Sign Language: Colonialism and the Battle over Text

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SIGN LANGUAGE:
COLONIALISM AND THE BATTLE OVER TEXT

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I. INTRODUCTION

During the past five years, several communities in northern New Jersey have experienced severe racial tensions as some residents pushed to restrict the use of foreign languages in commercial signs. After lawmakers in six towns passed legislation to prohibit local businesses from posting signs that did not include English, racial conflict became more pronounced. Critics described the sign ordinances as an attack on recent Korean immigrants. This situation offers an interesting case study in the dynamics of colonialism. The battle, in a fascinating twist, lay not in territorial possession, but in the question of which language could be used free of government intervention.

This Article considers both the signs and the legislation as texts for analysis. Each of these sets of texts presents a group’s response to an inability to communicate fully with the other. The Article examines these reciprocal attempts to maintain linguistic integrity, resulting from each side’s early unwillingness to interact with the alien group. From there it turns to a critique of the behavior of the lawmakers who drafted the sign ordinances. It identifies the lawmakers’ decision to enact the ordinances as a major causal factor in the escalation of racial conflict. The Article concludes by presenting some solutions to the impasse.

The Article now turns to a description of the racial conflict as it played out in the clash over commercial signs.

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II. BACKGROUND

This section of the Article examines the battle over the language on commercial signs. It begins with a brief history of the events that led up to the passage of the sign ordinances. This section identifies the town's simmering racial tensions as the persistent social problem that the town's lawmakers attempted to resolve through the sign ordinances. The discipline of law and literature is offered as a tool for teasing out the issues and concerns of the people involved in the dispute.

A. History

During the 1980s there began a large influx of Korean and Japanese immigration into Bergen County, an area of New Jersey considered a suburb of New York City. Most of the early group consisted of prosperous, well-educated executives and their families, who arrived with the establishment of American branches of large Asian corporations such as Nissin Foods and Samsung in northern New Jersey. Many of the Korean families settled in a cluster of towns located near the New York border.

Later groups of Korean immigrants included those who intended to open small businesses. These stores, restaurants, and professional services generally focused on Korean consumer preferences. They took advantage of the low rent and ready availability of commercial space in these towns. The local business districts had been neglected for years as large shopping malls, located away from town centers, had grown in popularity.¹ These merchants and service providers made a point, naturally enough, of advertising their special goods and Korean language proficiency by posting signs in that language.²

With the growth of the Korean community, formerly sleepy towns saw the opening of late-night and all-night establishments, which catered primarily to the newcomers. Signs in Korean became commonplace

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². The Korean language is in the Altaic group of languages, which includes, for example, the Manchu and Turkic languages. Its script, called hangul, consists of the phonetic symbols for the language's 10 vowels and 14 consonants. Korean is therefore not written in ideograms. Its words are written as a combination of these phonetic symbols, in the same manner that English words are written as combinations of letters of its alphabet. See generally 22 NEW ENCYCLOPAEDIA BRITANNICA 515-34, 748-50 (Macropedia 15th ed. 1995).
throughout the revitalized business districts of these towns. Much like commercial signs in New York City’s Chinatown, these signs often had only the most basic English information, but seeming volumes of writing in Korean.

As the Korean population swelled and the towns’ demographic profiles shifted dramatically, the incidence of racial clashes rose as well. Long-time residents exhibited growing animosity toward Koreans. The Korean population became more isolated and withdrawn from the larger community, even as their numbers grew.

Concerned with the sudden expansion, rapid change, and rise of racial tensions in their towns, local lawmakers cast about for a way to ease these pressures. Bowing to the demands of the long-time residents, the lawmakers enacted ordinances that required English translations of the Korean signs displayed on business storefronts.

B. Other Ordinances Impacting the Korean Population

The sign ordinances did not exist as the only legislation that seemed to target the Korean population. In Palisades Park, lawmakers enacted zoning ordinances restricting the hours of business operations. Retail businesses were required to close at 9:00 P.M., and restaurants at 3:00 A.M. A ban was placed on twenty-four hour operations.

These zoning changes affected Korean-owned businesses almost exclusively, including karaoke parlors, Asian-oriented comic book and periodical shops, Korean-import video rental stores, and a club where members played the board game “Go.” Six Korean-owned all-night restaurants were subject to the curfew, but the ordinance specifically exempted the one all-night restaurant that was not owned by a Korean American.


5. Ironically, the first suit to challenge the zoning changes was brought on behalf of businesses not owned by Koreans. Owners of two Sunoco gas stations, located on a segment of a state highway that ran through Palisades Park, immediately challenged the ordinance. The franchises, which had 24-hour operations, claimed they would suffer irreparable economic harm if forced to close at night. New Jersey Superior Court Judge James Murphy granted the plaintiffs a restraining order, blocking enforcement of the ordinance until its constitutionality could be decided at trial. Peter J. Sampson, Palisades Park: Truce Reached on Early Closings, BERGEN REC., Dec. 10, 1996, at NJ-1.

6. A clause in the ordinance exempted “premises commonly known as ‘diners,’” and thus enabled the Golden Eagle Diner (owned by a Greek American) to remain a 24-hour operation.
In some cases, existing laws were enforced in ways that seemed to single out Korean cultural and religious activities. In Palisades Park, a six year-old summer program for children, which offered Korean language and bible study classes, was abruptly halted by town officials. Town officials visited the site during the fourth week of the six-week program. The next day, town officials notified the state that the Korean Presbyterian Church of New Jersey, the program’s host, was operating an unlicensed day care center. State officials cited the church for the violation and ordered the program’s immediate cancellation.7

In Leonia, the zoning board rejected an application from the Korean Presbyterian Church to build an addition to the church in which they were housed. The rejection was widely seen as an irregular decision of the board, and some residents contended that opponents of the plan were driven more by racial prejudice than any legitimate zoning concern.8

The commercial signs written in the Korean language became a flash point for racial tensions already dividing the communities in the six towns. The sign ordinances that lawmakers enacted became an emblem of the legal restrictions that targeted the Korean population. Long-time residents actively utilized their system of law to roll back changes in the community that had occurred as a result of Korean immigration.

