

THE QUEBEC INDEPENDENCE VOTE AND ITS IMPLICATIONS FOR ENGLISH LANGUAGE LEGISLATION

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I. INTRODUCTION

Although language legislation has been around in one form or another for many years, the recent fervor to make English the official language of the United States has taken hold like none before it. Proponents of English language legislation¹ claim that the U.S. needs it to help immigrants better assimilate,² to promote efficiency and fairness,³ and to preserve unity and prevent linguistic division.⁴ Opponents respond with statistics indicating that immigrants are assimilating just as they have for generations,⁵ that English language legislation is inherently unfair because it alienates language minorities,⁶ and that such legislation will not unify, but will exacerbate linguistic and cultural divisions.⁷

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¹ Proponents have used both "Official English" and "English Only" to describe their cause. Today, Official English is the more popular term since English Only implies the exclusion of other languages and proponents insist that their goal is to protect English, not restrict the use of other languages. This note uses the term Official English or, more generally, English language legislation, since those terms most accurately describe the legislation currently under consideration in the Senate. See *infra* notes 22-30 for a discussion of that legislation. Note, however, that opponents believe "English Only" more accurately describes the movement because they believe that the practical effect of such legislation will be to restrict other languages. Jose Roberto Juarez, Jr., *The American Tradition of Language Rights: The Forgotten Right to Government in a "Known Tongue"*, 13 LAW & INEQ. J. 443, 449.

² H.R. 123, 104th Cong., 2d Sess. § 2(a)(6) (1995).

³ *Id.* § 2(a)(8).

⁴ *Id.* § 2(a)(4).

⁵ Frank M. Lowrey, IV, Comment, *Through the Looking Glass: Linguistic Separatism and National Unity*, 41 EMORY L.J. 223, 301-02 (1992) (noting that studies indicate Hispanic immigrants "anglicize" at a rate comparable to that of past immigrants).

⁶ Juan F. Perea, *Demography and Distrust: An essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 366-68 (1992).

⁷ See, e.g., Carl Rowan, *U.S. Immigrant Bashers Cite "Lesson" of Quebec*, CHICAGO SUN-TIMES, Nov. 5, 1995, at 43; see also Andre Sole, *Official English: A Socratic Dialogue*, 45 U. FLA. L. REV. 803, 825 (1993); see also Jim Fisher, *Gingrich Misreads the Lesson of*

The debate rages on and both sides use whatever statistical or anecdotal evidence they can find to support their arguments. Most recently, proponents of the legislation have cited the rift between Canada and Quebec as evidence of the divisiveness of bilingualism.⁸ If the U.S. does not declare English to be its official language, they say, the U.S. could see Spanish-speaking enclaves in Texas, California and Florida attempt secession just as the French have done in Canada.⁹ But to analogize the United States and Canada in this respect ignores significant historical and cultural differences between the two nations and between the two language minorities.

Part two of this paper looks at the English language legislation currently under consideration in Congress and gives an overview of the events leading up to the 1995 Quebec secessionist vote. Part three examines two crucial differences which invalidate the comparison between Canada and the United States: first, both French and English have been guaranteed equal status in Canada since its inception, while the United States has never officially guaranteed the language rights of any immigrant class; and second, Quebec's separatist movement involves a cohesive French culture, while English language legislation in the United States targets Spanish-speaking immigrants who lack the cultural cohesion to pose a serious secessionist threat.

II. HISTORICAL BACKGROUND

A. English Language Legislation

The framers of the United States' Constitution considered the question of an official language, but ultimately chose to avoid the issue.¹⁰ One

the Vote in Quebec, LEWISTON MORNING TRIBUNE, Nov. 1, 1995, at 12A.

⁸ E.g., *Gingrich Calls Quebec a Warning Signal for U.S.*, REUTERS WORLD SERVICE, Oct. 30, 1995, available in LEXIS, Nexis Library, CURNWS File ("[The Quebec vote is] a serious warning to all Americans that allowing bilingualism to continue to grow is very dangerous and that we should insist on English as a common language and that it's what binds us together."); Sean Somerville, *Roth, Others Get Warm Welcome on English Proposal*, GANNETT NEWS SERVICE, Dec. 6, 1995, available in LEXIS, Nexis Library, CURNWS File (citing testimony of Rep. Toby Roth) ("[The near-secession of Quebec] should be the red warning light that causes us to stop and think. Could America fragment like Canada almost did? . . . The answer is a disconcerting but resounding yes."); 142 CONG. REC. H 9738, 9751 (daily ed. Aug. 1, 1996) (statement of Sen. Cox) ("[O]nly the barest majority" managed to save [Canada] from the kind of disintegration that we ourselves avoided in the Civil War").

