

The Ghosts of Census Past and Their Relevance for 2020¹

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PRELIMINARIES

The United States has taken a population census every 10 years since 1790, as mandated in the 1787 Constitution. The census, a fundamental piece of the American political system, is also a rare, repeated, and unobtrusive event. As the count looms each decade, Americans ponder these characteristics and turn to census history to remind them of why the census is taken, and how it is taken and used.² The population count is infrequent; the 2020 Census will be the 24th count in 220 years. By comparison, the United States has had 45 presidents and 58 presidential elections. The 115th Congress is currently in session.

The census has been repeated successfully every 10 years since 1790, despite wars, including the Civil War, economic crises, and political turmoil. It provides continuity to Americans' understanding of their demographic history and hints at their likely future. The census is also a relatively unobtrusive event in American political life. Every 10 years, in the spring of the year ending in zero, census takers count the population quickly, hopefully non-controversially, and then tabulate and publish the results. Then from the public's perspective, the enterprise is mothballed for 10 years. Most people don't remember much about the last one, the one before that, the one before that, and often claim they only vaguely remember filling out a census form or even claim they personally never completed a census form. Compare that hazy memory with the searing memories of the 9/11 attacks (2001), John F. Kennedy's assassination (1963), and the Japanese attack on Pearl Harbor (1941). Nevertheless, the decennial population census is

1 Read 8 November 2018; updated February 2020.

2 The narrative in this essay is derived from Margo Anderson, *The American Census: A Social History*, 2nd ed. (New Haven: Yale University Press, 2015); and Margo Anderson and Stephen E. Fienberg, *Who Counts? The Politics of Census Taking in Contemporary America* (New York: Russell Sage Foundation, 2001).

a crucial element of the U.S. political system, and was a mechanism the revolutionary framers used to create a stable national state.

BUILDING THE AMERICAN STATE: WRITING THE CONSTITUTION OF 1787

At the end of the Revolutionary War, the 13 colonies that had successfully rebelled against Great Britain faced a problem creating a stable “united states.” During the war itself, the revolutionaries had cobbled together a national government based on “articles of confederation,” which consisted of a “continental congress” made up of one to two representatives of each state. Each state maintained its own local legislature, taxing authorities, courts, and so on. In the 1780s it became clear the arrangements were unsatisfactory, and the 1787 constitutional convention convened to “amend” the articles. The “framers,” as they came to be called, produced the constitution that still structures the American state, and for our purposes, addressed the issues of representation and taxation that had plagued the revolutionary era. The framers recognized that the states were of very different population sizes and thus created a bicameral legislature with a state’s seats in the House of Representatives allocated on the basis of a population count. They also provided that “direct taxes” could be apportioned among the states on the bases of population.

Article 1, Section 2, Paragraph 3 of the Constitution provides that:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

Voting qualifications for representatives to the national government were left to the states. Article 1, Section 2, Paragraph 1 specifies, “. . . The Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.”

In the late 18th century, only about 10 percent of the population had voting rights. Women, children, slaves, and white men without

property holdings could not vote.³ Nevertheless, the census, though always intended to be a political apportionment mechanism, counted on the basis of total population, not voters.

IMPORTANCE OF THE CENSUS

This innovation in the processes of representative government was truly radical at the time. The United States was the first nation in the history of the world to take a regular population census and use it to allocate seats in a national assembly according to population. But it also might have been a less significant innovation had it not been for the demographic character of the United States. The United States has had one of the most demographically dynamic and diverse populations in the history of the world. The combination of the census as mechanism to adjust power and resources each decade, in conjunction with the demographic dynamism and diversity, made the census and the statistical system truly central to the functioning of the society and state.

Dynamism can be measured by patterns of population growth and change. Diversity involves several aspects: geographic diversity, group diversity, and different rates of change for different parts of the country, and among the groups. A quick review of some numbers reveals the patterns. In terms of growth, the United States has grown from a population of 3.9 million in 1790 to ~330 million as we approach 2020. Thirteen states have become 50 states. The House of Representatives grew from 65 to 435 members. The average congressional district after the 2010 Census is larger than the total population of any of the original 13 states in 1790.

