L. Rev. 1 (1991) (arguing that Lochner era constitutionalism was a transitional era that was both explicable and defensible).
261. 268 U.S. 510 (1925).
262. Woodhouse, supra note 224, at 1037 (pointing out that the Meyer Court also struck down the child labor laws).
fundamental liberties of various kinds, Meyer is not a case that offers speech any particular protection. Indeed, there is little if any First Amendment content to Meyer, although it has been so interpreted on occasion. Yet, the fact remains that Meyer suggests a constitutional tolerance for linguistic diversity that is in clear opposition to state laws prohibiting the use of foreign tongues (at least in certain contexts).

b. America After Meyer

Following World War II, the United States became aware that it lagged behind other countries in its citizens’ abilities to speak foreign languages. The National Defense Education Act of 1958 was adopted in response to public and congressional concern about America’s place in the world, after the launching of Sputnik by the Soviet Union in 1957. Ten years later, federal support for bilingual education was introduced, theoretically providing immigrants with the possibility of language maintenance as well as the opportunity for English acquisition. The President’s Commission on Foreign Language and International Studies nevertheless concluded in 1979 that “Americans’ incompetence in foreign languages is nothing short of scandalous, and it is becoming worse.” The situation has essentially remained unchanged since that


264. The First Amendment was not “incorporated” into the Fourteenth Amendment until Gitlow v. New York, 268 U.S. 652, 666 (1925), two years after Meyer was decided. For a discussion of the First Amendment law of this period, see Howard O. Hunter, Problems in Search of Principles: The First Amendment in the Supreme Court from 1791–1930, 35 Emory L.J. 59, 128 (1986) (noting that Meyer contained “incidental protection” for speech and religious interests).

265. See, e.g., David Yassky, Eras of the First Amendment, 91 Colum. L. Rev. 1699, 1733 (1991); Griswold, 381 U.S. at 482 (stating that Meyer stands for the proposition that “the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge”).

266. Unfortunately, despite Meyer, “the practical effect of World War I and the accompanying state legislation resulted in the German language effectively being dropped from the high school curriculum.” Arnold H. Leibowitz, Educational Policy and Political Acceptance, The Imposition of English As the Language of Instruction in American Schools, reprinted in House Hearings, supra note 7, at 217, 237.


269. President’s Comm’n on Foreign Language & Int’l Studies, Strength Through Wisdom: A Critique of U.S. Capability 5 (Nov. 1979). The study pointed out that only 15% of American high
time—the United States has remained a profoundly monolingual nation, despite claims to the contrary of "creeping bilingualism."

This monolingualism has not only been reinforced by naturalization laws but also by state statutes consecrating the role of English as the nation’s language. Many states require jurors to be able to read, write, and speak English,\textsuperscript{270} require court records to be in English,\textsuperscript{271} or have various business regulations requiring the use of English.\textsuperscript{272} The procedural rules of many states\textsuperscript{273} (and at least one federal circuit\textsuperscript{274}) require that pleadings and evidence be filed in the English language, or, if in a foreign language, be accompanied by a translation. For the majority of states with no rule on the subject, it appears that, as a matter of custom and with the significant exception of Puerto Rico,\textsuperscript{275} English school students study a foreign language (as opposed to 24% in 1965), and that only 8% of American colleges and universities required knowledge of a foreign language for admission (compared with 34% in 1966). \textit{Id.} at 7. See also Sen. Paul Simon, \textit{The Tongue-Tied American: Confronting the Foreign Language Crisis} (1992).


\textsuperscript{273} See, e.g., Cal. Civ. Proc. Code \$ 185 (West 1982) ("Every written proceeding in a court of justice in this state shall be in the English language, and judicial proceedings shall be conducted, preserved, and published in no other."

The original version of this provision, in force from 1872 to 1880, permitted Spanish to be used in the counties of San Luis Obispo, Santa Barbara, Los Angeles, and San Diego. \textit{Id.} (historical notes)); Idaho R. Civ. P. \$ 10(a)(3) ("Pleadings shall be in the English language."); Mich. Ct. R. 2.113(B) ("Every pleading must be legibly typewritten or printed in the English language."); Minn. Gen. R. Prac. for the Dist. Cts., \$ 403(c) ("Any document which is written in a language other than English shall be accompanied by a verified translation into the English language."); Mont. Code Ann., \$ 3-1-314 (1995) (same as California \textit{supra}); N.Y. Civ. Prac. L \& R \$ 2101(b) (McKinney 1976) ("Each paper served or filed shall be in the English language which, where practicable, shall be of ordinary usage. Where an affidavit or exhibit annexed to a paper served or filed is in a foreign language, it shall be accompanied by an English translation and an affidavit by the translator stating his qualifications and that the translation is accurate." The advisory committee notes point out that this codifies the common law.).

\textsuperscript{274} Local Rule 30.7 of the First Circuit provides, \textit{inter alia}, that "the court will not receive documents not in the English language unless translations are furnished. Whenever an opinion of the Supreme Court of Puerto Rico is cited in a brief or oral argument which does not appear in the bound volumes in English, an official, certified or stipulated translation thereof with three conformed copies shall be filed."

\textsuperscript{275} For a long part of its history, Puerto Rico was an officially bilingual jurisdiction. Puerto Rican law provided:

\begin{quote}
In all the departments of the Commonwealth Government and in all the courts of this island, and in all public offices the English language and the Spanish language shall be used indiscriminately; and, when necessary, translations and oral interpretations shall be made from
\end{quote}
has generally been considered by the judiciary to be the official language of the courts (and, by extension, the legal system): 276

English is the language of this country. This conception is fundamental in the administration of all public affairs. It is an elemental truth, so axiomatic in its nature as to need no supporting authority. It is not declared in the Constitution nor enacted by statute. It is so by the universal customs of our past in Colony, Province and Commonwealth. 277

In the context of civil litigation, 278 courts have generally followed this rule even when doing so would injure an otherwise meritorious claimant and even in cases where serious due process or equal protection concerns have been raised. Thus, in *Carmona v. Sheffield*, 279 a district court summarily rejected contentions made by Spanish-speaking plaintiffs that they were denied the equal protection of the laws because the California

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277. Conners v. City of Lowell, 95 N.E. 412, 415 (Mass. 1911) (holding that a general public notice required by law to be published in a newspaper must be printed in an English newspaper even if the statute is silent as to the language requirement, benefitting a party who challenged a sale by the City tax inspector).

278. Criminal defendants have substantially more protection for obvious reasons. See, e.g., United States ex rel. Negron v. New York, 434 F.2d 386 (2d Cir. 1970) (establishing the right of a criminal defendant to have a translator assist him throughout his trial if he cannot understand English); see also 28 U.S.C. § 1827 (1994) (providing for interpreters in both civil and criminal cases instituted by the United States but not creating any constitutional entitlement to an interpreter).

279. 325 F. Supp. 1341 (N.D. Cal. 1971), aff’d, 475 F.2d 738 (9th Cir. 1973).
Department of Human Resources Development conducted the state’s program of unemployment insurance benefits in the English language. The court stated:

In essence, plaintiffs’ contention would require the State of California and, presumably, all other States and the Federal Government to provide forms and to conduct its affairs and proceedings in whatever language is spoken and understood by any person or group affected thereby. The breadth and scope of such a contention is so staggering as virtually to constitute its own refutation. If adopted in as cosmopolitan a society as ours, enriched as it has been by the immigration of persons from many lands with their distinctive linguistic and cultural heritages, it would virtually cause the processes of government to grind to a halt. . . .

For historical reasons too well-known to require review herein, the United States is an English-speaking country . . . .