C. Law and Literature

How will the analytical structure offered by law and literature aid in comprehending these events? At the heart of this mode of analysis lies the insight that the narratives and techniques of literature will help legal scholars understand how law affects people. Literature offers vivid descriptions of human interactions and social behaviors, which are exactly

Chen, supra note 3, at 6. The article reports that the exemption for this establishment was created because it was a “known quantity.” It quotes Palisades Park’s Borough Attorney Joseph Rotolo: “A diner is a diner is a diner; everyone knows what it is. The fact that nobody really knew what those other places did, or that people had suspicions about what they did—that was probably part of the consideration for the ordinance.” Id.

7. Here, critics of the incident point to the suddenness of the closure as indicative of the animosity that drove the municipal action. Since the program had run openly for six years, its supporters charged that the possibility of irregularities in the program’s status should have been raised by town officials during the 46 weeks of hiatus. Because the town officials made no attempt to communicate with the church about the problem, and instead immediately called state officials to close down the program, members of the church considered their acts a troubling sign of intolerance. See Sampon, supra note 4, at NJ-1.

the areas which legal systems seek to regulate. Because of this relationship, law and literature proponents suggest that the methods of literary criticism can offer illumination to the questions that occupy legal thinkers. Literary criticism asks the questions: What value does literature hold? What relationship does literature have to the reality of its readers?

As a starting point, this Article proposes to use a definition of literature developed by literary critic John M. Ellis. Literature, he says, is a set of texts in which readers find meaning independent of the particular context for which the texts were created. This Article claims that the signs have become a literature, both for those able to read the signs, and for those who cannot read them, but view them on a daily basis in these towns. Later sections analyze the ordinances as another literature, written in response to the literature of signs.

Legislation constitutes a literature in that the beliefs, value choices, and decision-making processes of its authors drive both the drafting and the language of a law. A community faced with new law reacts to these underlying policies, to what the legislation means, in making decisions about how to behave in response to the law’s commands.

The Article now turns to a discussion of the underlying causes of the racial conflict as it played out in the clash over commercial signs. It begins with a description of the sign ordinances and their relationship to

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9. Derrida described the relationship between the principles of literature and law in this way:

Literature is a modern invention, inscribed in conventions and institutions which . . . secure in principle its right to say everything. Literature thus ties its destiny to a certain noncensure, to the space of democratic freedom (freedom of the press, freedom of speech, etc.). No democracy without literature; no literature without democracy. One can always want neither one nor the other, and there is no shortage of doing without them under all regimes . . . but in no case can one dissociate one from the other.


11. Is it possible for commercial signs to constitute literature? Ellis’s definition supports this argument, and common observation confirms that modern culture has long since embraced the concept. Nowadays, commercial advertisements strive to create the ultimate in persuasive narrative, the better to advance sales and brand names. Public service announcements ape the attention-grabbing techniques of commercial ads to ensure that the information they offer reaches the public. And, in a fascinating reversal, municipal transportation authorities from New York City to San Francisco post poetry on buses. This practice was started to help straphangers wile away the weary time by offering them literature that has been turned into signs.
the problem of racial conflict, which this Article has identified as the social problem at issue.

III. THE BATTLE OVER TEXT

A. The Sign Ordinances

Between 1992 and 1996, six towns in Bergen County passed ordinances regulating signs written in foreign languages. These were Cliffside Park, Englewood Cliffs, Fort Lee, Leonia, Palisades Park, and Ridgefield.  

The ordinances shared two features. First, all required that commercial signs in a foreign language also display the same information in English. Second, the English translations displayed had to be written in letters of a size at least equal to the size of the characters of the foreign language. Failure to conform to these requirements carried penalties including summonses, court hearings, and fines. The requirements of the ordinances were not limited to commercial signs identifying a business by name or purpose, but applied to any placard posted by the establishment, however temporary.

Even a cursory examination of the legislation exposes flaws. Its rationale is not based on creating a full understanding for all members of the community. Instead, it gives English speakers the ability to understand the signs written in Korean, while offering no reciprocal requirement for stores displaying signs in English only. Therefore, the legislation fails to offer Korean speakers a bridge to the English-speaking community. It forces one group to communicate, but not the other.

The requirement that the English translations have letters at least the size of the Korean seems equally problematic. This rule burdens Korean

15. See Cowen, supra note 13, at L-5.
16. See Gavin, supra note 1, at NJ-1.
17. An argument that the sign ordinances did not exist specifically to curtail the use of Korean, as opposed to foreign language use generally, seems extremely unconvincing. On this point, Fort Lee Mayor Jack Alter remarked that storefront advertising solely in foreign languages to address ethnic audiences was nothing new. At different times in the town's history, commercial signs had been posted in Greek, Hebrew, Yiddish, and Italian, yet no law
merchants to reserve half their storefront advertising space for English. As it does not constrain merchants who use English exclusively, the requirement severely disadvantages Korean merchants in the amount and prominence of the information that they seek to advertise. In spite of these considerations, lawmakers did not entertain the question of whether a smaller sign would suffice for a translation.

Lawmakers generally recited a public safety purpose as the justification for the ordinances. Yet, there are a number of ways that legislation might have satisfied the government’s avowed purposes without running afoul of constitutional issues. For example, a requirement that businesses display their street address prominently would have been sufficient to guide police or firefighters in an emergency. Such a rule would have been minimally invasive, and would have applied to businesses evenhandedly, thus enhancing the level of public safety across the board. The lawmakers had forgone these possibilities, and instead had made more awkward drafting choices.

A federal district court invalidated a similar ordinance in Asian American Business Group v. City of Pomona. Proceeding from the finding that choice of language was a form of expression, the California district court found that restrictive-language sign ordinances constituted a regulation of expression of national origin, culture, and ethnicity. Sign ordinances, therefore, regulated content in a manner violating the First Amendment. The court further stated that primary language flows from national origin, here a suspect classification. Using strict scrutiny, the court found the ordinance insufficiently narrowly tailored and a violation of equal protection under the Fourteenth Amendment.

had ever been passed to restrict the practice in Fort Lee prior to 1992. Cowen, supra note 13, at L-5.