Population growth has been differential, and thus some states and local areas lose while others gain in political representation in the House of Representatives and Electoral College. The most counterintuitive pattern occurs when a state's population grows but its political representation declines because growth is faster in other states. New York State's population, for example, grew from about 340,000 in 1790 to 19.4 million in 2010. The state had 10 House seats after the 1790 Census, and 40 after the 1830 Census. The state's House seats declined to 31 seats after the 1860 Census as growth was faster in the West. As the state became an industrial powerhouse, New York's congressional delegation rose again, to 45 seats after the 1940 Census. It has declined to 27 seats after the 2010 Census as more rapid population growth in the South and West moved seats out of New York. The

3 Jo McGeegan, "Evolution of Voting Rights from 1789 to Today Must Continue," *Fairvote* (July 29, 2011), accessed February 10, 2019, <https://www.fairvote.org/evolution-of-voting-rights-from-1789-to-today-must-continue>.

size of the House of Representatives has remained at 435 seats since 1910, despite the fact that the population has more than tripled since then.

The U.S. population is also geographically diverse, with sharp sectional and regional differences, as well as urban, suburban, and rural differences within regions. The frontier rural society of the late 18th and early 19th centuries expanded westward, then gave way to urban industrial and metropolitan population patterns in the 20th and 21st centuries. The congressional districts drawn from the census population patterns both reflect that geographic diversity and reveal how leaders in state governments tried to maximize their power during the decennial redistricting process. It only took Americans three census cycles to figure out how to manipulate the geographic lines. The first gerrymander, named after Massachusetts governor Elbridge Gerry, was drawn in 1812.

The United States also has always been a racially and ethnically diverse society. The framers of the 1787 Constitution struggled with the logic of democratic representation in a society where some 20 percent of the population were enslaved African Americans. Their solution, the infamous Three-Fifths Compromise, counted the total slave population but discounted the totals for a state to 60 percent of the free population for allocating House seats among the states. “Indians not taxed” were excluded from the count altogether because American Indian tribal communities were considered sovereign nations outside the authority of the American state. Racial counting was embedded in the decennial census procedures from the beginning. There were other ethnic divides as well, particularly as immigrant communities with different religious traditions, languages, and customs arrived, challenging the capacities of the state to absorb those diverse populations into the political system. Race-based slavery ended in the Civil War, but racial segregation and discrimination based upon racial, ethnic, or religious identities has been endemic in American society, and documented in the decennial census.

Given this dynamism and diversity, it is remarkable that Americans have managed to count their population every decade, and except for one decade, use the data to reallocate seats in the House of Representatives and Electoral College. That one decade, the 1920s, when Congress did not reapportion, is a “ghost” that haunts census processes then and now, and reveals how high the stakes are for this critical element of the American political system. The 1920 episode serves as a warning for all future counts of what can go wrong when the census and apportionment processes don’t function as intended by the framers.

THE “GHOST” OF THE 1920 CENSUS: NO REAPPORTIONMENT THAT DECADE

The framers intended that House seats would follow population growth and migration, so that all areas of the country were guaranteed political representation in the national legislature as the nation grew. Yet, just as with an election where losers must concede to the vote winner, slower-growing areas are required each decade to concede political power to faster-growing areas. If, however, such an outcome seems fundamentally unfair, then leaders from the losing areas balk and question the logic of counting and reapportionment. That is what happened after the 1920 Census, when Congress was not able to pass a reapportionment bill from 1921 to 1929, when they only resolved the crisis by passing a prospective bill to guarantee that Congress would be reapportioned after the 1930 Census. In other words, the allocation of seats in the House and Electoral College did not change from 1912 to 1932. The question is why the 1920 Census results led to the legislative stalemate.

The controversy was unexpected. The 1920 Census proceeded relatively normally. Commentators expected the decennial reapportionment to proceed as a normal piece of legislation in 1921, as well. Republicans controlled both houses of Congress and the presidency, so partisan wrangling was not expected to be a major issue. But normalcy did not prevail, as the depth of the controversy emerged slowly and relentlessly and the political stalemate dragged on for eight years.

By the middle of the 1920s, the issues that underlay the controversy came into sharp focus. The first was demographic. The 1920 Census marked the transition of the United States to a predominantly urban and industrial society as the Census Bureau reported that for the first time, more Americans lived in “urban” than “rural” areas. The trend had been emerging for decades, yet for a nation built on frontier settler agriculture, the shift challenged Jeffersonian notions of freehold farmers as the required economic and cultural bedrock of a republican state.