⁹ *Gingrich Calls Quebec a Warning Signal for U.S.*, *supra* note 8.

¹⁰ Note, *Official English: Federal Limits on the Efforts to Curtail Bilingual Services in the States*, 100 HARV. L. REV. 1345, 1348 (1987).

commentator has noted that our "early political leaders recognized the close connection between language and religious/cultural freedoms, and they preferred to refrain from proposing legislation which might be construed as a restriction of these freedoms."¹¹

Nevertheless, the first call for English language legislation in the United States was heard in the early twentieth century in response to a wave of immigrants from eastern and southern Europe.¹² The call was again heard just after World War I, when war-inspired anti-foreign sentiments came to a head.¹³ In the early 1920s, Congress imposed restrictions on immigration and the language issue all but disappeared from the political agenda.¹⁴

The modern movement to pass English language legislation began in the 1960s when the lifting of immigration restrictions brought a new wave of immigrants, this time predominantly Hispanic.¹⁵ During the 1980s, the Hispanic population increased faster than any other segment of the population¹⁶ and that trend is expected to continue well into the next century.¹⁷ There is little doubt that the English language legislation currently under consideration was prompted by this influx of Spanish-speaking immigrants.¹⁸

When English Language amendments to the United States Constitution

¹¹ Heath, *Language and Politics in the United States*, in LINGUISTICS AND ANTHROPOLOGY 267, 270 (M. Saville-Troike ed., 1977).

¹² Jack Citrin, *Language Policies and American Identity*, in 99 PUBLIC INTEREST 96, 97 (1990).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Note, *supra* note 10, at 1349. Another factor contributing to the wave of immigrants at this time was the passage of federal legislation protecting language minorities. *E.g.*, Bilingual Education Act, 20 U.S.C. §§ 3281-3386 (1988); Voting Rights Act, 42 U.S.C. § 1973aa-1a (1982).

¹⁶ Lowrey, *supra* note 5, at 267.

¹⁷ *Id.* The 1980 United States Census identified approximately 5.6 million Hispanics in the United States. By 1990, that number had increased by fifty-three percent. *Id.* at 265-66.

¹⁸ Deborah Zabarenko, *Drive Begins for English as Official U.S. Tongue*, REUTERS WORLD SERVICE, Nov. 30, 1995, available in LEXIS, Nexis CURNWS File ("While not openly anti-immigrant, the measure would disproportionately affect Spanish-speaking Americans. . ."); *Gingrich Calls Quebec*, *supra* note 8 (noting the concern of conservative, pro-English language politicians about the growth of Spanish, particularly in states such as California, Texas and Florida). See also Note, *supra* note 10, at 1346, 1348-49 (noting that support for English-only has been strongest in states like California, Texas and Florida, which have large Spanish-speaking populations); Perea, *supra* note 6, at 344-45 (noting that the cause of the Official English movement is Hispanic and Asian immigration).

failed to capture Congress' attention in the mid-1980s,¹⁹ proponents re-directed their efforts to the states.²⁰ Today, twenty-three states have adopted some form of English language legislation.²¹ In light of this history, the recent popularity of federal English language legislation comes as no surprise.

The English Language Empowerment Act,²² passed by the House of Representatives in August 1996, would make English the official language of the United States' government and require the federal government to conduct virtually all of its business in English.²³ Framed in terms of "entitling" citizens to receive information in English, the bill would require that government documents are printed in English only, thereby repealing a portion of the Voting Rights Act²⁴ which requires that bilingual ballots be available for federal elections.²⁵ The bill contains a number of exemptions, including communications between members of Congress and their constituents, foreign language instruction, national security matters, public

¹⁹ E.g., H.R.J. Res. 171, 103d Cong., 1st Sess. (1983). See Dennis Baron, *The English-Only Question* 189 (1990) (constitutional amendments to declare English the official language of the United States, proposed in 1983, 1985 and 1987, met with little support).

²⁰ *Id.* See Perea, *supra* note 6, at n.327 (language legislation has principally been the province of state regulation, giving rise to question whether the federal government should involve itself in this area at all). See generally Juarez, *supra* note 1, at 452 (discussing the possibility of additional protection for language rights under state constitutions).

²¹ The following states have some type of English language legislation: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii (English and Hawaiian), Illinois, Indiana, Kentucky, Louisiana, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, South Dakota, South Carolina, Tennessee, Virginia and Wyoming.

