

Back to the Future? The Past and Present of Immigration, Race, and the Census

Dylan Riley University of California, Berkeley

riley@berkeley.edu

Rebecca Jean Emigh University of California, Los Angeles

Emigh@soc.ucla.edu

Patricia Ahmed, South Dakota State University

patricia.ahmed@sdstate.edu

Abstract

Our paper distinguishes three periods of census immigration politics, and racialization. In the first period, from roughly 1790 to 1850, the census was focused primarily on the distinction between blacks and whites. European immigrants were largely held to be potential citizen, and immigration was not regarded as a racial issue. In the second period, the Progressive Era from 1870 to 1924, immigration was racialized. The census was linked to an immigration restrictionist movement with intellectual foundations in eugenics. In the contemporary period the Trump administration is trying to pursue an immigration restriction agenda using the census that is similar to the twenties; however, this projects lacks intellectual legitimacy and political support. We close our paper with a brief set of speculations about the likely course of race, immigration and the census in the future.

The 2020 census is likely to be the most politicized national count for decades. This is because it is occurring in the context of a push for renewed immigration restriction, and the census is rightly viewed by all sides in the debate as a key tool for a potential radical restructuring of US immigration policy. Our paper intervenes in this debate by historicizing the contemporary politics of immigration and the census. We distinguish three periods of immigration and census politics each characterized by a specific structure of lay categories, a particular configuration of census intellectuals, and a distinct balance of class forces (Emigh, Riley and Ahmed 2016b:15–16). During the first period from 1790 to 1850 the dominant racial categories were white and black, census intellectuals were largely gentleman scholars concerned with polygenesis, and there were few significant class forces resisting immigration. As a result, the politics of race and the census in this period was quite distinct from the politics of immigration. This separation was consolidated in the census which emerged as a *de-facto* count enumerating all persons present on the territory for the purposes of representation. During the Progressive Era (1870–1924) racial categorization changed as new immigrants from southern and eastern Europe as well as Asia presented a threat to the homogenous white population. Census intellectuals at this time consolidated as lobbies of experts in eugenic science with close ties to the government and academia. Furthermore, a cross-class coalition of white workers and north eastern manufacturers supported immigration restriction. The result was a historically unique fusion of racial and immigration politics focused on the census. These two previous periods provide a context for thinking about the linked census and

immigration policies of the present administration. The present era is distinct from those that came before in three respects. First, the legitimacy of a racialized hierarchized division of the population has been considerably weakened. This means that explicit racial justifications for immigration restriction are no longer possible. Second, census intellectuals are now very unlikely to be exponents of eugenic science, and much more likely to be articulate advocates for racial and ethnic minorities. This leaves immigration restrictionists with few qualified cadre. Third, in the context of a capitalist class dependent on globalized supply chains, and a weakened working class, there exists little class constituency for a project of immigration restriction linked to the census.

Our paper proceeds as follows. We begin our analysis with a discussion of the US census' central political role. This requires a discussion of the history of apportionment, the development of political parties, and the rise of single member districts for representation. We then turn to a discussion of census politics in the early nineteenth century. Here we show that although the census asked a question about national origins from 1820 onward, before the Civil War the debates about race and the census were focused on whites and blacks, not immigrants. Our paper then turns to an analysis of mass migration, census politics, and immigration restriction in the Progressive Era. Here we show how a confluence of a widely shared view of whiteness, a powerful social Darwinist elite lobby of intellectuals, and a relatively indifferent capitalist class and a pro-restrictionist working class laid the foundations for immigration restriction using the census in 1924. We then contrast this configuration with the contemporary era. Here we show that a

somewhat weakened attachment to whiteness, a relative absence of social Darwinist intellectuals, and a hostile capitalist class and organizationally weakened labor movement make immigration restriction using the census a much more difficult proposition in the contemporary US. Our paper concludes by drawing some broader conclusions about census politics.

§ 1 – The Position of the Census in US Political Institutions

Before launching into a discussion of the uses of the census in immigration restriction, it is essential to consider the unique role that the census plays in US politics. Here three features are important to discuss. First, the census is the key mechanism for apportioning representatives; however, exactly what population the US's representative institutions, and particularly the House of Representatives, is supposed to be representative of, is highly ambiguous. As a result, the denominator in any calculation aimed at distributing representatives is *potentially* contestable. Second, the US political system is dominated by two parties who share between them virtually all elected positions. Finally, from the 1840s this system has been based on a first past the post or "winner take all" electoral procedure. These three features make the question of where certain types of people live, and how many of them live there, a *potentially* highly politically charged matter. In what follows we discuss these three features in turn.