The extent to which special consideration should be given to persons who have difficulty with the English language is a matter of public policy for consideration by the appropriate legislative bodies and not by the Courts. 280

Virtually all the courts that have considered the issue under either a due process or equal protection rubric have essentially agreed with the Carmona court, 281 although many of them have admitted that either

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280. Id. at 1342. The Ninth Circuit affirmed, holding that California’s decision to deal in English only had a “reasonable basis,” and that “the additional burdens imposed on California’s finite resources and California’s interest in having to deal in only one language with all its citizens support the conclusion of reasonableness.” 475 F.2d at 739.

281. See, e.g., Soberal-Perez v. Heckler, 717 F.2d 36 (2d Cir. 1983), cert. denied, 466 U.S. 299 (1984); Frontera v. Sindell, 522 F.2d 1215, 1220 (6th Cir. 1975) (holding that the Fourteenth Amendment does not require a city to give civil service examinations in Spanish to Spanish-speaking applicants because “the common, national language of the United States is English”); Vialez v. New York City Hous. Auth., 783 F. Supp. 109 (S.D.N.Y. 1991); Jara v. Municipal Court, 578 P.2d 94, 95 (Cal. 1978) (holding that there is no common law right to an interpreter in a civil case and refusal to appoint one is constitutional), cert. denied, 439 U.S. 1067 (1979); Guerrero v. Carleson, 512 P.2d 833 (Cal. 1973) (holding that Spanish-speaking citizens are not entitled to notice in Spanish of termination of welfare benefits, even where it was known that they were literate in Spanish only), cert. denied, 414 U.S. 1137 (1974); Hernandez v. Department of Labor, 416 N.E.2d 263 (Ill. 1981) (holding that even where notice in English to a non-English speaker has been mistranslated by a friend, plaintiff may not require the state to provide notices in Spanish); Commonwealth v. Olivo, 337 N.E.2d 904, 911 (Mass. 1975) (holding that no bilingual notice is required even for a criminal conviction because “[t]his is not an officially multilingual country, and notification of official matters in the sole official language of both this nation and this Commonwealth is patently reasonable.”); accord DaLomba v. Director, Div. of Employment Sec., 337 N.E.2d 687 (Mass. 1975); In re Adoption of Hanna, 602 N.E.2d 588 (Mass. App. Ct. 1992); Alfonso v. Board of
"administrative and humanitarian considerations would warrant the use of bilingual documents." Such humanitarian considerations notwithstanding, public and private pressures to Americanize have, since the Revolution, produced a culture that is, for the most part, like that of France, vigorously monolingual. What the French imposed through a combination of royal fiat and decree, Americans have attained through a relentless pressure to assimilate.

C. The Official English Movement

The most commonly asked question about the English language amendment is why do we need it? And I would just like to say, we need it to provide English with legal protection as our national language which will continue our heritage as a unilingual nation.

Rep. Norman D. Shumway

Review, Dep't. of Labor & Indus., 444 A.2d 1075 (N.J. 1982) (holding that there is no need for notice of unemployment insurance benefits to be translated into beneficiaries' language), cert. denied, 459 U.S. 806 (1982).

But see Jara, 578 P.2d at 101 (Tobriner, J., dissenting); Guerrero, 512 P.2d at 840 (Tobriner, J., dissenting); Alfonso, 444 A.2d at 1078–79 (Wilentz, J., dissenting) (arguing that under Mullane and its progeny, "[w]hen the state knows that a person does not understand English, it has an obligation to provide notice in that person's language with a sufficient amount of information to trigger inquiry or action that will result in an appeal, unless the burden of providing that notice is so great that it outweighs the benefits of doing so."); Consolidated Edison Co. of N.Y., Inc. v. Powell, 354 N.Y.S.2d 311, 316 (Civ. Ct. 1974).


282. Alfonso, 444 A.2d at 1077. See also Lau v. Nichols, 414 U.S. 563 (1974). In Lau, the Supreme Court held that the San Francisco schools were required to take affirmative measures to accommodate the needs of some 1800 non-English speaking students of Chinese ancestry so that they could obtain a meaningful educational experience (and presumably acquire English language skills, although the opinion is a bit oblique as to this point). The Court held that English-only was not enough. Id. at 566. The Court did not reach the constitutional questions presented, but decided the case solely under § 601 of the 1964 Civil Rights Act. Id. Nor did the Court mandate any specific remedy. Following Lau, the Office of Civil Rights, responsible for implementing the Bilingual Education Act, promulgated "guidelines for districts to use in complying with Lau . . . [which] went well beyond the limited entitlement recognized in Lau." Rachel Moran, Bilingual Education As a Status Conflict, 75 Cal. L. Rev. 321, 329 (1987). The guidelines "strongly endorsed bilingual-bicultural education," but are no longer in effect today. Id. at 331.

283. As Denis Doyle comments, in comparing the monolingualism of the United States to the linguistic repression of Franco's Spain, "America offers the cultural equivalent of a monolingual administrative edict." Doyle, supra note 208, at 227.

284. House Hearings, supra note 7, at 33.
1. The Federal English Language Amendment

Against this background, Official English comes as a surprise. Not only has English essentially been the official language of the United States, it has, in international affairs, come to supplant French as the most widely used language of international discourse. Nevertheless, many versions of the ELA have been introduced several times in both the House of Representatives and the Senate, starting with Senator S.I. Hayakawa's original proposal in 1981, and many states have adopted either constitutional amendments, statutory provisions, or legislative resolutions officializing English since that time. Congress's lack of enthusiasm for constitutional measures has also sparked a rash of legislative proposals seeking to establish English as the official language of the government of the United States.

Yet the wide appeal of the Official English movement is explicable if seen as a part of the recurrent pattern of nativism in American political life. Also, it is probably a predictable reaction to the fact that the introduction of limited special legal rights for speakers of foreign languages in the United States, such as bilingual education, came about essentially as part of the civil rights movement rather than from a pedagogical imperative. Large numbers of Spanish-speaking residents,

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285. See supra note 78.
288. See supra note 5.
289. See supra note 10. As the primary focus of this Article is on the proposed constitutional amendments, legislative proposals to make English the "official" or national language of government via a federal statute will not be discussed.
290. This point is masterfully made by Denis Doyle, who points out that chaos is bound to result if "bilingual education is a civil right rather than an instructional program, because then everyone's language and culture is equally valid." Doyle, supra note 208, at 226. Thus, he concludes that "there is no rational basis for limiting bilingual education to Spanish or any other language." Id. Bilingualism was not treated as a "purely pedagogical program . . . . driven by defense needs, intellectual curiosity, or commercial interests. . . . In China, for example, more students are studying
whose visibility may be greater than earlier waves of immigrants as a result of technological change, give the impression of an unprecedented deluge of foreigners who are unwilling or unable to assimilate. Even politically moderate individuals are afraid: Drawing from their own experiences and those of their families, they wonder why, if they or their grandparents could learn English without bilingual education, the newcomers cannot? Too, the very ubiquitousness of English in American official and unofficial life may be seen as a reason to support the ELA which, to many, simply codifies and enshrines the obvious. Like France, the United States is both "hard pressed by cultural demands from within" as well as "larger, supranational associations with powerful cultural dimensions, such as the European

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English than there are citizens of the United States; but that phenomenon has nothing whatsoever to do with civil rights." Id. at 224.

291. Geoffrey Nunberg argues persuasively that new means of replicating experiences such as the movies, radio, and television have imposed a high degree of cultural and ideological uniformity, making departures from the norm seem all the more aberrant. He also points out that the new technology makes it appear as if there is greater linguistic diversity than before, even though there probably is not. Nunberg, supra note 13, at 490–92.

292. See, e.g., Letter from Helen Wong Jean, Executive Secretary, Chinese American Civic Council, to Sen. Walter Huddleston (Apr. 23, 1984), in Senate Hearings, supra note 7, at 30 (supporting the ELA because more than one language should be singled out for translation and she speaks English); Letter from Michael Blichasz, President, Polish American Congress, Inc. (E.D. Pa.), to Rep. Norman D. Shumway (Feb. 6, 1984), in Senate Hearings, supra note 7, at 78 ("Those who wish to spare their people the burden of learning a new language are either ignorant or tyrants .... Who would be writing these words to you today if I had not been forced to learn English[?]"); Letter from Surendra K. Saxena, President, The Association of [Asian] Indians in America, Inc., to Joseph E. Fallon (Oct. 25, 1983), in Senate Hearings, supra note 7, at 113 (expressing similar views). Of course, this ignores the difficulties of those who were unable to succeed. See supra note 15.