18. Sometimes the public safety purpose invoked seems to be that of establishing the existential import of the Korean-owned businesses, surely an ambitious project for any piece of legislation. Cf. Gavin, supra note 1, at NJ-1 (“In case of an emergency, [Ridgefield Mayor Stewart] Veale said, the English-sign requirement will help eyewitnesses describe the business and its location to police, fire, and medical personnel. That information could be invaluable to emergency crews determining the substances, equipment, and stock on the site, he said.”).

19. One dissenting Ridgefield councilman suggested this very solution: “What do signs have to do with finding an address? . . . Put numbers up so people can see where they’re going.” Gavin, supra note 1, at NJ-1 (quoting Councilman Robert Brite).


21. Id. at 1333.


23. Asian Am. Business Group, 716 F. Supp. at 1334. In its discussion of insufficiently narrow tailoring of language, the district court pointed to two of the Pomona ordinance’s provisions that also appear in the New Jersey versions. First, the requirement to post advertising
The sign ordinances implicitly create a hierarchy of language, in that English becomes the *sine qua non* of commercial signs, under penalty of law. It presents a set of individuals with an untenable choice: either to communicate in a certain way and no more than a certain amount, or not to communicate at all. The rule thus abridges their freedom of speech under the First Amendment.  

The Supreme Court has spoken before on the constitutional violations inherent in enforcing a linguistic minority to conform or remain silent. In *Yu Cong Eng v. Trinidad*, the Court invalidated an act of the Philippine Legislature that prohibited merchants from keeping business records in any language other than those designated as "official languages" of the Philippines. The justification offered was that of streamlining the process of business tax collection. This law effectively served to prevent the large population of Chinese merchants from keeping records of their accounts in Chinese.

In striking down the law, the Supreme Court found that the ability to maintain a set of account books in Chinese was an important interest of Chinese nationals residing in the Philippines, insofar as they had no fluency in the "official" languages. Because the linguistic restrictions

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24. Because the signs' primary function is to advertise goods and services, the legislation at first blush might be considered cavalierly as a governmental regulation of commercial speech. In such cases, a First Amendment analysis focuses on the interests of the audience in receiving information. See, e.g., Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n. 447 U.S. 557, 563 (1980); Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 762 (1976).

This situation, however, does not describe one of ordinary business advertising. Here, the question of choice of language concerns the advertisers' individual right of free expression, as well as the audience's interest in acquiring information. See Meyer v. Nebraska, 262 U.S. 390 (1923); see also Bolger v. Young Drug Corp., 463 U.S. 60, 66 (1983) (noting that speech is not commercial merely because there is an economic motivation in expressing it); First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 784 (1978) (noting that speech within the protection of the First Amendment does not lose protection simply because its source is a business enterprise).


26. Upon signing the Treaty of Paris in 1898, the United States wrested imperial control of the Philippines from Spain. The Philippines did not achieve full independence until 1946. During that period, the Supreme Court reviewed judgments of the Supreme Court of the Philippines in the same manner as it did decisions of state supreme courts. Id. at 524.

27. The official languages of the Philippines included English and Spanish, as well as the Filipino languages.
stripped the Chinese merchants of the ability to effectively conduct their business, the Court deemed the law an improper use of the police power.\textsuperscript{28} The law violated the Due Process Clauses of both the Philippine Bill of Rights and the Fifth Amendment to the U.S. Constitution.\textsuperscript{29}

The Court also found it a violation of the Equal Protection Clause of the Fourteenth Amendment. In its decision, it noted that the deprivation of liberty and property the law created was "obviously intended chiefly to affect [the Chinese merchants] as distinguished from the rest of the community."\textsuperscript{30}

The legislation as drafted drew the ridicule of legal experts as well as local citizens.\textsuperscript{31} Their amazement underscores the puzzle of how the lawmakers of these towns could have thought so heavy-handed a solution could prove successful.\textsuperscript{32} What antagonism was driving the authors of the over-restrictive ordinances?

\textit{B. Federal Challenges}

In 1996, a federal suit was filed to challenge the constitutionality of the sign ordinances of all six towns. John C. H. Park, a Korean American who owned an advertising business, claimed that the ordinances' restrictions violated his right of free speech under the First Amendment. In December 1996, the complaint against five of the towns was dismissed. U.S. District Judge William Bassler ruled that only Ridgefield's ordinance affected Park, whose business office was located in that town. Judge Bassler allowed Park's challenge to that ordinance to proceed. In spite of

\textsuperscript{28} Cf. \textit{Yu Cong Eng}, 271 U.S. at 518. We fully concede that it is the duty of a court in considering the validity of an act to give it such reasonable construction as can be reached to bring it within the fundamental law. But it is very clear that amendment may not be substituted for construction, and that a court may not exercise legislative functions to save the law from conflict with constitutional limitation. \textit{Id.}

\textsuperscript{29} "[W]e . . . test the correctness of the action . . . by substantially the same criteria which we would apply to a case arising in the United States and controlled by the Bill of Rights expressed in the Amendments to the Constitution of the United States." \textit{Yu Cong Eng}, 271 U.S. at 524 (quoting Serra v. Mortiga, 204 U.S. 470, 474 (1907)).

\textsuperscript{30} \textit{Id.} at 528. The Court proceeded, with some asperity, to point out that the protections of the Fourteenth Amendment extended to "any person within its jurisdiction," without regard to birth or immigration status. \textit{Id.}

\textsuperscript{31} The executive director of the American Civil Liberties Union (ACLU) of New Jersey, Ed Martone, has remained a vocal opponent of the local sign laws since the first one was passed in 1992. Martone has pledged the ACLU's aid in any potential federal challenge to the ordinances. \textit{See} Gavin, \textit{supra} note 1, at NJ-1.