Apportionment

The US census forms part of a late eighteenth century institution that has its intellectual roots in the seventeenth century. Its basic purpose is to apportion seats to the House of Representatives and votes to the Electoral College. Because of this,

the census is closely connected to the idea of sovereignty. However, the conception of sovereignty embodied in the US Constitution is highly ambiguous.

The framers of the Constitution were generally suspicious of democracy both for theoretical reasons and because, as men of property, they disliked the pro-debtor policies of the state legislatures; however, they also wanted to provide the government with some democratic legitimacy (Robertson 2013:28, 41–42). The federal Constitution reconciled these contradictory aims by including a popularly elected institution, while also blocking and filtering democratic initiative as much as possible (Robertson 2013:112–114). Accordingly, the framers sought to divide power among different institutions: an indirectly elected temporary monarch (the president), a federal judicial system explicitly insulated from the popular will, and a legislative branch divided between a purposely oligarchic upper chamber and a democratic lower chamber.

But even the underlying notion of sovereignty embodied in the House of Representatives (the putatively democratic part of the federal government) as specified by the Constitution is ambiguous. In some ways the House seems to be a purely democratic institution representing the people. But in other respects it is best understood as a chamber representing the overall wealth and importance of individual states. To understand the origins of this ambiguity it is useful to revisit the debates over apportionment in the Constitution.

After a contentious debate, the Convention adopted the rule that House seats could be drawn for every 30,000 persons (Robertson 2013:90). Although some delegates wanted to entrench the power of the original thirteen colonies they were

defeated; thus, as new states were added, the House expanded its membership until 1929 when the number was fixed at 435 (Robertson 2013:92). Since the population determined the number of representatives per state, a census was needed to distribute the seats among the states.

Who would be counted and how would they be counted for the purposes of apportionment? The answer to this question might seem obvious. The almost contemporaneous French Constitution of 1791, which closely resembles the American one in its conception of the division of powers and its attempt to balance democratic and aristocratic principles, stipulated that 249 deputies should be apportioned according to the number of citizens in each electoral district (National Assembly Constitution of 1791, Title III, Chapter I, Sections 1 and 2). But the US Constitution does not closely link representation to a citizenship count. Instead, the Constitution calls for "an actual enumeration of the population", that is a count of the *de facto* population of "free Persons" in addition to notoriously specifying a count of "three fifths of all other Persons", that is, slaves (United States Constitution, Article 1, Section 2). But slaves were not citizens; they were property. The House of Representatives thus represented both "wealth" and "people" from the very beginning. There was also a population excluded from the census count altogether: untaxed native Americans or "Indians". This population was factually present on the territory, but was invisible to the census in the early period (Schor 2009:11). As we will show below the tradition of not counting populations considered to be outside the national community would be revived in the debates over the 2020 census. Three partially overlapping groups then existed in the US: citizens, non-citizen

members of the population, and untaxed Indians. Only the first two groups were counted in the census.

Constitutional debates suggest that the delegates themselves held various views about why seats in the House should be apportioned according to population. Some members of the Convention argued that the House of Representatives, as the most democratic part of the new government, should reflect the distribution of the population. But others claimed that the lower chamber's seats should be apportioned according to wealth (Robertson 2013:85). Madison argued that population could be understood as a proxy for the distribution of wealth, thus proposing a compromise formula (Robertson 2013:91). The exact purpose of the census (producing an indicator of wealth, or producing a count of all the people to be represented) was, accordingly, ambiguous from the beginning. Adding to the ambiguity, the Constitution specifies that the census was to be used both for apportionment and for taxation: a feature that historian Margo Anderson calls "one of the classic checks and balances in the Constitution"(Anderson 1988:10). Each state had opposite incentives with respect to ensuring the accuracy of the count. If the state in question over-counted to gain more representation, it would be overtaxed. If it undercounted to avoid taxes it would lose representation. But this trade-off is based on the idea that the census was partly an indicator of the state's property, not just a counting of citizens. Furthermore, although the Constitution established the number of House Seats that each state would receive according to population, it stipulated no such proportional procedure for apportionment of seats within the state. It was not until a Supreme Court decision in 1964 (to which we

return below) that states were required to draw House districts "as equal in population as possible" (Robertson 2013:93).