293. Opponents of Official English have proposed an "English-Plus" Resolution, which requests the United States government to, inter alia:

(1) encourage all residents of this country to become fully proficient in English by expanding educational opportunities;
(2) conserve and develop the Nation's linguistic resources by encouraging all residents of this country to learn or maintain skills in a language other than English;
(3) assist Native Americans, Native Alaskans, Native Hawaiians, and other peoples indigenous to the United States, in their efforts to prevent the extinction of their languages and cultures;
(4) continue to provide services in languages other than English as needed to facilitate access to essential functions of government, promote public health and safety, ensure due process, promote equal educational opportunity, and protect fundamental rights; and
(5) recognize the importance of multilingualism to vital American interests and individual rights, and oppose "English-only" measures and similar language restrictionist measures.

Union and the North American Free Trade Agreement\textsuperscript{294} from without—both phenomena threatening what Americans perceive to be their national identity. It is not important whether this threat to national identity is real or imagined for, as has been so persuasively argued elsewhere, national identity is to some extent imaginary to begin with.\textsuperscript{295} What is essential is the perception that the threat is real. Viewed from this perspective, the Official English movement is not only explicable—it was inevitable.

Amendments proposed to the constitutions of either the states or federal government generally take one of two forms. They either have a simple, what some refer to as a primarily symbolic form, typified by Senate Joint Resolution 167,\textsuperscript{296} or are more complex, ranging from that typified by House Joint Resolution 13,\textsuperscript{297} introduced in 1987, to the more extensive provisions of House Joint Resolution 81,\textsuperscript{298} introduced in 1989.

Senate Resolution 167 was introduced by Senator Walter D. Huddleston of Kentucky and others on September 21, 1983. It would add the following amendment to the U.S. Constitution:

Section 1. The English language shall be the official language of the United States.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.\textsuperscript{299}

Proponents of the amendment claimed that it would not prohibit or discourage the use of foreign languages in private contexts, or the teaching of foreign languages in public schools or colleges, or prevent the use of second languages for the purpose of public safety.\textsuperscript{300} Rather, they argued, it would simply "establish a national consensus that a common language is necessary to preserve the basic internal unity that is required for a stable and growing nation;" establish English as the official language of federal, state, and local governments; eliminate

\textsuperscript{294} Tully, \textit{supra} note 19, at 2.


\textsuperscript{297} H.R.J. Res. 13, 100th Cong., 1st Sess. (1987). This bill is similar to an earlier version introduced in 1983. See \textit{infra} note 307.


\textsuperscript{300} Senate Hearings, \textit{supra} note 7, at 23 (statement of Sen. Huddleston).

\textsuperscript{301} \textit{Id.} (quoting Sen. Huddleston).
bilingual ballots; and permit bilingual education only where it could be "clearly demonstrated the primary objective and practical result is the teaching of English to students as rapidly as possible and not of cultural maintenance."302

Yet, it is obvious that if the intent was to require the federal government to act in English only (i.e., by eliminating bilingual ballots and educational programs), other activities of the government would necessarily be affected as well. Thus, the "simple form" of the ELA could have far-reaching consequences. As Senator Orrin Hatch, chair of the Senate Judiciary Committee, pointed out:

The Constitution provides a framework within which each succeeding generation may resolve the social controversies unique to that era. It is not the vehicle to make the adjustments in legal policy necessitated by changing circumstances. Attempting to inculcate the mores and perspectives of any particular time and place in the Constitution will inhibit the document's usefulness for resolving problems to arise in times and places we cannot now foresee.303

Although it has often been stated that section 1 of Resolution 167, alone, would be of little practical effect,304 that is not so clear. To give the provision no effect would be counterintuitive: If it could muster the votes for adoption, presumably it would be because the public thought it meant something. Constitutional provisions generally do not require any legislation for their implementation. If the contrary would be true in the case of the ELA, it is only because of its inherent ambiguity: The question becomes what meaning a court would attach to its provisions. In any event, in none of the "simple" forms that the ELA has taken does section 1 ever stand alone; it is always accompanied by a second section, empowering Congress to enforce section 1 "by appropriate legislation."305 Section 2 does not limit its purview to civil legislation,

302. Id. at 24 (quoting Sen. Huddleston).
303. Id. at 6 (prepared statement of Sen. Orrin G. Hatch).
304. See, e.g., Charles Dale, Legal Analysis of S.J. Res. 167 Proposing an Amendment to the U.S. Constitution To Make English the Official Language of the United States, in Senate Hearings, supra note 7, at 32. This statement often is made in reliance on the fact that the state constitutional provisions officializing English have had little immediate effect. See, e.g., Yniguez v. Arizonans for Official English, 69 F.3d 920, 927 n.11 (9th Cir. 1995) (en banc) (noting primarily symbolic effect of Official English laws in other states), cert. granted, 1995 WL 761639 (U.S. Mar. 25, 1996) (No. 95-974); accord Puerto Rican Org. for Political Action v. Kusper, 490 F.2d 575, 577 (7th Cir. 1973).
305. This is true of most of the post-Civil War amendments.
presumably permitting Congress to use criminal prosecutions to enforce the law, should it so desire.

If Senate Resolution 167 enjoyed the advantage of simplicity as well as the disadvantage of vagueness, other versions of the ELA manage to combine vagueness with complexity.\footnote{They were modeled after the bill, originally introduced into the Senate by Senator S.I. Hayakawa, which included six sections. See S.J. Res. 72, 1st Cong., 1st Sess. (1981).} For example, House Joint Resolution 13,\footnote{This bill is the same as its predecessor, H.R.J. Res. 169, 98th Cong., 1st Sess. (1983), introduced on March 2, 1983.} introduced on January 6, 1987, in addition to making English the Official Language and granting specific enforcement power to Congress, provides:

Section 2. Neither the United States nor any State shall require, by law, ordinance, regulation, order, decree, program or policy, the use in the United States of any language other than English.

Section 3. This article shall not prohibit any law, ordinance, regulation, order, decree, program, or policy requiring educational instruction in a language other than English for the purpose of making students who use a language other than English proficient in English.\footnote{Determining the intent of a particular educational program is a difficult task for the judiciary. Indeed, one wonders how this provision would be enforced. "Proficiency" in English, would presumably have to be authoritatively defined—in a court decision, a legislative enactment, or an administrative regulation—as a matter of constitutional law! If a local school board or state attempted to require its schools to provide bilingual education beyond the official definition of "proficient," could the teachers doing so be punished as Robert Meyer was?}

While the legislative history is silent on the rationale for the addition of sections 2 and 3, one may infer that the supporters of House Resolution 13 thought that section 2 was required to bolster section 1's effectiveness: to ensure that the government could not require any services, even for health or safety purposes, to be offered or made available in any language other than English. Section 3, apparently permitting bilingual education for transitional purposes only, is the only exception permitted.