\textsuperscript{32} Not all lawmakers agreed with the passage of the ordinances. Some called the restrictions "selfish," "a hardship," and "obviously a mistake." Chen, \textit{supra} note 3, at 6.
the reprieve, four of the towns immediately began processing revisions or revocations of their ordinances. 33 Officials in those towns cited the expense of potential future legal battles, in addition to pressure from the Korean community, as the factors motivating the changes. 34

Members of the Korean American Chamber of Commerce prepared another federal challenge to the Palisades Park sign ordinance. 35 They agreed to delay filing, however, after the mayor of Palisades Park lost her bid for re-election in November 1996. Her administration had been widely criticized for the numerous restrictions placed on the Korean community in that town. The new mayor, in contrast, had pledged to revise the ordinances upon taking office. 36

The towns’ decision to revise their sign ordinances came on the heels of a federal court decision on a similar issue. 37 Across the country, many states have passed such “official English” laws, which prohibit state and local employees from speaking languages other than English while performing official business. 38 Among the most restrictive of these was Arizona’s law, enacted in 1988. Introduced by voter initiative, the legislation became Article XXVIII of the Arizona Constitution. It prohibited the use of other languages in the performance of state and local official activities in almost every circumstance. 39 Maria Kelly Yniguez, then a state employee, successfully challenged the law on First Amendment grounds in a Phoenix federal court. When the state decided not to appeal the decision invalidating the legislation, members of “Arizonans for Official English,” the group that had promoted the passage of the legislation, proceeded with an appeal. The Ninth Circuit ruled that the group had standing to intervene, and affirmed the trial court. Judge Stephen Reinhardt, writing for the Ninth Circuit Court of Appeals’ en banc opinion, affirmed the decision holding the law unconstitutional. The Supreme Court reviewed the case this year. Noting that Yniguez had left state employment during the appeals process, the Supreme Court vacated

33. Cowen, supra note 13, at L-5.

34. Id.

35. Sampson, supra note 5, at NJ-1.

36. Id.

37. Cowen, supra note 13, at L-5.


39. The exceptions to this law: only in situations where necessary to ensure public health and safety, to protect the rights of defendants in a criminal case, to comply with federal laws, or in classes that teach foreign languages. ARIZ. CONST. art. XXVIII.
all decisions in the case. It expressed no comment on the constitutionality of Arizona's "official English" law.40

Last year, Congress also debated "official English" legislation, which would have prohibited federal employees from using any language other than English while conducting official business.41 The bill, named the "English Language Empowerment Act," passed in House of Representatives, 259-169, but never came to a vote in the Senate. The bill was reintroduced in the House of Representatives on January 7, 1997.42

Generally, law is thought of as mediating influence on social conflict. It is rarely created to aggravate or instigate conflict, at least on a conscious level. The sign ordinances, however, were written in such a way as to raise animosity between the groups. Since the legislation's result was faulty and its basis irrational, analysis must focus on the motivations that lay behind its drafting.

The following sections discuss the behaviors of the long-time residents and members of the Korean community. Using the analytical tools provided by literary criticism, the Article considers the ways in which each group reacted to the presence and actions of the other. It describes the two groups' different constructions of this literature of signs. The Article then examines the effect of their behaviors on the six towns' lawmakers, who responded to the situation by drafting the sign ordinances.

C. Long-time Residents' Attempts to Limit Change in Community

The long-time residents of the six towns found themselves unable to read the signs in Korean displayed by merchants serving that community. Their subsequent behavior evinced a need to limit changes in the town resulting from Korean immigration. This section explains their behavior in terms of the alienation and fear triggered by the growing presence of the Korean population. It begins with a discussion of the meaning that signs hold for a reader.43

1. The Significance of Signs

Why do people want to be able to read signs? In seeing a sign, the reader knows someone wishes to communicate something. The ability to read signs, the words others offer to the public, gives the reader two rewards. One exists in the new information the reader gains. The other gain comes in the reader's knowledge that the someone is reaching out to him or her.

A reader may perceive meaning even in signs written in a language s/he cannot read. To begin with, there is the lack of immediate comprehension, which is, at its root, a denial of gratification. Language is a vehicle of communication. It is the tool by which we meet the first challenge of society: that we understand our immediate surroundings. This feeling of being able to interact with one's environment is thus deeply linked with the power which language brings.

Yet, it also exists as a gratification essential to the socialized person. Human beings of every culture recognize both the necessity and the enjoyment of communication. Almost the first pleasure parents share with children, after tending to bodily needs, is the process of naming things.

Seeing commercial signs in a language foreign to the reader, therefore, provides a number of unpleasant realizations. First, the reader finds that s/he cannot understand that sign, cannot perceive what meaning it offers. Second, the reader realizes that the business which posts that sign houses things which s/he cannot identify by name, and therefore cannot claim to recognize.

Third, the reader realizes that s/he lacks the power to communicate with a present and active "other." That is, the reader is not disturbed by the awareness that there are Koreans in South Korea communicating with each other in ways unintelligible to the reader. Instead, it is the inability to comprehend Korean speakers present in the reader's own environment that irks and frustrates. This inability to communicate is made clear by the existence of the sign. The unintelligible sign makes the reader aware of an unknown message, an unknown speaker, an unknown audience. All these awarenesses engender in the uncomprehending reader a feeling of alienation. It is this alienation, the sense of being out of step with the environment, which the reader must somehow defeat in order to regain gratification.

The reader perceives that s/he has lost, in some part, the power to understand the environment. A simple solution of this conflict would be

44. Cf. Gavin, supra note 1, at NJ-1.
for the reader to start learning how to read the Korean language signs. But the events as they have unfolded in the six towns show that not many choose this course. Few respond in a rational manner, by beginning anew the process of naming things, and thus recapturing their power to interact with the environment.

Instead, the emotion commonly attached to alienation is a deep anger that develops as the reader defines the unintelligible sign, the text that triggers the reader's alienation, as something that does not belong there. The sign "doesn't belong" to the extent that the reader "does belong," was "there first," has a "better right," has staked out possession of place. This profound territorialism translates the reader's alienation into a sensation of being intruded upon and a fear of being overwhelmed.