²² H.R. 123, 104th Cong., 2d Sess. (1995). Several other "Official English" measures have been introduced recently. E.g.: S.426, 103d Cong., 1st Sess. (1993) (same legislation); H.R. 739, 103d Cong., 1st Sess. (1993) (Declaration of Official Language Act of 1993); H.R.J. 171, 103d Cong., 1st Sess. (1993) (proposing amendment to U.S. Constitution). This paper focuses on the English Language Empowerment Act as representative of other similar measures.

²³ H.R. 123, § 102 (proposed amendments to 4 U.S.C. §§ 161-69).

²⁴ 42 U.S.C. § 1973aa-1a (1994).

²⁵ The fate of bilingual voting programs under English-only legislation has sparked heated debate. Those in favor of strict English-only legislation argue that such bilingual programs prevent assimilation and foster a permanent language minority with no incentive to learn English. Elimination of bilingual voting rights, opponents of English-only maintain, will disenfranchise language minorities by preventing them from participating in the political process. See Lowrey, *supra* note 5, at 276, 280.

health and safety matters, criminal matters and Census documents.²⁶ The Act is intended to facilitate assimilation by immigrants, promote efficiency and fairness and prevent division along linguistic lines.²⁷ The bill, although passed by a 259 to 169 vote in the House,²⁸ still has a number of hurdles to overcome.²⁹ Even if it passes the Senate in 1997, the Clinton Administration has threatened a veto, denouncing the bill as "unnecessary, inefficient and divisive."³⁰

B. *The Quebec Vote*

On October 30, 1995, Quebec voters were called to the polls to determine the fate of their province—would Quebec remain part of Canada or seek independence? The final vote did little to settle the issue, since separation was rejected by a mere one percent margin.³¹ The razor-thin margin suggests the matter is far from settled, particularly in light of the composition of the secessionist vote: eighty-two percent of French-speaking

²⁶ H.R. 123 § 102(a). Proponents of the bill point to these exemptions in an attempt to distinguish this legislation from "English Only" legislation. They maintain that, since the bill does not completely ban federal employees from oral communications in other languages, it is more appropriately described as "Official English" legislation. See HOUSE COMM. ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES, H.R. Rep. No. 723, 104th Cong., 2d Sess. (1996).

²⁷ *Id.*

²⁸ Marc Lacey, *House OKs English Only Legislation*, L.A. TIMES, Aug. 2, 1996, at A1.

²⁹ In January 1997, opponents of the Act introduced a concurrent resolution entitled "English Plus," which reaffirms the benefits of multilingualism and denounces English-only measures as divisive and dangerous. As this paper goes to press, English Plus, with 23 cosponsors, has been referred to the Committee on Education and the Workforce. H.R. Con. Res. 4, 105th Cong., 1st Sess. (1997).

³⁰ Lacey, *supra* note 28. The constitutionality of the bill was questioned after a 1995 Ninth Circuit decision struck down an English language amendment to the Arizona state constitution as violative of free speech. *Yniguez v. Arizona*, 69 F.3d 920 (9th Cir. 1995), *cert. granted sub. nom.*, *Arizonans for Official English v. Arizona*, 116 S. Ct. 1316 (1996). The Supreme Court eventually decided the case on procedural grounds. *Arizonans for Official English v. Arizona*, No. 95-974 (U.S. March 3, 1997). The decision leaves open the question whether laws requiring public employees to speak only English in the workplace would violate their First Amendment rights. See Joan Biskupic, *High Court Test of 'English Only' Will Have to Wait; Possible Test Case Not Valid, Justices Decide*, WASH. POST, Mar. 4, 1994, at A04.

³¹ Andrew Stark, *Adieu, Liberal Nationalism*, N.Y. TIMES, Nov. 2, 1995, at A27 (50.6% to 49.4% in favor of staying with Canada).

Quebeckers voted in favor of secession.³² The separatist movement undeniably centers around the language issue, but to suggest that Canada's split is based solely on language ignores 200 years of conflict between Quebec and its provincial neighbors.