Aside from the obvious problems with section 3,\footnote{Presumably to correct some of these deficiencies, ELA sponsors proposed H.R.J. Res. 81, 101st Cong., 1st Sess. (1989), introduced on January 19, 1989. Section 3 of that bill is yet more complicated, providing:}

Section 2 is particularly troubling.\footnote{This article shall not prohibit any law, ordinance, regulation, order, decree, program, or policy—}
and not private activity, the distinction between the two is not always clear:

[C]ould Congress or any state enforce the section 1 declaration of English as the "official" national language by legislatively restricting use of non-English by private persons in public places, or bar judicial enforcement of private legal documents executed in a language other than English? Concededly, such curbs on the private use of foreign language would raise substantial First Amendment questions, but just how the courts might reconcile the apparent conflict between the demands of free speech, on the one hand, and the constitutional interests protected by the proposed amendment are unclear. *The most that can be said is that, absent a definitive legislative history, the two sets of interests would presumably be of equivalent constitutional status, and the courts would be left to strike the appropriate balance between them.*

Which is exactly what the French Constitutional Council did in analyzing the *Loi Toubon.*

2. *Yniguez v. Arizonans for Official English*

Most state constitutional amendments follow the general pattern of the federal ELA proposals. Either they provide that, together with the state song and state bird, English is the state’s official language, or they are

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(1) to provide educational instruction in a language other than English for the purpose of making students who use a language other than English proficient in English,

(2) to teach a foreign language to students who are already proficient in English,

(3) to protect public health and safety, or

(4) to allow translators for litigants, defendants, or witnesses in court cases.


Again, one wonders what “proficiency” requires. Does it mean an eighth grade level (as the Nebraska legislature apparently thought in 1923)? A second grade level? May kindergarten students in public schools (who, in spite of having English as their mother tongue may not be “proficient” in it) be taught foreign languages? Or must they wait until the eighth grade?


312. *See supra* part II.D.3.

more explicit (and restrictive) in application, like House Resolution 13.314 The most restrictive state constitutional amendment to date has been Arizona’s English language amendment, Proposition 106, which was narrowly adopted by referendum on November 8, 1988.315

Proposition 106 was incorporated into the Arizona State Constitution as Article XXVIII. It proclaims English to be the official language of Arizona316 and provides, inter alia, that the state and all its political subdivisions, including its officials and employees, shall “act in English and no other language”317 unless a constitutionally permissible exception exists.318 Article XXVIII requires the state to “preserve, protect, and enhance the role of the English language” as the official language of the state319 and grants standing to persons residing in or doing business in Arizona to bring suit to enforce it.320 By its terms, Article XXVIII goes even further than most of the federal ELA proposals. Yet, one wonders whether Arizona’s constitutional provision only makes explicit what is implicit in the federal versions of the ELA—that the government and its employees shall act in English only, unless one of a few constitutionally permitted exceptions is present.

Article XXVIII was challenged by Maria-Kelley Yniguez, a bilingual employee of the Risk Management Division of the Arizona Department

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314. See supra notes 307–11 and accompanying text.
317. Id. § 3(1)(a).
318. Ariz. Const. art. XXVIII, § 3(2) provides:

This State and all political subdivisions of this State may act in a language other than English under any of the following circumstances:

(a) to assist students who are not proficient in the English language, to the extent necessary to comply with federal law, by giving educational instruction in a language other than English to provide as rapid as possible a translation to English.

(b) to comply with other federal laws.

(c) to teach a student a foreign language as a part of a required or voluntary educational curriculum.

(d) to protect public health or safety.

(e) to protect the rights of criminal defendants or victims of crime.
319. Id. § 2.
320. Id. § 4.
of Administration at the time Proposition 106 was approved. 321 Yniguez filed an action against three officials of the State of Arizona 322 seeking an injunction against state enforcement of the provision and a declaration that it violated the First and Fourteenth Amendments of the U.S. Constitution and several federal civil rights laws. 323 In a surprisingly short opinion given the novelty of the issues presented, 324 the district court agreed with Yniguez, holding that the "sweeping language" of Article XXVIII prohibited, by its terms, "the use of any language other than English by all officers and employees of all political subdivisions in Arizona while performing their official duties, save to the extent that they may be allowed to use a foreign language by the limited exceptions contained in § 3(2) of Article XXVIII." 325 There being no construction capable of narrowing the provision, 326 the court concluded that Article

321. Supplemental Brief on Rehearing En Banc for Plaintiffs-Appellees at 1, Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995) (en banc) (on file with the author). The parties stipulated that Yniguez was fluent in both English and Spanish and that her responsibilities included adjusting medical malpractice claims. 69 F.3d at 924 n.4. Prior to the adoption of Article XXVIII, she communicated with monolingual Spanish-speaking claimants in Spanish and with bilingual claimants in a combination of English and Spanish. Id. State employees who fail to obey the Arizona Constitution are subject to employment sanctions. Yniguez v. Mofford, 730 F. Supp. 309, 311 (D. Ariz. 1990), aff'd sub nom. Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995), cert. granted, 1995 WL 761639 (U.S. Mar. 25, 1996) [hereinafter Yniguez I] (discussing this point in detail). Immediately upon passage of Article XXVIII, Yniguez stopped speaking Spanish on the job. Id. at 310.

322. Yniguez sued Rose Mofford, Governor; Robert Corbin, Attorney General; and Catherine Eden, Director of the Arizona Department of Administration, in their individual and official capacities. 730 F. Supp. at 310. The court found that Mofford, acting in her official capacity, was the only appropriate defendant in the action. Id. at 310–13.

323. Yniguez was joined by a state legislator, Jaime Gutierrez, who communicates in Spanish with his Spanish-speaking constituents. Id. at 310. Gutierrez's claim was dismissed on Eleventh Amendment grounds. Id. at 311.

324. Prior to the Yniguez decision, no court had squarely addressed the issue whether choice of language is entitled to First Amendment protection. Meyer, of course, was not a First Amendment case, although it is occasionally referred to as such. David Yassky, Eras of the First Amendment, 91 Colum. L. Rev. 1699, 1733 (1991). There are hints in otherwise inapposite cases of the close connection between choice of language and freedom of expression, but none addresses the issue squarely. See, e.g., Gutierrez v. Municipal Court, 838 F.2d 1031 (9th Cir. 1988), vacated on grounds of mootness, 490 U.S. 1016 (1989); Asian Am. Business Group v. City of Pomona, 716 F. Supp. 1328, 1330 (C.D. Cal. 1989) (holding that regulation of language is a regulation of content). Likewise, First Amendment scholarship raises comparable questions, but is not generally on point. See, e.g., Owen Fiss, State Activism and State Censorship, 100 Yale L.J. 2087 (1991); Martin Redish, The Content Distinction in First Amendment Analysis, 34 Stan. L. Rev. 113 (1981).


326. The State Attorney General issued an advisory opinion arguing that Article XXVIII was directed only towards sovereign governmental acts and did not prohibit the use of languages other than English that were reasonably necessary to facilitate the day-to-day operation of government. Id. at 315. However, not only was this opinion not binding under Arizona state law, but was, as Judge
XXVIII was facially overbroad and invalid under the First Amendment.\textsuperscript{327} On appeal, the Ninth Circuit affirmed.\textsuperscript{328} Like the court below, it rejected the state Attorney General's interpretation that the law would permit the use of languages other than English whenever such use would reasonably "facilitate the day-to-day operation of government," holding that: "Article XXVIII plainly does not set forth an innocuous, pragmatic rule that tolerates the use of languages other than English whenever beneficial to the public welfare. Its mandate is precisely the opposite. The use of languages other than English is banned except when expressly permitted."\textsuperscript{329}

The panel also concluded that the Arizona law was facially overbroad\textsuperscript{330} because it would chill the speech of third parties not before the court, adversely affecting not only the speech rights of all Arizona employees, officials, officers, judges, and legislators, but burdening the interests of non-English-speaking Arizonans in receiving information, as well.\textsuperscript{331} It then turned to the claims of the defendants: first, that the

\textsuperscript{327}Yniguez v. Arizonans for Official English, 69 F.3d 920, 931 (9th Cir. 1995), cert. granted, 1995 WL 761639 (U.S. Mar. 25, 1996) (No. 95-974) [hereinafter Yniguez III].