Second, the after effects of World War I rocked the nation in 1919 and 1920. Race and ethnic riots, vigilante violence, the largest strike wave in American history, and fears of revolution all dominated the headlines. In this context, European immigration, which fueled the urban industrial expansion, resumed in full force at the end of the war, and anti-immigration lobbies blamed “foreigners” for the turmoil engulfing the country. Third, of course, the census results shifted House seats to states with growing urban industrial populations from more rural, agricultural states, and thus from the perspective of rural

agricultural representatives, would perversely exacerbate the underlying tension in the country. The “losers” from the proposed reapportionment controlled sufficient power in the House and Senate to block a bill. They began to question the original understandings of who the “people” were, who could vote, who “belonged” in the United States.

These complaints had been heard before, of course. But in 1920, the mechanisms that Congress had used to soften the blow of shifting power were not available. In earlier decades, Congress increased the size of the House of Representatives so that slow-growing areas would keep their House seats, losing relative, but not absolute, power in the House. Congress tinkered with the apportionment formula if it appeared to help win political support for the reapportionment bill. And they could admit new states to the union to balance the interests of older states in Congress.

The older mechanisms failed in 1920 because there were no more territories left to be admitted as states. The House chamber was becoming crowded, and there was reluctance to add members beyond the 435 limit set in 1910. When Congress asked about modifying the apportionment formula, census officials disagreed on several methods and confused Congress. There did not seem to be easy solutions to the political stalemate.

FINDING A RESOLUTION

Congress adopted several strategies to try to break the logjam. The first strategy was simply to refer the issue to committee, postpone any decision to a later date, and to “study” the issues in the meantime. The second strategy was to restrict immigration to stop or slow the “dangers” of the demographic trajectory toward urbanization, using the alleged “national origins” of the 1790 population to define immigration “quotas.” Rural interests suggested that the problem was the glut of alien immigrants in big cities, and proposed both immigration restriction legislation and a constitutional amendment to exclude aliens from the apportionment counts, akin to what the framers had done with the Three-Fifths Compromise by classing different groups of people with different political authority.

Immigration legislation passed first as a temporary measure in 1921 and then in the National Origins Act of 1924. A constitutional amendment to exclude aliens from apportionment calculations did not find widespread support. The restriction acts ended the historic open immigration policy of the United States and promised to reduce the “threat” of immigration in the future. They did not, however, at the time help resolve the immediate reapportionment issue based on the

numbers from the 1920 Census. The third strategy was to repress the violence and disorder by suppressing strikes, deporting foreign-born agitators, and affirming a native white, Protestant, cultural hegemony for the country. Still, the reapportionment bill could not muster a majority in both houses of Congress in the 66th, 67th, 68th, 69th, or 70th Congresses.

RESTORING THE REAPPORTIONMENT PROCESS AFTER THE 1930 CENSUS

By the late 1920s, the non-action raised the specter of a constitutional crisis. Since the House and Electoral College were still apportioned on the population base from the 1910 Census, and the demographic trends toward urbanization and industrialization had continued unabated, observers recognized that the 1928 presidential election could generate a popular vote for one candidate and an electoral vote for his opponent due to the lack of reapportionment. Herbert Hoover, Commerce Secretary who oversaw the Census Bureau from 1921 to 1929, was elected president in 1928, and recognized the issue. He called a special session of Congress in the spring of 1929 to deal with reapportionment, among other matters.

By then, all sides recognized that it made little sense to reapportion Congress in 1929 and then again in 1932 after the 1930 Census. This factor, plus the sober recognition that something had to give, prompted Congress to propose an "automatic" reapportionment process. The final successful compromise language charged the Commerce Secretary with reporting the 1930 and subsequent census results each decade and as well as a reapportionment of 435 House seats based on the "last" reapportionment formula used, i.e., for 1930, the 1910 method. The reapportionment would take effect automatically unless Congress acted to override it. Proposals to change the apportionment base to citizens, or to change the apportionment formula, or to increase the size of the house, were shelved.