Canada has maintained an official policy of bilingualism almost since its inception. French and English were both recognized as official languages as early as 1867³³ and legislation passed in the 1960s renewed that commitment.³⁴ However, despite official recognition on the federal level, the rights of French and other minority languages have effectively been disregarded in the Canadian provinces.³⁵

Prior to the 1960s, language was not considered a political issue in Quebec. Provincial political parties rarely addressed language differences in their platforms and there were no proposals for government action with regard to language.³⁶ The mobilization of the nationalist movement in Quebec in the 1960s can be attributed to a number of factors. One major reason was a growing dissatisfaction with the commercial prominence of English in Montreal.³⁷ Although Quebec was overwhelmingly French-speaking, portions of Montreal, with a substantial English-speaking minority

³² *Id.*

³³ The British North American Act of 1867 (BNA), now known as the Constitution Act of 1867, declared that both English and French would be official languages. Section 133 grants the right to use either English or French before federal courts and in debates of the Canadian Parliament. It also provides for the maintenance of legislation and legislative records in both languages. R.S.C. 1985, app. II, no. 5, § 133 (1985) (Can.); see Terrence Meyerhoff, *Multiculturalism and Language Rights in Canada: Problems and Prospects for Equality and Unity*, 9 AM. U. J. INT'L L. & POL'Y 913, 956 (1994). See *infra* notes 47-48 for a brief explanation of Canada's constitutional history.

³⁴ Official Languages Act, R.S.C. chs. 0-3, (1985) (Can.) (declaring English and French to be the official languages of Canada).

³⁵ Lowrey, *supra* note 5, at 228. The rights of language minorities have fluctuated greatly since the enactment of the BNA. For example, in the 1800s, French had no official status in Ontario or Acadia, despite the BNA's guarantees of equality. French was granted official status in Manitoba in 1870, but that recognition was revoked in the 1890s. During World War I, Ontario ended public-supported French language instruction and Manitoba, followed by Anglophone western provinces, passed legislation prohibiting bilingual education. *Id.* at 227. Furthermore, the Royal Commission on Bilingualism and Biculturalism found, in 1963, that French had become a second-class language in Canada, even in Quebec. *Id.* at 229.

³⁶ *Id.* at 234.

³⁷ *Id.* at 234-35. Other factors widely considered to have contributed to the movement are the migration of French-speaking artists, writers and intellectuals from rural Quebec to Montreal, and the rise of a nationalist Francophone middle class. *Id.*

controlling much of the Montreal economy, managed to function almost exclusively in English.³⁸ The Anglophone's commercial success effectively relegated French to a second-class language within Montreal, so much so that the English speaker in 1961 Montreal earned about 51 percent more than did a Francophone and English was almost exclusively the language of corporate Montreal.³⁹

Nationalist sentiment in Quebec gained momentum throughout the 1960s, with the language issue becoming increasingly prominent.⁴⁰ This growing unrest prompted the Canadian government to pass the Official Languages Act of 1969,⁴¹ which reaffirmed the equal status of French and English.⁴² Despite these efforts to assuage French-speaking Quebecers, language and culture continued to be a point of contention in provincial politics.⁴³ A number of political parties emerged in Quebec at this time, with independence as their central theme.⁴⁴ The *Parti Quebecois* (PQ), formed in the late 1960s, won the Quebec Provincial Parliamentary elections on its separatist platform in 1976 and four years later Quebec held its first "sovereignty-association" referendum,⁴⁵ which failed by a 3-2 margin.⁴⁶ Although Quebec was not yet willing to separate from Canada, neither was it eager to embrace a Canada that repeatedly subordinated its unique Francophone culture.

The same fears of cultural and linguistic erosion which brought about the 1980 separatist referendum also prompted Quebec to repeatedly block the

³⁸ *Id.* at 233.

³⁹ *Id.*

⁴⁰ See Anthony J. Davis, Note, *Canada's Constitutional Crisis After Meech Lake*, 18 SYRACUSE J. INT'L. L. & COM. 223, 232 (1992) (called the Quiet Revolution, the movement's goal was for Quebec to have greater control over its own affairs (the desire to become "maitres chez-nous")).

⁴¹ R.S.C. chs 0-3, (1985) (Can.).

⁴² Meyerhoff, *supra* note 33, at 932.

⁴³ Lowrey, *supra* note 5, at 232.

⁴⁴ The *Rassemblement pour l'Indépendance Nationale* (RIN) was Montreal's first popular, separatist political party. The *Front de Libération du Québec* (FLQ) was a radical separatist group whose efforts included terrorism in Anglophone communities and kidnapping. Lowrey, *supra* note 5, at 237.

⁴⁵ *Id.* The party platform called for total separation, but acknowledged the need for some type of loose economic association with Canada.