\textsuperscript{328}Yniguez v. Arizonans for Official English, 42 F.3d 1217 (9th Cir. 1994) [hereinafter Yniguez II], withdrawn, 69 F.3d 920 (9th Cir. 1995). Although the state declined to appeal, the Ninth Circuit permitted the intervention of Arizonans for Official English for that purpose. Id. at 1233. Yniguez subsequently cross-appealed for nominal damages. She was joined as a plaintiff-appellee by Arizonans Against Constitutional Tampering, the principal opponent of Proposition 106, which the court also permitted to intervene. Id. at 1223–24. The Supreme Court's order granting certiorari suggests that the unusual procedural posture of this case may have troubled it, for it specifically asked the parties to brief the issue of standing, 64 U.S.L.W. 3639 (1996).

\textsuperscript{329}Yniguez II, 42 F.3d at 1226–27. In a footnote to the en banc decision, the majority noted that there seemed to be a difference of opinion between the state Attorney General and Arizonans for Official English as to the scope of Article XXVIII. Stating that both parties' explanations "were confused and contradictory," the court added: "At best, they shed little light on how the amendment could rationally be construed in a limiting manner and at worst they helped make it clear that it could not be." Yniguez III, 69 F.3d at 928 n.12.

\textsuperscript{330}As the court pointed out, "Article XXVIII on its face applies to speech in a seemingly limitless variety of governmental settings, from ministerial statements by civil servants at the office to teachers speaking in the classroom, from town-hall discussions between constituents and their representatives to the translation of judicial proceedings in the courtroom." Yniguez II, 42 F.3d at 1229. The court also got a bit carried away, adding that "[u]nder the article, the Arizona state universities would be barred from issuing diplomas in Latin, and judges performing weddings would be prohibited from saying "Mazel Tov" as part of the official marriage ceremony." Id.

\textsuperscript{331}Id. at 1230.
decision of what language to speak is a matter of expressive conduct rather than speech (and therefore entitled to less protection); second, that what Yniguez was really seeking was to compel the state to furnish information to all members of the public in their own language; finally, that as a government employee, Yniguez's speech was simply not entitled to First Amendment protection.332

Taking the second contention first, the Ninth Circuit pointed out that the defendants' argument was based on an erroneous interpretation of the facts, as Yniguez was seeking only to prevent the state from gagging the employees currently providing members of the public with information in other languages from continuing to do so.333 As for the more substantial argument made by the defendants, that the First Amendment protected only the content of the speech and not the language in which it was made, again the court found the defendants' position lacking:

[W]e are entirely unpersuaded by the comparison between speaking languages other than English and burning flags. Of course, speech in any language consists of the "expressive conduct" of vibrating one's vocal chords, moving one's mouth and thereby making sounds, or of putting pen to paper, or hand to keyboard. Yet the fact that such "conduct" is shaped by a language—that is, a sophisticated and complex system of understood meanings—is what makes it speech. Language is by definition speech, and the regulation of any language is the regulation of speech.334

While space does not permit a detailed exploration of this point, it is worth noting that this is an issue of enormous significance that has been decided differently by different legal systems.335 Relying on Cohen v.

332. Id.
333. Id. at 1233.
334. Id. at 1231 (citations omitted) (emphasis added).

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.
California,\textsuperscript{336} the Ninth Circuit reasoned that, just as a state may not excise one particularly scurrilous epithet from public discourse, the State of Arizona may not succeed in its attempt to single out not "one word from repression, but rather entire vocabularies."\textsuperscript{337}

Finally, the court addressed the contention that the government was entitled to control the content and manner of Yniguez’s speech because she was a government employee. While conceding this to be true, at least within the limits established by the Supreme Court’s line of government employee speech cases,\textsuperscript{338} the court, relying on \textit{Meyer v. Nebraska},\textsuperscript{339}

\textsuperscript{336} See also U.N. Charter arts. 1, ¶ 3; 13, ¶ 1(b); 55(c); 76(c) (all stating that the purpose of the U.N. includes promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion); Universal Declaration of Human Rights, art. 2, G.A. Res. 217A(III), U.N. Doc. A/810 (1948) ("Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."); Syméon Karagiannis, \textit{La Protection des Langues Minoritaires au Titre de l'Article 27 du Pacte International Relatif Aux Droits Civils et Politiques}, Rev. trim dr. h. 195 (1994).

337. 403 U.S. 15 (1971) (upholding a "speaker's freedom to say 'fuck the d-aft' rather than 'I strongly oppose the draft'") and reversing a conviction under the California "offensive conduct" law. Although the \textit{Cohen} decision was a controversial one, see, e.g., Jules B. Gerard, \textit{May Society Preserve a Modicum of Decorum in Public Discourse?}, in \textit{The Bill of Rights} 94 (Eugene W. Hickok, Jr. ed., 1991), as Professor Laurence Tribe notes, \textit{Cohen} recognizes "the emotive role of free expression—it's place in the evolution, definition, and proclamation of individual and group identity." Laurence Tribe, \textit{American Constitutional Law} 787 (1988).

338. Yniguez II, 42 F.3d at 1232. As the en banc opinion noted: "To call a prohibition that precludes the conveying of information to thousands of Arizonans in a language they can comprehend a mere regulation of 'mode of expression' is to miss entirely the basic point of First Amendment protections." Yniguez v. Arizonans for Official English, 69 F.3d 920, 931 (9th Cir. 1995), cert. granted, 1995 WL 761639 (U.S. Mar. 25, 1996) (No. 95-974).

339. 262 U.S. 390 (1923).
responded that, although it recognized the importance of a common language in promoting democracy and national unity:

[The] state cannot achieve unity by prescribing orthodoxy . . . [T]he goals of protecting democracy and encouraging unity and stability are at most indirectly related to the repressive means selected to achieve them . . . [T]he measure inhibits rather than advances the state's interest in the efficient and effective performance of its duties . . . [T]he direct effect of the provision is not only to restrict the rights of all state and local government servants in Arizona, but also to severely impair the free speech interests of a portion of the populace they serve. 340

The court also pointed out that this was speech that members of the public wished to hear 341 and speech that furthered government efficiency by providing the public with information it could not otherwise obtain. 342

On rehearing en banc, the panel's decision was affirmed and most of its opinion adopted by a vote of six to five. 343 Of note, however, were the separate opinion of Judge Brunetti, who concurred but wrote separately "to emphasize that the article's unconstitutional effect on Arizona's elected officials would alone be sufficient reason to strike the provision down," 344 and the vigorous dissents penned by Judge Fernandez and Judge Kozinski. 345 Judge Fernandez defined the issue as one of employee speech. Harkening back to the Nebraska Supreme Court in *McKelvie I,* 346 he would find that the language chosen by the speaker is of no import to the First Amendment. 347 The only relevant factor, in his view, is the

340. *Yniguez II,* 42 F.3d at 1241. The court's reference to *Meyer* is appropriate: *Meyer* rejects the argument that the statute at issue was an appropriate means to "foster a homogenous people with American ideals." 262 U.S. at 402.

341. *Yniguez II,* 42 F.3d at 1236.

342. The court dismissed an additional justification of the defendant—that allowing government employees to speak foreign languages would undermine public confidence in government. Even if that were true (which the court disputed), the court held that it would not justify the infringement of constitutional rights. *Id.* at 1241.

343. *Yniguez III,* 69 F.3d 920, 924 (9th Cir. 1995) (en bane).

344. *Id.* at 950 (Brunetti, J., concurring). "By restricting the free communication of ideas between elected officials and the people they serve, Article XXVIII threatens the very survival of our democratic society." *Id.*

345. Chief Judge Wallace also dissented. He wrote separately, contending that, as Yniguez could say in English what she wanted to say in Spanish, there was no First Amendment problem. *Id.* at 959 (Wallace, C.J., dissenting).

346. 175 N.W. 531 (Neb. 1919). See supra notes 241–45 and accompanying text.