At this point, the sign gains one more meaning: it symbolizes the culture of the alien group, whose growth and success signify the diminishing power of the reader. The foreign language becomes linked with the loss of control of the environment. Controlling the language, then, may present itself as a method of regaining control of the environment. In demanding English translations through the mechanism of the sign ordinances, then, the long-time residents were reasserting their territorial claim.

In other words, the long-time residents can be said to have exhibited the discontents and responses of a community victimized by colonialism. They saw themselves as victims of colonialism because a recognizably different group, with economic power seemingly independent from that of the long-time residents, had established and nurtured an alien culture in their midst. The newcomers were perceived as expanding their presence in an area that the long-time residents considered their own. It is notable that, however heterogeneous the long-time residents are as individuals, they found strong identification as members of the group resisting the contamination of the newcomers' culture. Faced with intrusion, they created and projected the image of a closed, homogeneous community. Once that definition of "community" was reified, the long-time residents set themselves the task of protecting it.

45. Cf. LACAN, supra note 43, at 211.

46. Derrida suggests that this demand, at the same time it asserts the dominance of the known language, nevertheless reveals an intense desire to communicate with the unknown because of its exotic nature. See JACQUES DERRIDA, Sauf le nom, in ON THE NAME 35, 47 (Thomas Dutoit ed. & David Wood et al. trans., Stanford Univ. Press 1995) (1993).
Colonialism denotes a form of political and economic expansion historically utilized by certain European nations. Colonialism as a phenomenon was marked by the exploration, settlement, and exploitation of large areas beyond national borders. This end was often achieved through the conquering and subjugation of indigenous populations.\textsuperscript{47}

One dynamic that can be identified in the early stage of colonialism exists in the distribution of economic and political authority. In most societies, economic authority and political authority remain united in the possession of a single group, whether large or small, tightly bound or diffusely allied. At the beginning of a process of colonization, however, these forms of power become split. Economic power rests in the hands of the newcomers, who utilize their government’s resources to remain independent of the local economy. Control over the political process, on the other hand, rests with the indigenous population. This authority can be used to slow the expansion of a colonizing force, until the processes of colonialism cause the replacement or inundation the local structures of government.

One explanation, then, for the long-time residents’ negative reactions to the growth of Korean population may have existed in their fear of colonization. Certainly, the Korean immigrants cannot rationally be seen as having come to the Bergen County towns to further any government policy of politico-economic expansion. The long-time residents, however, may have found the situation so resonant with their concept of colonialism as to make the conclusion difficult to avoid.

If this fear became one of the underlying reasons for their animosity, then their next step, while still not rising to rationality, becomes understandable. Given a comprehension of the dynamic described above, the long-time residents’ best chance to prevent the inundation they feared would be to turn immediately to their lawmakers. Utilizing their political strength, they would urge their government to protect the community from outside forces. They would attempt to hinder the economic growth of the colonizing force and prevent any move by the colonizers toward consolidation of political power.

\textsuperscript{47} For the individuals who acted as agents of a government policy of expansion through colonialism, the benefits became huge. Colonists explored novel environments, pursued new forms of trade, and enhanced security for themselves. In working for the furtherance of governmental authority, colonists gained political power within the structures of their government, among their fellow colonists, and often over the indigenous population as well.
From this explanation, it becomes clear that the fight over commercial signs came about as a proxy for turf war. Implicit in the question of which language would rule lay the idea that the arrival of a new cultural group justified a demand that lawmakers authorize a hierarchy of language. Once lawmakers enacted ordinances defining one language as necessary, all other languages became by implication unnecessary, and thus less important. At that point, the long-time residents came closer to an answer of the question of who "possessed" the town that conformed with their own needs.

D. Social Isolation of the Korean Population

This section examines the behavior of the Korean population as it related to the racial conflict growing in the towns. It starts with the question of why the Korean population remained isolated socially, while living in the midst of the larger community.

1. The Significance of Signs

The presence of a large Korean population in these New Jersey towns exists as a very recent development. Two examples: by 1996, the Korean population of Palisades Park constituted twenty-five percent of its 15,000 residents, up from six percent in 1980. In Leonia, thirteen percent of the 8500 residents are Asian, and two-thirds of the Asian population comprise Korean immigrants who have settled there since 1989.

As newcomers not just to those towns, but to the United States as well, many of the Korean immigrants had limited English skills. With such high language barriers, interdependence within the group became an important survival tactic. They settled, as most new immigrant groups have done historically, in tightly knit communities. They chose to live and work in towns where the residential area lay very close to the commercial district. This ensured easy access to goods and services specially tailored to the group's needs.

Commercial signs on Korean-owned local businesses were designed in response to the inability of many recent Korean immigrants to read English well. Unable to advertise effectively in publications such as the local papers or the yellow pages, Korean merchants became used to

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48. Sampson, supra note 4.
posting numerous storefront signs. These indicated business hours, phone numbers, and weekly sales, as well as the name of the business, in Korean.

Since the need for these signs was very clear to the Korean population, the long-time residents’ anger over them seemed quite irrational. After all, the Korean residents of the town were also faced on a daily basis with the evidence of an unfamiliar language. This alienation they accepted, as the cost of entering a new society. It does not seem, however, that they anticipated being challenged for using their own language to communicate with each other.

The translation requirement of the sign ordinances may have been hard to fathom, insofar as the signs existed to advertise information that they believed would only interest other Korean speakers. That non-Koreans wanted to read their signs seemed an improbable reason for the law. Harassment of the Korean population, on the other hand, offered a more likely explanation.  

The sign ordinances restricted the Korean merchants’ ability to communicate with their customers. They perceived the laws as an attempt to invade the linguistic space that had been constructed for the comfort of Koreans with limited English. With this legislation, the Korean population was required to accept that the dominant culture considered their presence a threat to community. They were asked to conduct themselves in such a way as to soothe people who saw themselves as victims about to be conquered by the culture of the Koreans.

2. Linguistic Colonialism

Linguistic colonialism describes a socio-political attempt to impress a linguistic standard upon a population, in opposition to language received by observation or through local tradition. It denotes the imposition of an external linguistic standard by an institution setting itself up as an authority. Historically, it existed as an adjunct of the political and economic strategies underlying colonial expansion. To effect a policy of linguistic colonialism, the authority demands that the dependent population relinquish linguistic autonomy for prescription from outside the local community.