In 1932, 21 states lost 27 seats in the House. Eleven other states gained them. California's House delegation grew from 11 to 20; Michigan's from 13 to 17. Texas got three new seats. New York, New Jersey, and Ohio each got two. But there was still one little-noticed change in the bill, which laid the seeds of the next controversy over the census, reapportionment and redistricting. The 1929 law removed the standard language from the reapportionment statute requiring "compact," "contiguous," and equally sized congressional districts. Effectively, Congress kicked the reapportionment problem to the state level, allowing states to malapportion seats within the state, or elect

representatives at large. The change preserved rural dominance of national politics for another generation. For example, in New York State in the 1930s, the largest urban House district contained 799,407 people, the smallest rural one, 90,671. Many states stopped redistricting their legislatures and congressional seats altogether. It wasn't until the 1960s when a series of test cases made their way through the federal courts that the Supreme Court ruled such malapportionment unconstitutional and coined the phrase "one man, one vote" or "one person, one vote" to define a requirement for equally sized House districts.

There were other elements of the resolution of the 1920s controversy that still shape national politics. After 1920, Congress no longer considered increasing the size of the House on the basis of population growth, as had been routine from 1790 to 1910. Congress did not reexamine the apportionment base to consider whether a metric other than total population was appropriate. During the 1920s debates, when rural interests, primarily southern, proposed a constitutional amendment to change the apportionment base to the citizen population, representatives from northern urban areas countered by proposing that the never-implemented Section 2 of the 14th Amendment be activated to reduce representation in southern states that denied African Americans the right to vote.⁴ A stalemate ensued, and Congress did not inquire into the nature of the relationship between voter participation and population counting.

Nor in the mid-20th-century era of legislative malapportionment did members of Congress or local officials focus on the accuracy of the underlying census counts. During the mid-20th century, the Census Bureau pioneered new methods to improve the census and to measure bias, accuracy, and flaws in the basis census data. Officials reported that there were differential undercounts of minorities, the poor, and dense urban areas. The results were widely reported in the academic literature, but until the Civil Rights Revolution and the "one person, one vote" decisions of the 1960s, there was little recognition that census error or bias could have much political impact.

4 14th Amendment, Section 2: "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

THE REDISCOVERY OF THE IMPORTANCE OF THE CENSUS FOR THE POLITICAL SYSTEM

Since then, of course, Americans have become quite aware of the impact of census accuracy on their political system. The reapportionment court decisions required accurate data to draw equally sized legislative districts. The Voting Rights Act required population data to identify areas where minority voting rights needed to be monitored. The Civil Rights Act of 1964 required data on employment patterns to measure equal opportunity in hiring and promotion. An undercount or bias in the underlying data would prevent implementation of the new standards for an “equal opportunity” society. And Congress increasingly used the data to allocate program funding to states and local areas.

From the 1970s on, the decennial census faced years of intense scrutiny and litigation designed to improve procedures to guarantee that the underlying numbers informing apportionment, redistricting, funding, and civil rights compliance are in fact fair and unbiased toward particular communities, regions, or racial and ethnic groups. Both census officials and census “stakeholders,” as they are now called, have come to recognize and advocate for best practices for counting to reach the far corners of the still dynamic and diverse American population. Thus, as the next count nears each decade, communities across the nation scrutinize census procedures to make sure that their “people” are counted, accurately and efficiently. There is still some evidence of bias in the decennial census counts, but the large differentials of the mid-20th century have been reduced considerably, and the intense controversies that engulfed census planning and administration from the 1980s through the 2000 census almost disappeared for the 2010 count.

THE CITIZENSHIP QUESTION AND THREATS TO THE 2020 COUNT

Unfortunately, the political controversy over the procedures for the next count has emerged with a vengeance in 2018 as the Commerce Secretary mandated that a question on citizenship be added to the 2020 form at the request of the Justice Department. On March 26, 2018, Secretary of Commerce Wilbur Ross informed Congress, “I have determined that reinstatement of a citizenship question on the 2020 decennial census is necessary to provide complete and accurate data in response to the *DOJ* request.”⁵ Within days, the controversy exploded

5 Ross claimed that in December 2017, the Justice Department requested that he “reinststate a citizenship question on the decennial census to provide census block level citizenship

publicly as civil rights organizations and state and local government officials announced their intentions to sue the Commerce Department to reverse the decision.