347. Judge Fernandez's opinion is rather confusing on this issue. At one point he suggests that content may differ from one language to another; if this is true, he says, Article XXVIII is constitutional
content, that is, what the speaker says. And, if the speaker’s words do not involve public concern (as Judge Fernandez thought Yniguez’s speech did not), the state may “direct what that content must be.” This would leave Yniguez only the protection of the Supreme Court’s line of expressive conduct cases, which Judge Fernandez found inapplicable. According to him, there is no “First Amendment protection of the pure mode element of a language.”

Finally, Judge Kozinski entered the throe. As he sees it, the government essentially owns the speech of its employees, who lose most, if not all, of their First Amendment rights upon entering government service. As Yniguez worked for the government, she does not have the right to decide what she will say (nor, implicitly, the language she shall say it in); to hold otherwise would, in Judge Kozinski’s view, give “bureaucrats the right to turn every policy disagreement into a federal lawsuit.”

Judge Kozinski’s opinion failed to see the forest for the trees. Yniguez asserted that Article XXVIII was facially overbroad because it trod on the First Amendment rights, not only of all those who might “act” for the government in any way (including, as Judge Brunetti makes clear, state

because “the State has the right to control the content of what it is paying for.” Yniguez III, 69 F.3d at 957 (Fernandez, J., dissenting). If this is not true, and choice of language is just conduct, ordering Yniguez to speak English, in Judge Fernandez’s view, is no different than the state “direct[ing] that its ditches be dug and that its contracts be let in particular ways.” Id. (Fernandez, J., dissenting).

348. Judge Fernandez admitted some difficulty in deciding whether Yniguez’s speech was “public” or “private” but concluded that it was “more like a case of private concern speech.” Id. at 956.

349. Id. at 957.

350. Id. at 958.

351. His opinion did not address many of the important issues raised by the case, but did lengthen the debate considerably, his hyperbole causing Judge Reinhardt to pen a particularly caustic response. See id. at 952–54 (Reinhardt, J., concurring specially).

352. Id. at 961 (Kozinski, J., dissenting) (arguing that since Arizonans pay Yniguez’s salary, it is “their call whether Yniguez spent her work-time processing claims, promoting English or twiddling her thumbs”).

353. Judge Kozinski does not really explain why the First Amendment does not apply to government employees, but implicit in his discussion are a couple of predominant themes: first, that if the First Amendment did apply, the government would become hostage to the rights of its employees, id. (“This case is about whether state employees may arrest the gears of government by refusing to say or do what the state chooses to have said or done.”); second, that the Arizona constitutional amendment was appropriate, id. at 960, 963 (Kozinski, J., dissenting) (saying that he is not sure whether it is constitutional, but opening his opinion with the following quote: “A house divided against itself cannot stand.”).

354. Id. at 961. Judge Kozinski does not discuss how this might affect judges, who are also government employees.
legislators and judges), but of all those who might receive government services. Judge Kozinski suggested that the fact that Article XXVIII was democratically enacted vouches for its constitutionality. Yet it is hornbook law that the provisions of the Bill of Rights are specifically designed to protect minorities from the tyranny of the majority. Judge Kozinski’s dissent disappoints in failing to address the really thorny question that the majority identifies: Is one’s choice of language protected by the First Amendment?

As the debate between the majority and dissenting judges suggests, the answers to a legal problem, whether substantive or procedural, depend on the question asked. The dissenting judges frame the question narrowly: What may the state, as Yniguez’s employer, compel her to do? The majority sees the case in the context of a broader question: May the state banish foreign languages from public life? The majority properly refused to be manipulated into restricting the scope of its inquiry (and thus the response given). Note that the majority’s position does not in any way undermine the government’s power to regulate, within the constitutional limits set by the Supreme Court’s line of employee speech cases, the speech of its employees and subject them to discipline if ‘the employee’s interest in expressing herself on [a] matter . . . [is] outweighed by any injury the speech could cause to ‘the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.”

But, let us take this case one step further. Suppose that the Arizona law were indeed constitutional and that Yniguez were still at her post, handling medical malpractice claims brought to her by private citizens speaking English, Spanish, and various Native American languages.

355. Curiously, Judge Kozinski suggests that there may be other constitutional problems with Article XXVIII, but indicates that this is not the case in which to raise them. Id. at 963 (Kozinski, J., dissenting).

356. Id. at 961.

357. As Professor Laurence Tribe has pointed out: “Expression and conduct, message and medium, are ... inextricably tied together in all communicative behavior.” Tribe, supra note 336, at 827.

358. Waters v. Churchill, 114 S. Ct. 1878, 1884 (1994) (quoting Connick v. Myers, 461 U.S. 138, 142 (1983)). Unfortunately, although the majority recognized the broader implications of Yniguez’s claims, its opinion does not recognize the doctrinal complexities and implications of its holding. That is, the Ninth Circuit did not articulate a test that could guide either state legislatures or other courts in defining the limits of the First Amendment right it identifies. The court’s holding rests on a finding that Arizona’s constitutional amendment was overbroad because it would prohibit protected speech merely because the speech was uttered in a foreign language. But the opinion does not really define what speech is protected, nor identify under what circumstances, if any, the government would be able to impose an English language requirement. Of course, those issues were not directly before the court. Yet, more guidance on this question would have been useful.
Yniguez has recently received a pamphlet from the director of civil service that specifically requires employees to promote the English language and admonishes them to “act in English and no other language” unless one of the exceptions listed in section 3 of Article XXVIII applies. A claimant enters and addresses Yniguez in Spanish. Yniguez smiles and responds in Spanish, the language in which she was addressed, as bilinguals often do. Of course, it might matter whether Yniguez’s response is a simple “hola,” an “hola” accompanied by a longer greeting, such as, “Hola. ¿Cómo estás?,” or a greeting combined with something more substantial, such as, “Hola. ¿En qué puedo ayudarte?” A monolingual English-speaking coworker glowers at her. Suddenly mindful of her mistake, Yniguez switches to English. The claimant cannot speak English and continues to address her in Spanish.

Variations on the above theme are obviously infinite, yet one thing is clear: Under Judge Kozinski’s analysis, Yniguez could be fired, and if Yniguez’s employer

359. There is a large body of fascinating research on how bilinguals actually use their languages. See, e.g., Grosjean, supra note 207, at 228–88.
360. “Hello.”
361. “Hello, how are you?”
362. “Hello. How can I help you?”
363. The above hypothetical differs from Yniguez’s case in that Yniguez claimed that her use of Spanish was intentional.
364. Judge Reinhardt addresses the possible variations in his concurring opinion, stating: If Judge Kozinski had his way, bilingual government clerks would not be able to advise persons who can speak only Spanish—or Chinese or Navajo—how to apply for food stamps, or aid for their children, or unemployment or disability benefits. Public employees would be prohibited from helping non-English speaking residents file complaints against those who mistreat them or who violate their rights or even from helping them secure driver’s licenses or permits to open small businesses. Bilingual traffic officers would not be able to give directions to nearby medical clinics or schools. Migrant farm workers who cannot speak English would find themselves cut off from almost all government assistance by an impenetrable language barrier. Recent immigrants in general, including many who fled persecution, would find their lives in their adopted land unduly harsh and bewildering.