The sign ordinances generated a distrust of the motives of its authors. This was so because the legislation resonated strongly with the history of

50. Cowen, supra note 13, at L-5.

51. Often, linguistic colonialism is rationalized as a policy enshrining the Neoplatonic viewpoint of language. This philosophy suggests that the community benefits by striving toward an ideal form of communication as exemplified by a standard common language.
colonial domination through language. Fear of a renewal of the evils that colonialism once presented to subjugated populations still constitutes a rationale in language protection movements across Southeast Asia. Koreans are not newcomers to this aversion to submitting to linguistic colonialism.

The native Korean alphabet was established in 1446 and was developed to replace the practice of writing Korean with Chinese ideograms. The language has borrowed many words from Chinese, but foreign linguistic influences seem limited to these additions to vocabulary. Korea's government and intelligentsia have effectively protected the integrity of the language over generations of Mongol attacks, Manchurian invasions, Chinese military occupation, Japanese annexation, and pressures from the West to assimilate outside cultural elements.52

Historical responses in Korea to linguistic colonialism have included intense nationalism, entrenchment of parochialism (non-assimilation), and a continuing governmental aversion to engage in regular interaction, even with perceived allies. It is this legacy of struggle against true colonialism that seems to inform the behavior of the Korean population in the conflict described here. This linguistic history may provide insight into the fact that social ostracism and legal restrictions provoked little response from the Korean population. Once governmental restrictions approached the institutions of Korean language and culture, however, the storm of resistance that erupted surprised those who had considered the immigrant community a peculiarly reserved and compliant one.

E. Law as Text

Law is the text that supersedes all other texts. In this country, which bases its political system on the rule of law, it is the discourse hierarchically superior to other forms. Because it is accessed through political power, law was successfully utilized by the long-time residents, to the detriment of newcomers. Long-time residents used their political strength to press lawmakers to prohibit Korean-only language signs. They perceived the signs as both the text of a new economic power, beyond the control of the long-time residents, and the symbols of a colonizing group. They wanted legislation, the text of governmental authority, to inhibit the growing power held by the authors of the sign-text. Because of their inability to communicate meaningfully, the long-time residents turned to a form of discourse that could compel response.

52. See supra note 2 and accompanying text.
Their displacement onto the Korean speakers of the responsibility for resolving the alienation they experienced existed as a punitive reaction caused by their fear of colonialism. The long-time residents, in demanding the legislation, argued that it was the sole duty of the Korean speakers to ensure comprehension.

The Korean merchants had created the signs to communicate with those of their fellow immigrants who had limited English skills. They had not thought that these advertisements would interest non-Korean speakers. As a result of Korea’s history of guarding against linguistic colonialism, the Korean population remained sensitive to authoritarian attempts to restrict cultural expression. When lawmakers passed sign ordinances, the many among the Korean population perceived it as a xenophobic attack, rather than a public safety regulation.53

Lawmakers had thought to assuage the long-time residents’ fear of colonialism by enacting the sign ordinances. Ironically, in enforcing the ordinances, lawmakers perpetrated an act of linguistic colonialism upon the Korean population. Responding to this form of colonialism, the Korean community found rational justification for their own alienation and their resistance to interacting with the larger community.

Just as the signs themselves can be said to be text, the struggle over which language would be displayed on the signs can be described as a discourse on colonialism.

The next section describes the effect of the behaviors of the two antagonistic groups on the towns’ lawmakers. It discusses the choices the lawmakers made in implementing the sign ordinances, and offers a critique of their action in terms of the law’s results.

IV. PROBLEMS IN THE LAWMAKERS’ DECISION-MAKING PROCESSES

The advocates of the sign ordinances began by identifying the social difficulty that required solution. They considered the problem to be something like the following: Korean merchants are hanging signs that English-only readers do not understand.

They created legislation that required the merchants to provide English translations for every sign in a foreign language. The translations were to be equally as prominent as the originals. Merchants who did not comply would be penalized. Police officers were charged with

enforcement of these rules, and used their discretion to write summonses only for rule violators who used Korean.\textsuperscript{54}

Assuming rigorous enforcement, such legislation solved the problem of too many signs in Korean, and not enough signs in English. Therefore, the social conflict that gave rise to the need for government intervention should have, fairly quickly, ceased to exist. Clearly, however, the legislation did nothing to ameliorate the conflict. Instead, tensions heightened in the six towns.\textsuperscript{55}

Lawmakers write legislation to solve an existing social problem. If the legislation does not address the causes of that problem, its authors have achieved nothing more than the temporary relief of symptoms. The key to creating an effective legislative solution lies in gaining a thorough understanding of the causes, and utilizing that knowledge during the drafting process to overcome them.\textsuperscript{56}

Here, the lawmakers had failed miserably. The behavior they identified as problematic, merchants posting signs in Korean, did not constitute the root of the conflict. Therefore, exerting government authority to control the posting of signs established no recognizable solution. Instead, the law actually engendered further conflict, including the anger among those merchants whose behavior had been wrongly targeted as the cause of the problem. It also generated resentment in the Korean community, which shared the stigmatization inherent in the language of the sign ordinances.

One explanation for the lawmakers' failure derives from their over-identification with the interests of the long-time residents. They had proceeded from a perception of the Korean speaking residents, not as new members of the lawmakers' constituencies, but as outsiders beyond the circle of community.

\textsuperscript{54} A few establishments in clear violation of the sign ordinances include: "Picco Lissimo" (in Fort Lee), "Chateau Brasil" (in Cliffside Park), and "Buongustaio" (in Englewood Cliffs). A few of the towns also have "Au Bon Pain" franchises, the neon signs for which include English ("The French Bakery Cafe") that is neither a translation of the French phrase, nor written in characters of the same size as the French. Not one of these businesses has been cited for violating the sign ordinances.