⁴⁶ *Id.*

adoption of the Canadian Constitution.⁴⁷ The Canada Act of 1982 finally ratified the Canadian Constitution with the consent of all the provinces except Quebec.⁴⁸ The Act was legally binding on Quebec despite its dissent, but many Canadians wanted Quebec to ratify the constitution nonetheless.⁴⁹

Quebec's offer to accept the Canada Act, subject to a number of conditions, led to the Meech Lake Accord, a compromise designed to bring Quebec back into the fold.⁵⁰ While the Accord reaffirmed the bilingual character of Canadian society, it also contained a clause recognizing Quebec as a distinct society within Canada.⁵¹ Initially signed in 1987, the Accord required provincial ratification within three years.⁵² Events in Quebec immediately prior to and during those three years raised fears among the provinces about the rights of Quebec's language minorities and the Accord

⁴⁷ Kevin Sneesby, Comment, *National Separation: Canada in Context - A Legal Perspective*, 53 LA. L. REV. 1357, 1361 (1993). Prior to 1982, the Canadian Constitution was not a single document, but was a body of law composed of written and common law rules and constitutional conventions. Davis, *supra* note 40, at 235. The Canada Act of 1982 amended Canada's founding document (the British North America Act) to end all British involvement in Canada. The Act also established the Canadian Charter of Rights and Freedoms, granting individual rights for the first time, and renamed the BNA the Constitution Act of 1867. What is now referred to as the Canadian Constitution consists of this amended document and the pre-existing body of Canadian Constitutional law. *Id.* at 234-236.

⁴⁸ Davis, *supra* note 40, at 234. See also Sneesby, *supra* note 47, at 1361 ("French-speaking Quebecers refused to approve the Act, believing that adoption of the constitution without specific protections for their distinct society, would accelerate the erosion of French language and culture in an English dominated federation").

⁴⁹ Sneesby, *supra* note 47, at 1363. According to fundamental constitutional law, approval by a mere majority of provinces makes the constitution legal, but not legitimate. Davis, *supra* note 40, at 238 (citing Richard S. Kay, *The Creation of Constitutions in Canada and the United States*, 7 CAN. U.S. L.J. 111, 120-23 (1984)). Today, many separatists use this argument to defend against claims that Quebec's unilateral secession might violate the Canadian Constitution. See Colin Nickerson, *Canada Challenges Legality of a Quebec Secession; Supreme Court Gets a Formal Request for Ruling*, BOSTON GLOBE, Sept. 27, 1996, at A2.

⁵⁰ Sneesby, *supra* note 47, at 1364.

⁵¹ Lowrey, *supra* note 5, at 250. The clause stated: "The Constitution of Canada shall be interpreted in a manner consistent with . . . the recognition that Quebec constitutes within Canada a distinct society . . . The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec . . . is affirmed." *Id.*

⁵² *Id.*

collapsed without ratification.⁵³ The failure of English Canada to ratify the Meech Lake Accord was viewed by many Quebeckers as symbolic repudiation of Quebec's role in the Canadian federation.⁵⁴

Canadian leaders again tried to convince Quebec to ratify the constitution in 1992 with the Charlottetown Accord.⁵⁵ The resulting document again recognized Quebec as a distinct society, gave Quebec authority to preserve and promote that society, and affirmed Canada's commitment to multilingualism.⁵⁶ Canadians rejected the agreement because it gave special privileges to Quebec which, they believed, upset provincial equality.⁵⁷ Quebec Francophones criticized the document for not granting them sufficient powers to protect their unique culture⁵⁸ and English language minorities in Quebec feared that it would not protect their rights within the majority French-speaking province.⁵⁹ The ultimate failure of both the Meech Lake and Charlottetown Accords illustrates the inherent divisions within Canada with respect to language and culture. Despite Canada's best efforts, the Anglophone perception that French Quebec was being afforded special status simply could not be reconciled with the Quebec view that its French culture was not adequately protected.

⁵³ Davis, *supra* note 40, at 243. From the outset, English Canada was wary of the "distinct society" clause, fearing Quebec would use it to justify trampling the rights of English minorities in Quebec under the guise of protecting French culture. *Id.* During the ratification period, the Quebec government substantiated those fears by implementing legislation prohibiting outdoor English signs, despite a Supreme Court decision declaring the law unconstitutional under the Canadian Charter of Rights and Freedoms. *See A.G. Quebec v. Chaussure Brown's, Inc.* [1987] 1 C.A.80. Even more disturbing to Anglophones was the French reaction to the legislation. Sixty thousand French-speaking Quebeckers protested in the streets, believing the bill did not go far enough. Lowrey, *supra* note 5, at 253.