Ross publicly claimed that his decision to add the citizenship question to the form was not problematic, that the question had been asked for over a century on the census or the American Community Survey, and that it would not generate logistical or technical problems for the 2020 count. Yet word of Ross's intentions had been percolating among census stakeholders for several months and had generated a dramatic behind-the-scenes debate opposing adding the question. For example, in a January 2018 letter to Ross, six former census directors in both Republican and Democratic administrations wrote, ". . . we believe that adding a citizenship question to the 2020 Census will considerably increase the risks to the 2020 enumeration. Because we share your goal of a 'full, fair, and accurate census,' as the Constitution requires, we urge you to consider a prudent course of action in response to the Justice Department's untimely and potentially disruptive request."⁶ Critics charged that the Trump administration was intentionally trying to suppress census responses from immigrant communities. They charged that the question had not been asked on the main census since 1950, and that when it was asked on the main census form from 1890 to 1950, it was only asked of the foreign-born population. In 1990 and 2000, a question on citizenship was asked of sample households that received the detailed "long form" census form. Since 2000, it has been asked on the American Community Survey sample. In other words, the question has never appeared on the census to be asked of all persons. Thus critics charged that the question had not been tested to assure respondents would understand and answer correctly, and that it would add substantially to the cost of the census.

Ross's action and the intense opposition it generated thus reignited the public debate about the history of census taking, the functions of the census for reapportionment and redistricting, the dynamism and diversity of the U.S. population, and the need for a fair census so that

voting age population ('CVAP') data that are not currently available from government survey data." The Justice Department claimed that "having these data at the census block level will permit more effective enforcement" of the Voting Rights Act.

6 The former directors continued: "It is highly risky to ask untested questions in the context of the complete 2020 Census design. There is a great deal of evidence that even small changes in survey question order, wording, and instructions can have significant, and often unexpected, consequences for the rate, quality, and truthfulness of response. The effect of adding a citizenship question to the 2020 Census on data quality and census accuracy, therefore, is completely unknown. Also of import, overcoming unexpected obstacles that arise as 2020 Census operations unfold would add to the cost, without assurances that such efforts would yield a more accurate outcome."

both the “winners” and the “losers” in the reapportionment and redistricting process will see the outcome as legitimate. The controversy reminded Americans that the census is an instrument of government, but it should not be a partisan or biased instrument with controversial questions that affect the quality of the results.

Since the spring of 2018, seven major federal lawsuits challenged Ross’s decision to include a citizenship question on the 2020 Census. The litigation process generated a detailed administrative record of the Trump administration decision-making. Three trials were held, in New York City, San Francisco, and Maryland. All three federal courts ruled against the government on the grounds that Ross’s action violated the Administrative Procedures Act. The judges in the Maryland and California cases also found that Ross’s action violated the enumeration clause of the Constitution. The New York case was expedited to Supreme Court review, with oral arguments on April 23, 2019, so that the court could rule before its summer recess, and the Census Bureau could finalize the printing contract for census forms.

On June 27, 2019, Chief Justice Roberts affirmed the lower court decision and wrote the opinion for a slim 5–4 majority (*Department of Commerce et al. v. New York et al.* 2019). The court found that Ross’s decision-making had violated the Administrative Procedures Act. Printing was slated to start by July 1. For two weeks, the president pressed to find a way to get the question on the form, despite the fact that the Commerce Department authorized the printing contract to go into effect in the first week of July. Trump suggested an addendum, even postponing the census. On July 11, he relented and acknowledged that the 2020 Census Form would not have a citizenship question, but ordered the Census Bureau to produce small area citizenship data from the American Community Survey and administrative records. The potential constitutional crisis of a president defying a Supreme Court decision abated. But the threats and challenges to the 2020 count were not over. New questions immediately arose and remain unanswered—about the impact of the controversy on people’s willingness to respond to the census, the cost of the census, on cybersecurity, on the readiness of the computer systems underpinning the new mass internet response option.

The statistical community almost universally objected to the introduction of the citizenship question on the 2020 Census Form, arguing that Ross’s hasty and cavalier decision undermined the trust in the federal statistical system, by disregarding the technical and statistical expertise that have been carefully and systematically integrated into law and administrative practice over the past 200 years. As Teresa Sullivan recently argued in her President’s Invited Address at the 2019

Joint Statistical Meetings, it is no mean accomplishment that American “statistics in the public interest,” born in revolution and political decision-making, nevertheless have come to be regarded worldwide as exemplars of scientific innovation and objectivity.⁷ Ross’s actions were an unprecedented attack on the statistical system, and the American statistical community is facing a truly existential moment in the years ahead.

⁷ A revised version of the address with commentary is available in the Harvard Data Science Review: <https://hdsr.mitpress.mit.edu/>.