\textsuperscript{55} In one of the oddest incidents, the Italian American owner of a pizzeria in Palisades Park posted a small window advertisement in Korean. In response, vandals enraged by the attempt to communicate with the Korean community, pelted the storefront with tomatoes the same day. See Chen, supra note 3, at 6.

\textsuperscript{56} This section of the Article draws deeply from the problem-solving methodology for legislative drafting developed by Robert Seidman. See, e.g., Robert Seidman, Justifying Legislation: A Pragmatic, Institutionalist Approach to the Memorandum of Law, Legislative Theory, and Practical Reason 29 HARV. J. ON LEGIS. 1 (1992).
As described above, the long-time residents created an identifiable, external "other" by refusing to accept the Korean residents of the town as a part of their town's community. They attempted to protect their conception of the community from alien influences. These efforts resulted in their advocating the creation of a rule that would restrict the propagation of information in the alien language.

In accepting the analysis of this vocal segment of their constituencies, the lawmakers chose to advance the interests of the politically sophisticated long-time residents over the Korean newcomers. They made the glaring error of ignoring their roles as elected representatives of the entire community.57

The discrimination enshrined in the passage of the ordinances was further reflected in their execution.58 They were enforced so as to single out a group hampered by political powerlessness, which resulted from its members' status as recent immigrants. Thus, the sign ordinances presented a prime example of legislation handicapping a "discrete and insular" minority.59

The lawmakers purported to act in their capacity as mediators of conflict by passing the sign ordinances. In doing so, however, they succumbed to the same fears of colonialism that had caused the community to split into factions.

The racial tensions that had developed in these towns existed as a legitimate social problem. In devising legislation to resolve the conflict, how should the lawmakers have proceeded? This section above critiqued their decision to write the sign ordinances, because they substituted imagined causes for research into the realities of the problem. The next section will discuss the path that would have allowed them to address directly the causes of the racial conflict.

57. Cf. Holden v. Hardy, 169 U.S. 366, 398 (1898) ("The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression, or spoliation of a particular class.").

58. Cf. Yick Wo v. Hopkins, 118 U.S. 356, 373 (1886). In this case, the Supreme Court noted that ordinances, in their administration, could be directed so exclusively against a particular group as to warrant the conclusion that their effect was unequal and oppressive. Such legislation amounted to a denial by the state of equal protection of the laws.

59. See United States v. Carolene Prods. Co., 304 U.S. 144, 152–53 n.4 (1938). Singling out "statutes directed at particular religious . . . , or national . . . , or racial minorities," Justice Stone noted that "prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon in protecting minorities, and which may call for a correspondingly more searching judicial inquiry." Id.
V. DRAFTING LEGISLATION FOR SOCIAL CHANGE

The lawmakers involved in the drafting and passage of the sign ordinances behaved within a system of laws that existed to prescribe their behavior: town charters, regulations, and statutes. Since these regulatory structures existed, why did the lawmakers produce ordinances that did nothing to resolve the social problem? This section provides a general explanation of why people behave as they do in the face of law. It generates hypotheses for why the lawmakers failed to produce laws that would induce the desired behavior. In this case, a successful legislative response would have created institutions to draw the old and new residents together to build a unified community.60

Legislation can solve social problems only by changing the behaviors that create them. Drafting legislation that attempts to transform institutions without eliminating the causes of the problematic behavior generally results in nothing more than a cosmetic treatment of symptoms. The law may gesture feebly towards inducing the desired behavior; it may back its normative intentions with threats of punishment; but it will not end the problem.

Successful legislation is built on an understanding of why people behave as they do in the face of a law. When presented with a rule that requires a change in behavior, social actors first respond by deliberating the available possibilities. They make choices after a consideration, not only of the law's potential rewards and punishments, but also of all the constraints and resources their own situation offers.61 Drafters must consider all the factors, non-legal and legal, which condition the choices social actors make. Otherwise they will forever chase after actors, drafting laws that exhort them to behave right, without any idea of why the carefully worded prescriptions remain ignored.

When choosing how to behave in response to a rule, the social actors consider two sets of factors, apart from the rule itself, which bear on the decision they will make. One set consists of the social, economic, and

60. Karl Llewellyn once suggested that this was the basic purpose of every law:
The law-jobs are in their bare bones fundamental; they are eternal. Perhaps they can all be summed up in a single formulation: such arrangement and adjustment of people's behavior that the society (or the group) remain a society (or a group) and gets enough energy unleashed and coordinated to keep on with its job as a society (or a group).”

61. See Frederik Barth, Models of Social Organization, in ROYAL ANTHROPOLOGICAL INSTITUTE OCCASIONAL PAPER 23 (Glasgow Univ. Press 1966).
ideological environments in which the actors exist. The second causal factor exists in the potential sanctions that the rule’s implementing agency seems likely to impose upon a violator of the rule.

Because of this, drafters must research beyond the text of the rule itself. They must investigate the specific causal factors influencing each discrete group of actors, including their non-legal environment and the likely behavior of the rule’s implementing agency. The legislation’s success will rest on the quality of the research into these issues.

In this case, the lawmakers lacked a research regimen and decision-making process to guide their creation of a lasting solution to the racial conflict. A proper legislative theory begins with a recognition of the function of law in social engineering. The lawmakers, therefore, needed to start with the premise that law can create social change.

In contrast, the sign ordinances stood as an example of legislation as a declaration of duties, the failure to perform which would bring punishment through court proceedings. This view of legislation’s function serves up the assumption that laws cannot influence social change. It suggests that government intervention through law should limit itself to guiding judges.  

Lacking an adequate legislative theory, lawmakers easily fell prey to a vocal interest group, which pressured them to accept a poorly researched and unjustified piece of legislation. In doing so, they lent their authority to all the deep mistrust and anger that drove the restrictions in the law. They should have recognized their own capacity to create transformative law, to legislate in a manner that presented a rational justification for government intervention to address the simmering racial conflicts.