⁵⁴ Lowrey, *supra* note 5, at 258. *See also* Barry Came, *A Growing Sense of Alienation: Quebeckers Review Their Options*, MACLEAN'S, Mar. 13, 1990, at 20-21 (opinion polls conducted during the ratification period indicated that a majority of Quebeckers equated rejection of the Meech Lake Accord with rejection of Quebec as a partner in the Canadian federal system).

⁵⁵ Meyerhoff, *supra* note 33, at 985 (provincial delegations met at Charlottetown to draw up a Draft Constitutional Amendment addressing Quebec's concerns about its place in the Canadian federation).

⁵⁶ *Id.* at 986.

⁵⁷ *Id.* at 990. *See also* Christopher K. Leman and Robert H. Nelson, *The Rise of Managerial Federalism: An Assessment of Benefits and Costs*, 12 ENVTL. L. 981, 1006 (noting the importance of equality among states in constructing a strong central government).

⁵⁸ Meyerhoff, *supra* note 33, at 992.

⁵⁹ *Id.* at 993, 994.

Quebec's dissatisfaction manifested itself two years later when the *Parti Quebecois* won a majority in the 1994 provincial election by promising to hold an independence referendum within one year.⁶⁰ The following June, separatist leaders agreed to hold a "soft" referendum, requesting the authority to re-negotiate the Quebec-Canada link, with full separation only if a satisfactory agreement was not reached within a year.⁶¹ Fears about the economic feasibility of Quebec's separation loomed large during the campaign, and up until a few weeks before the vote, the separatist movement seemed doomed.⁶² The tides turned, some believe, when separatist leaders put away the economic forecasts and pulled out the language issue.⁶³

Immediately following their defeat, separatists announced plans to continue their efforts.⁶⁴ However, the enthusiasm for secession has waned somewhat in the face of economic hardships. The uncertainty of Quebec's future has taken its toll on the provincial economy, with rising unemployment rates and a mass exodus by English businesses.⁶⁵ Quebec's leaders, recognizing the need to stabilize the economy, have pledged to hold off on another referendum until after the next provincial election, expected sometime after 1998.⁶⁶ Although the decision is delayed, the closeness of the 1995 vote⁶⁷ and the level of emotion involved suggests that the issue is far from settled.

⁶⁰ Joe Lauria, *French and English in Quebec: An Uneasy History*, DEUTSCHE PRESSE-AGENTUR, Oct. 31, 1995.

⁶¹ *Quebec's Place in Canada*, IRISH TIMES, Nov. 1, 1995, at 13.

⁶² *That's That, Until Quebec Tries Again*, ECONOMIST, Nov. 4, 1995, at 45.

⁶³ *Id.*

⁶⁴ *After the Vote/Apres le Scrutin*, WASH. TIMES, Nov. 1, 1995, at A16.

⁶⁵ Don MacDonald, *In Uncertain Quebec, a House Still Divided; One Year After Vote to Stay with Canada, Bitter Debate Rages*, FORT LAUDERDALE SUN-SENTINEL, Oct. 31, 1996 (Montreal reports a 12.6% unemployment rate, the highest of any major metropolitan area in North America).

⁶⁶ *Id.* Canada's Attorney General has asked the Supreme Court to answer three questions: 1) whether a unilateral declaration of independence by the Quebec legislature would violate the Canadian constitution; 2) whether international law gives Quebec the right to secede; and 3) in the event of a conflict between the two, would Canada's constitution or international law control? Quebec's leaders have vowed to ignore the Supreme Court's ruling, stating that "Quebec's future will be decided by the will of its people, not Canada"). Nickerson, *supra* note 49.

⁶⁷ See Stark, *supra* notes 31-32 and accompanying text.

III. DISSECTING THE U.S.-CANADA ANALOGY

A. *The Historical Distinctions*

To view the Quebec independence vote as a warning to Americans of the dangers of bilingualism is to ignore important historical differences in the birth and growth of the two nations. The fragmentation currently plaguing Canada represents the fruition of a separation that has existed since Canada's formation.⁶⁸

Quebec was a French colony before being forced into the British Empire in 1763.⁶⁹ When Quebec, Ontario, New Brunswick and Nova Scotia combined to form Canada, the rights of both English and French speaking persons were explicitly recognized in the nation's founding document.⁷⁰ While Canadian Francophones entered the confederation as a founding race, language minorities in the United States enter primarily as immigrants.⁷¹ Spanish-speaking immigrants generally come to the United States expecting to assimilate, at least so far as language is concerned,⁷² while the special recognition of French-speaking Canadians effectively guaranteed they would not be required to assimilate.⁷³

The United States does not share the official bilingual history that French Canadians see as a broken promise. Immigrants are not promised bilingualism when they enter the United States, nor do they expect it.⁷⁴ Unlike

⁶⁸ Lowrey, *supra* note 5, at 264.