365. Note that under Pickering v. Board of Educ., 391 U.S. 563 (1968), and its progeny, it is hard to see how she could be fired for saying any of the above in English, although the government clearly has the right to exercise greater control over the speech of its employees than over the speech of private citizens. Rankin v. McPherson, 483 U.S. 378 (1987); Connick v. Myers, 461 U.S. 138 (1983).
366. As the Yniguez II court explained:

[Article XXVIII] effectively requires that . . . employees remain mute before members of the non-English speaking public who seek their assistance. At such moments of awkward silence
does not fire her, the annoyed coworker could perhaps sue Yniguez (or, more probably, her employer) under section 4 of Article XXVIII for speaking Spanish on the job. Of course, the courts will have to decide whether a mixture of Spanish and English violates the law. Is a salutation alone ("hola") enough grounds for dismissal, or must Yniguez say something more substantive? In the above hypothetical, Yniguez's use of Spanish was accidental—would that make a difference?^67

Now suppose that, pursuant to section 2 of Article XXVIII, a blue-ribbon commission appointed by the state proposes various laws that will help to "preserve, protect and enhance the role of the English language as the official language of the state of Arizona." One of these laws requires all advertising on public property, such as buses, to be in English only. Suppose that instead of limiting the law to public property, the law applies to all public fora: newspapers, theatres, restaurants, etc. This would, of course, be even more restrictive than the 1994 French law^366 (which does permit translations under certain conditions), but suppose further that the legislative history suggests that the Arizona legislature thought the law "necessary to oblige non-English speakers to learn English." One might question whether the law is within the scope of the power granted to the Arizona legislature by section 2, but in Judge Fernandez's view, it would clearly not pose any constitutional problem under the First Amendment, as the law would not go to the content of the advertisement, only the language in which the advertising appeared. Similarly, it is hard to see why the state could not make violation of the law a misdemeanor and authorize the police to issue citations for "illegal use of the [your foreign language here] language in a public place." Finally, those who were particularly recalcitrant could be jailed for a few

^367. In the Title VII context, at least one court has intimated that the employee's volition is irrelevant: "The fact that an employee may have to catch himself or herself from occasionally slipping into Spanish does not impose a burden significant enough to amount to the denial of equal opportunity." Garcia v. Spun Steak Co., 998 F.2d 1480, 1488 (9th Cir. 1993), cert. denied, 114 S. Ct. 2726 (1994). That decision, however, should have little bearing on our hypothetical, for, not only did the Garcia court admit that it was holding as it did essentially without reference to the facts of the particular case, but that it was only responding to the question whether English-only rules may have a discriminatory impact on bilingual employees in the context of Title VII, not the First Amendment. Id. at 1490.

^368. Compare article 3 of the 1994 French law concerning the use of the French language. See supra note 153 and accompanying text.

months. That would surely teach them to renounce their native tongues. While the French Constitution may permit this kind of Orwellian world, in which “Big Brother could compel its minions to say War is Peace and Peace is War,” the U.S. Constitution does not and should not.

IV. CONCLUSION

There is no doubt that, for better or worse, both the United States and France are essentially monolingual countries, deeply suspicious of foreign tongues. Yet they have arrived at this state in different ways. The French have seen culture and language as essentially within the state’s purview; cultural norms are to be protected, are to be enforced, are to be channeled and controlled. Moreover, the French maintain a firm belief that this can be accomplished by law.

Americans, more pragmatic perhaps, and from a more liberal political tradition, have not traditionally perceived culture as within the purview of the state. Nor have they sought to regulate language by using the law as a tool, although certainly the common law absorbed cultural ideas about language and turned them into legal precedent, building, one could say, from the ground up rather than from the top down. The French experience should demonstrate that legislating about language is really quite futile, at least in a free society. Language is something that lives and breathes, that simply cannot be controlled by legal institutions. The key phrase, of course, is “in a free society.” To the extent that we are willing to make society less free in order to impose monolingualism, some “progress” towards monolingualism could perhaps be made.

370. Compare articles 16 and 17 of the 1594 French law. See supra notes 150–51 and accompanying text.


372. In a similar vein but in a different context, the Second Senate of the German Constitutional Court recently suggested in its decision on the Maastricht Treaty that a polity (referring to the European Union) in which citizens may not address public authorities in their own language (thinking of German) is lacking a fundamental element of democracy:

Democracy, if it is not to remain a merely formal principle of accountability, is cependent on the presence of certain pre-legal conditions, such as a continuous free debate between opposing social forces, interests and ideas, in which political goals also become clarified and change course and out of which comes a public opinion which forms the beginnings of political intentions. That also entails that the decision-making processes of the organs exercising sovereign powers and the various political objectives pursued can be generally perceived and
A French Lesson

English is disappearing from advertisements in the French métro, Spanish could disappear from signs in the New York subway. Yet, in spite of all their attempts at rigorous language legislation, the French have not been able either to maintain their international linguistic hegemony, or to insure cultural harmony and economic bliss at home. To chip away at the First Amendment in pursuit of some elusive goal of cultural harmony or national unity then, is self-defeating as well as dangerous.

Courts in the United States have chosen to see choice of language as part of the speech interests protected by the Constitution. Meyer places this protection somewhere in the Due Process Clause; Yniguez locates it directly in the First Amendment. Despite the provisions of the Declaration of the Rights of Man, however, the French Constitutional Council does not recognize choice of language as protected—only choices of words within a language. This is more than a semantic difference, going to fundamentally different views of freedom and of life in civil society.

The French Constitutional Council might have ruled as it did even without the recent amendment to the French Constitution. The supremacy of the French language has been a principle of French public law for a long time. What one can surely say, however, is that if the U.S. Constitution were ever amended to enshrine English as an official language, Meyer and Yniguez might not be decided as they were—and America could be a very different place than it is now. What proponents of Official English need to recognize is that the English language and the American people have prospered precisely because of their freedom, not in spite of it.

understood, and therefore that the citizen entitled to vote can communicate in his own language with the sovereign authority to which he is subject.

APPENDIX: THE LOI TOUBON

Law No. 94-665 of August 4, 1994, Concerning the use of the French language:

Article 1. Language of the Republic by virtue of the Constitution, the French language is a fundamental element of France’s personality and heritage (patrimoine).

It is the language of teaching, of labor, of commerce (échanges) and of public services.

It is the privileged link between the nations of the French-speaking community (la francophonie).

Article 2. Use of the French language is compulsory with respect to the name, the offer, the presentation, the instructions, the description of the scope and the conditions of the warranties of a good, a product or a service, as well as with respect to invoices and receipts.

[Provisions declared unconstitutional by Constitutional Council Decision No. 94-345 of July 29, 1994 are omitted.]

The above provisions apply to any advertising, whether written, spoken or audio-visual.

This article does not apply to the designation of well-known typical products and foreign specialties (spécialités d’appellation étrangère).

Nothing in the trademark laws prevents the application of the first and third paragraphs of this article with respect to any declarations (mentions) or slogans registered with the brand or trade name.

Article 3. Any inscription or announcement which is intended for the public’s information, and which is posted or made on a public street, in a location open to the public or in any means of public transportation, must be in the French language. [Provisions

Article 4. When any of the inscriptions or announcements referred to in article 3 have been translated and are posted or made by public entities or by private persons acting in a public capacity, at least two translations must be made.

Where the declarations, announcements and inscriptions referred to in articles 2 and 3 of this law are accompanied by one or more translations, the French version must be as legible, audible and intelligible as the foreign language version.

A decree from the Council of State shall specify the cases and conditions in which departures from the provisions of this article in the area of international transportation [shall be authorized].

Article 5. Whatever the object and terms, contracts to which a public entity or a private person acting in a public capacity are parties shall be written in the French language. Such contracts may not contain any foreign expression or term if there exists any French expression or term having the same meaning and approved according to the regulations (dispositions réglementaires) on the enrichment of the French language.

These provisions do not apply to contracts to be performed entirely outside of the national territory which are entered into by public entities acting in an industrial or commercial capacity.

The contracts referred to in this article, if entered into with one or more foreign parties, may be executed, in addition to the French version, in one or more equally authentic foreign versions.

A party to a contract entered into in violation of paragraph one of this article may not rely upon a provision [of the contract that is] in a foreign language if it would be prejudicial to the opposing party.

Article 6. Any participant in a demonstration, a colloquium or a conference organized in France by persons or entities of French nationality has the right to express himself in French. Documents distributed to participants before and during the meeting to present the agenda (programme) must be written in French and may be translated into one or more foreign languages.
When preparatory documents or working documents are distributed to the participants or minutes and records of a demonstration, colloquium or conference are published, all texts or presentations made in a foreign language must be accompanied by at least a summary in French.