Because their theory was inadequate, the lawmakers chose to create legislation based on decisions of who had “better rights;” for example: which group constituted the community? The ethnically homogeneous newcomer group, or the longer-established, ethnically assimilated group? Given a democratic polity, which will triumph: the economically powerful newcomers, or the politically savvy long-time residents? The lawmakers’ failure lay in their inability to perceive that these questions, posed in binary form, would never derive a basis for solving problems of social division. The assumptions implicit in these questions would generate policies that would exacerbate the conflict.

VI. CONCLUSION

A. Solutions

Once the lawmakers began to abandon the flawed solution of the sign ordinances they turned towards creating institutions that better advanced a policy of reducing social conflict. Most of these changes involved bringing about greater interaction between long-time residents and the Korean population.

In Leonia, the town formed a human relations commission that was charged with creating ways to bring new residents into the community. Among its first priorities was the expansion of its tutoring program in English as a second language. The commission also announced a new policy of teaching police and emergency personnel sufficient Korean, Japanese, and Spanish to allow them to respond swiftly to calls from residents who spoke those languages primarily.\(^6\)

In Palisades Park, the new mayor and Korean merchant groups agreed on ways to revise the numerous ordinances that had been enacted as restrictions on the Korean community. They also established a plan for hiring the town's first Korean American bilingual police officer.\(^6\)

The new institutions the towns created had two things in common. They created solutions that directly addressed the cause of the racial tensions, which existed in the growing division and distrust between the two groups. In establishing all these programs, the policy of establishing bilateral communication shines through clearly. The new institutions also drew input from both groups, thus altering the flawed procedure by which the lawmakers had earlier made their decisions.

B. Communication and Identity

In the end, this is a story about communication. Two groups, newly brought together, found themselves unable to speak with one another. They retreated into separate camps and began to find more and more reason to distrust one another. What began as a linguistic and cultural difference developed into a wall of silence, an impenetrable barrier of fears and suspicions. The long-established residents feared that they would be overwhelmed by the newcomers and fall victim to colonialism. They used

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64. Sampson, supra note 5, at NJ-1.
their access to political authority in urging their lawmakers to make the newcomers speak in a way that they could understand.

Speech is instrumental in relating the self to the other. Lacan points out that part of the identity we create for ourselves emerges only in our interactions with the other. Therefore, trust in the process of communication becomes essential, because we need each other in order to reveal ourselves. When we realize how important it is that we maintain this trust, we also begin to realize that the "other" faces the same difficulties and needs. This mutual need to trust and to communicate establishes the good faith in discourse from which civil society draws its strength.

C. Legislation as Literature

Lawmakers stepped into the breach in an attempt to create common ground. With little input from the Korean community, they rapidly identified with the long-time residents' suspicions, taking them as their own. They acted, not to build a unified community, but to establish linguistic dominance in lieu of natural communication. They chose to demand compliance with the letter of communication, but ignored entirely the necessity of developing deeper mutual understanding between the two groups.

To this end, the town’s lawmakers wrote and enacted ordinances that addressed only the symptoms of the social problem. They never sought for its causes. They did not attempt to resolve its causes, which existed in the fears and suspicions roiling under the thin layer of translation that the sign ordinances required.

Not only did their legislative solution fail to solve the problem, it actually exacerbated the situation. This happened because the lawmakers did not acknowledge the communicative power of legislation. Their legislation was a facile attempt to control words without increasing understanding. It is clear they thought of legislation as nothing more than words that constitute commands. Here lay their basic error.

Just as the signs meant more to each side than the advertisements written upon them, the sign ordinances represented more than a definition of new procedures and sanctions. The legislation was also a text constructed on the prejudices of one group and the silence and political powerlessness of the other. It bore the marks of that heritage in the

commands the law gave, and in the policy of linguistic superiority it established.

The two populations reacted to the underlying literature of the law. In that literature, they read about the establishment of linguistic hierarchy. They saw it place a burden to communicate on one group, but no equivalent burden on the other. They understood its refusal to commit resources to address the ongoing racial conflict.

Each group drew meaning from the policy choices inherent in the law and acted accordingly. The long-time residents, seeing government reify their fears and suspicions, felt justified in expressing their growing animosity. The Korean-speaking population, seeing government restrict their communication with each other while offering no path by which they might join the larger community, withdrew even further into isolation.

Legislation must fully respond to the causes of a social problem and must offer a full justification for the choices that constitute its policy. Legislation that does not do so remains in danger of recapitulating the worst failure of colonialism: that of wielding authority without regard to the needs of the community. Laws that command performances for which no one understands the rationale create distrust in government, and expose government to the danger of becoming illegitimate and, finally, irrelevant.

Legislation is most successful when it has been drafted as the best literature is written, deeply rooted in an understanding of human behavior and social interaction. It cannot be limited to the words which command. It should explain the reasons for the policies it creates and offer a thorough justification. It must always ask the questions that no one else has yet considered, if it is to solve the problems that have not been overcome.

66. In one incident in Palisades Park, a woman married to a former councilman was arrested for defacing a truck. She had done this in the (mistaken) belief that the truck was owned by a Korean. See Chen, supra note 3, at 6.


The words of the statute are too often the only evidence of the legal thought that has gone into it. It is as though judicial reasoning had to be gathered from reports giving decrees only, without opinions . . . . Moreover, the habit of not supporting decisions by reasons inevitably reacts upon the quality of the decisions . . . . The rule in English and American legislation has been to state no reasons at all . . . .

Id.

68. See DERRIDA, supra note 9, at 28.

Each time a literary work is censured, democracy is in danger . . . the possibility of literature, the legitimation that a society gives it, the allaying of suspicion or terror with regard to it, all that goes together—politically—with the unlimited right to ask any question, to suspect all dogmatism, to analyze every presupposition, even those of the ethics or politics of responsibility.

Id.
Colonialism failed as a political option because it based itself on a faulty theory of governance. It allowed lawmakers to rule populations without offering equal access to power, thoughtful consideration of their constituents' needs, or an even-handed allocation of resources. In order to overcome the yoke of colonial rule, subjugated populations often brought about social change through violent civil uprisings. There is good reason to fear the return of colonialism as a political phenomenon. Fear, however, should never become the basis for creating legislation.

In this case, better options remain.