⁶⁹ Fisher, *supra* note 7.

⁷⁰ The British North American Act of 1867 (BNA); *see supra* note 33.

⁷¹ Samuel Issacharoff, *Groups and the Right to Vote*, 44 EMORY L.J. 869, 891 (citing BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, 1990 CENSUS OF THE POPULATION, SOCIAL AND ECONOMIC CHARACTERISTICS, FLORIDA 28 (1993) (in 1990, 79% of Cuban-Americans in Dade County, Florida were foreign born). *See* NATIONAL COUNCIL OF LA RAZA, THE STATE OF HISPANIC AMERICA 1991: AN OVERVIEW 3 (1992) (most Mexican-Americans today are those who (or whose families) have immigrated since the early 1900s, not descendants of the first annexed Mexican-Americans).

⁷² In fact, current immigration and naturalization laws require immigrants to demonstrate literacy in English to become naturalized citizens. *See* 8 U.S.C. § 1423 (1988).

⁷³ Davis, *supra* note 40, at 250.

⁷⁴ While some critics argue that federal bilingual education has resulted in an unofficial bilingual language policy in the United States, the program is, in fact, designed to aid immigrants in their assimilation. The Bilingual Education Act provides funding for transitional bilingual education, designed to teach Spanish-speaking students English, while providing them with instruction in their native language to allow them to progress in other

Canada, the United States has always been unified by a general consensus that English was, and would be the common language.⁷⁵ Furthermore, Hispanics and other immigrants recognize the economic imperative of learning English, as evidenced by the increasing demand for "English as a second language" classes.⁷⁶

Another distinction arises from the loose nature of Canada's federation, which has fostered more provincial than national allegiance.⁷⁷ Canadians, particularly Quebecers, tend to identify with their provinces more strongly than with Canada as a nation.⁷⁸ In contrast, the fifty states have come together as a more tightly knit nation than its northern neighbor and the regional identity is not found in the United States as it is in Canada.⁷⁹ Americans possess a national sense of community, tending to consider their status as Americans more significant than their status as "Tennesseans" or "Californians."⁸⁰

subjects. 20 U.S.C. §§ 3281-3386 (1988). Critics of these bilingual programs argue that they prevent assimilation by making it possible for language minority students to progress through school in their native languages without having to learn English. This argument fails in light of the fact that courts have invalidated plans which fail to "provide a method for transferring students out of the program when the necessary level of English proficiency is reached." See Lowrey, *supra* note 5, at 276. See also *Cintron v. Brentwood Union Free Sch. Dist.*, 455 F. Supp. 57, 64 (E.D.N.Y. 1978).

⁷⁵ Lowrey, *supra* note 5, at 264.

⁷⁶ *The Language Government Act of 1995: Hearings on S. 356 Before the Senate Comm. on Governmental Affairs*, 104th Cong., 1st Sess. (1995) (statement of Daphne Kwock, Exec. Dir., Org. of Chinese Americans) (in Washington, D.C., 5,000 immigrants were turned away from English classes in the 1994 school year and in Los Angeles, there are waiting lists as long as 40,000 for English classes).

⁷⁷ Lowrey, *supra* note 5, at 260 (recent de-centralization of some federal programs such as old age security and medicare have forced Canadian provinces to create their own social welfare programs, thereby removing an important incentive for national unity); see also Greg Taylor, *The Forces of Division*, MACLEAN'S, Nov. 20, 1989, at 30 (trade barriers that still exist between provinces foster provincial alliances). See Leman, *supra* note 57, at 997 (noting that the U.S. Constitution sought to prevent divisive trade barriers by reserving control over interstate commerce to the federal government).

⁷⁸ Lowrey, *supra* note 5, at 260 (citing Carl Mollins, *An Uncertain Nation*, MACLEAN'S, Jan. 1, 1990 (one poll found that 55% of Quebecers identify themselves first as citizens of Quebec).

⁷⁹ Leman, *supra* note 57, at 986 (the United States, although initially a loose collection of states, has become increasingly reliant on a centralized, federal government as a result of national crises such as the Civil War and the Depression).

⁸⁰ *Id.* at 994-95.