These provisions do not apply to demonstrations, colloquia or conferences that only concern foreigners, nor are these provisions applicable to conferences promoting French foreign trade.

Article 7. When written in a foreign language, publications, reviews and communications distributed in France and issued by a public entity, a private person acting in a public capacity or a private person receiving public funds, must include at least a summary in French. [Provisions declared unconstitutional by Constitutional Council Decision No. 94-345 of July 29, 1994 are omitted.]

Article 8. The last three paragraphs of article L.121-1 of the labor code are replaced by the following four paragraphs:

"An employment contract which is in writing must be in French. [Provisions declared unconstitutional by Constitutional Council Decision No. 94-345 of July 29, 1994 are omitted.]

When the work to be performed under the contract can only be designated by a foreign term without a French equivalent, the employment contract shall include an explanation of the foreign term in French.

When the employee is a foreigner and the employment contract is in writing, the employee may request a written translation of the contract in the employee's language. The two texts shall be of equal legal validity. In case of a discrepancy between the two texts, only the text in the foreign employee's language may be used against him.

The employer may not use otherwise prejudicial clauses of an employment contract which are in violation of this article against the employee."
Article 9. I. Article L.122-35 of the labor code is completed by the following paragraph:

"Workplace regulations (règlement interieur) shall be in French. [Provisions declared unconstitutional by Constitutional Council Decision No. 94-345 of July 29, 1994 are omitted.] Such regulations may be accompanied by translations into one or more foreign languages."

II. After article L.122-39 of the labor code, article L.122-39-1 is inserted as follows:

"Art. L.122-39-1. Any documents which contain obligations of an employee or clauses which the employee must understand to be able to perform his job must be in French. [Provisions declared unconstitutional by Constitutional Council Decision No. 94-345 of July 29, 1994 are omitted.] Such documents may be accompanied by translations into one or more foreign languages.

"These provisions do not apply to documents received from foreign countries or intended for foreigners."

....

III. [omitted]

IV. After article L.132-2 of the labor code, article L.132-2-1 is inserted, as follows:

"Art. L.132-2-1. Collective bargaining agreements . . . must be in French. Any provision in a foreign language [Provisions declared unconstitutional by Constitutional Council Decision No. 94-345 of July 29, 1994 are omitted.] may not be used against an employee as to whom the clause would be prejudicial."

Article 10. Article L.311-4, 3º of the labor code [pertaining to offers of employment] is written as follows:

"3º A text in a foreign language [Provisions declared unconstitutional by Constitutional Council Decision No. 94-345 of July 29, 1994 are omitted.]"
When the employment or the job offered can only be designated by a foreign term without a French equivalent, the French text must contain a description sufficiently detailed so as not to lead to error within the meaning of 2°.

The prescriptions of the two preceding paragraphs apply to services to be performed on French territory, whatever the nationality of the offeror or of the employer, and apply to services to be performed outside of French territory when the offeror or the employer is French, even if perfect knowledge of a foreign language is one of the conditions required for the employment offered. Notwithstanding, directors of publications written, in whole or in part, in a foreign language may, in France, receive employment offers written in that [foreign] language."

**Article 11.** I. French is the language of teaching, of examinations and competitions, and of theses and dissertations in public and private educational institutions, except where necessary for the teaching of regional or foreign languages and cultures or where the teachers are associated or visiting foreign professors.

Foreign schools or special schools which receive students of foreign nationality, as well as educational institutions where teaching is of an international character, are not subject to the above requirement.

II. After the second paragraph of article 1 of law no. 89-486 dated July 10, 1989, on orientation and education, this paragraph is inserted as follows:

"Mastery of the French language and knowledge of two other languages are fundamental objectives of [the French educational system]."

**Article 12.** Before chapter I of title II of law no. 86-1067 dated September 30, 1986 on freedom of communication, article 20-1 is inserted as follows:

"Art. 20-1. The use of French is compulsory in all radio and television programs and advertising, regardless of the mode of broadcast or distribution, except for films and audiovisual works in their original versions."
Subject to the provisions of 2° bis of article 28 of this law, the preceding paragraph does not apply to musical works the text of which, in whole or in part, is in a foreign language.

The obligation imposed by paragraph one does not apply to programs, partial programs or advertising included in these programs or partial programs intended to be broadcast entirely in a foreign language or the goal of which is to teach a [foreign] language, nor to broadcasts of religious ceremonies.

[Provisions declared unconstitutional by Constitutional Council Decision No. 94-345 of July 29, 1994 are omitted.]

When any of the programs or advertising referred to in paragraph one of this article are accompanied by French translations, the French version must be as legible, audible or intelligible as the foreign language version."

Article 13. [On the francophone community is omitted.]

Article 14. I. The use of a trademark, a brand name or trade name composed of a foreign expression or term is forbidden to public entities if there exists any French expression or term having the same meaning and approved according to the regulations on the enrichment of the French language.

This prohibition applies to private entities acting in a public capacity.

II. The provisions of this article do not apply to trademarks used for the first time prior to the enactment of this law.

Article 15. All public subsidies [by collectivités and établissements publics] are conditioned upon respect by the beneficiaries of all of the provisions of this law.

Any violation may lead, after the beneficiary has been invited to present his comments, to total or partial restitution of the funds.

Article 16. In addition to officers and agents of the police judiciaire acting pursuant to the provisions of the code of criminal procedure, the agents listed in paragraphs 1°, 3° and 4° of article L.215-1 of the consumer protection code may investigate and record violations of the texts enacted in application of article 2 of this law.
To this end, agents may enter, during the day time, [certain] locations and vehicles . . . except for dwelling places. Agents may examine any documents necessary to carry out their mission, make copies of those documents, and receive, either by appointment or at that same location, information necessary to carry out their task.

They may also take a sample of the goods or any products that are involved, under conditions to be set forth in a decree of the Council of State.

Article 17. Whoever may obstruct, either directly or indirectly, the agents from accomplishing their mission referred to in paragraph one of article 16, or does not provide them with all of the necessary means to carry out their mission, is subject to the punishments set out in paragraph two of article 433-5 of the criminal code.

Article 18. Violations of the texts enacted in application of this law shall be recorded by a statement in writing (procès-verbal) which writing shall conclusively establish the violation, unless there is some other proof to the contrary.

. . . . These statements must be sent to the Public Prosecutor (le Procureur) within five days of their definitive establishment (clôture).

The party concerned must receive a copy of the statement within the same five-day period.

Article 19. After article 2-13 of the Code of Criminal Procedure, article 2-14 is inserted as follows:

"Art. 2-14. Any properly established association whose goal is, according to its charter (statuts), to defend the French language, and which has been approved (agréée) under conditions set out by a decree of the Council of State, may exercise the rights of a civil party (partie civile) with respect to violations of the texts enacted in application of articles 2, 3, 4, 6, 7 and 10 of [the 1994 law concerning the use of the French language]."

Article 20. This law is a matter of public policy (ordre public). It applies to contracts entered into after its entry into force.
Article 21. The provisions of this law apply without prejudice to the legislation and regulations in force concerning the regional languages of France and are not intended to oppose their use.

Article 22. Prior to September 15 of each year, the Government shall present a report to Parliament on the application of this law and on the provisions of any Convention or international treaty concerning the status of the French language in international institutions.

Article 23. The provisions of article 2 will become effective as of the date of the publication of the decree of the Council of State defining the sanctions accompanying that article, and, at the latest, twelve months after the publication of this law in the Official Journal (Journal Officiel).

Articles 3 and 4 of this law will enter into force six months after article 2 takes effect.

Article 24. Law no. 75-1349 dated December 31, 1975 on the use of the French language is repealed, except for articles 1 to 3 which will be repealed when article 2 of this law becomes effective; Provided that article 6 of Law no. 75-1349 will be repealed when article 3 of this law becomes effective.