B. *The Cultural Distinctions*

The distinction between French-speakers as a cohesive minority and Spanish-speakers as a group with various ethnic backgrounds proves to be a critical flaw in the U.S.-Canada analogy. Members of the secessionist faction in Quebec identify themselves in terms of a single linguistic and cultural heritage.⁸¹ Hispanics, on the other hand, do not identify themselves in terms of a shared language, but in terms of their national origin.⁸² So, while Hispanics share a common language, they do not share the cultural cohesion that was so important in giving rise to the secessionist movement in Quebec.⁸³

The immigrant status of the Hispanic population provides another division within the group—between those foreign-born and American-born.⁸⁴ Official English advocates warn that the concentration of Spanish speakers in Miami, Texas and southern California, combined with the push for multiculturalism in the United States, could give rise to secessionist movements in those areas.⁸⁵ However, once the presumption that Spanish-speaking immigrants are a homogenous group is dispelled, the claim that bilingualism threatens national unity makes no sense and the language issue begins to look like a proxy for anti-immigration sentiment.⁸⁶

The analogy in question ignores two hundred years of tension stemming from Canada's official policy of bilingualism and its ineffective application. From its inception, Canada embraced linguistic dualism, recognizing that the French and the British, as its two founding peoples, should share equal rights and status as to their culture and their language.⁸⁷ The historical disparity

⁸¹ Lowrey, *supra* note 5, at 246.

⁸² Paul Brest and Miranda Oshige, *Symposium: Race and Remedy in a Multicultural Society: Affirmative Action for Whom?*, 47 STAN. L. REV. 855, 890.

⁸³ See generally Brest, *supra* note 82, at 883-90; see also Perea, *supra* note 6, at 355 (explaining that language is a poor proxy for national unity).

⁸⁴ Brest, *supra* note 82, at 889 (citing RODOLFO DE LA GARZA ET AL., *LATINO VOICES: MEXICAN, PUERTO RICAN & CUBAN PERSPECTIVES ON AMERICAN POLITICS* 66-67, 69). Mexican Americans born in the U.S. claim to feel as close to Anglos as to recent Mexican immigrants. Furthermore, a majority of Puerto Ricans, Cubans and Mexicans believe that too many immigrants are coming into the U.S. *Id.*

⁸⁵ Rowan, *supra* note 7.

⁸⁶ See Perea, *supra* note 6, at 355.

⁸⁷ Meyerhoff, *supra* note 33, at 918. See R.S.C. Chs 0-3, (1985) (Can.); Can. Const. (Const. Act, 1982) (Schedule B, §§ 16-23).

between the French and English, despite this guarantee of equality, has understandably left Canadian Francophones angry and frustrated.⁸⁸ The subordination of French culture and language within Canada was a major factor contributing to the recent secessionist movement.⁸⁹

It is inaccurate and misleading to suggest to Americans that a similar situation may result in the United States if English is not declared its official language. There is not now, nor has there ever been a call by any language minority in America for equal status with English.⁹⁰ There is no official bilingual policy in the United States.

Furthermore, the relationship between Quebec and the rest of Canada has broken down, not because bilingualism is inherently divisive, but because the Canadian government has failed to ensure the equal status it promised. An examination of Canadian history and of the culture from which the Quebec secessionist movement arose clearly shows that official English advocates have taken the wrong message from the Canadian experience.

IV. CONCLUSION

A number of Congressional leaders have cited the narrow Quebec independence vote as evidence of the dangers of bilingualism and the resulting need for English language legislation. But this analogy is ineffective in a number of ways. First, there are significant historical differences in the birth and growth of the two nations and English language legislation advocates ignore 200 years of history when they blame the recent secessionist vote solely on Canada's official bilingual policy.

Second, French-Canadians were not immigrants, but were a founding race, guaranteed equal status from the beginning. Immigrants to the United States, on the other hand, expect to assimilate into American culture and accept that knowledge of English is an economic necessity. Furthermore, Hispanics in the United States lack the cohesiveness to pose a serious secessionist threat, whereas the French of Quebec share a cultural, political and linguistic history which ultimately gave rise to their secessionist vote. Those who cite the

⁸⁸ See *supra* note 35 and accompanying text for a discussion of French rights in Canada.

⁸⁹ See Sole, *supra* note 7, at 826 (quoting Maxwell Yalden, commissioner of Canada's official languages, who stated: "We do not have a separatist problem in Canada because we have two languages. We have the problem because we refuse to give status to the other French language").

⁹⁰ Lowrey, *supra* note 5, at 301.

Canadian rift as a warning of the dangers of bilingualism seek to play upon the fears of Americans, and they do so without regard to the facts which clearly distinguish the two situations.