The US census is not, as result, closely linked to citizenship. Indeed, nowhere does the Constitution stipulate that House seats should be apportioned according the number of citizens in any locale. It is somewhat paradoxical to find left-liberals pointing this out while self-described "conservatives", who often boast of their fidelity to the Constitution, seem to have forgotten it.

The US census is a de-facto count. It can be understood either as an index of the economic importance of particular states, or as a basis for democratic representation. But citizenship is quite obviously not a pre-requisite to being counted in the US census. This feature of the census is important because it builds in indeterminacy about exactly who should be counted for the purposes of apportionment. Different answers to that question are directly relevant to contrasting conceptions of sovereignty; this is a debate which the basic document of the US government does not clearly resolve. The potential for a conflict over the census is thus intrinsic to US political institutions.

Political Parties

The initial debates over the US census unfolded in a political background characterized by the absence of political parties. The framers of the Constitution were worried about two primary conflicts: those between classes, and those between states. The constitution, however, contained no mention of political parties, and there is no evidence that the framers predicted their emergence. By the third decade of the nineteenth century during the presidency of Andrew Jackson,

however, the mass party emerged as a new political phenomenon. It would be followed during the run-up to the Civil War by the emergence of the Republican Party as a competitor organization (DeLeon 2008:48–49).

The emergence of political parties gave a new meaning to the census. Struggles over the census count were now shaped not just by the competing interests of different states, or different sections, but also by those of competing political parties.

Single Member Districts

This party conflict was exacerbated by another feature of the US electoral system: the establishment of single member, winner take all or "first past the post", districts rather than proportional representation called in the US context the "General ticket". Single member district representation was established by the Apportionment Act of 1842. The two catalysts for the reform were first a "general ticket" election in New Jersey in 1838, and second the adoption of a "general ticket" apportionment reform in Alabama in 1841 (Dow 2017:111). In "general ticket" elections all the representatives for the state were elected in a single constituency. Electors had as many votes as the number of candidates running in the election. In states dominated by a single political party, in the cases of New Jersey and Alabama this meant the Democratic party, the entire delegation was likely to be of that party, even if there were concentrated pockets of politically minority voters in specific locales. It is for this reason that Single Member District (SMD) elections were first promoted by the Whig party and that this method of selected delegates was couched in the language of protecting minority rights (Dow 2017:133).

Conclusion to the Institutional Background

By the fifth decade of the nineteenth century then many of the features that would lead to a highly politicized census were in place: an institution directly relevant to the apportionment of seats in the House of Representatives combined with a two party system and SMD elections. Given this institutional set up, the identification of where certain types of voters were located geographically became of burning political interest for political party organizations.

When this feature is combined with the deep political importance of race and ethnicity in the U.S. context, it implies that determining the distribution of types of people across territories is a profoundly political act. The politicization of the census is thus intrinsic to the purpose of the census and the U.S. system of political representation regardless of any more specific historical conditions.

§ 2 – Citizenship and Whiteness Prior to the Civil War

During the period immediately after the Revolutionary War the main demographic distinctions that concerned the census were mixed racial and legal categories: free whites and slaves above all. From 1820 the census did ask a question about non-naturalized foreigners (Wright 1900:26), but as Schor (2009:43) points out, these people were included in the census as part of the de-facto population of the United States for all the legal purposes for which the census was used. Generally speaking, during this early period whiteness and citizenship were closely related so immigrants who were considered white were understood as either actual or potential citizens. As a consequence, debates over race and the census in this period did *not* closely intersect with debates about immigration and citizenship.

The Structure of Lay Categories

The US's first naturalization law of 1790 restricted naturalization to "free whites". But this was a broad category (Fitzgerald and Cook-Martin 2014:86–87; Jacobson 1998:40). The first major wave of European immigration after the establishment of the United States came in the 1840s, and was connected with a downturn in the business cycle in Europe (Margo 2000:209). However, these early waves of European immigrants were relatively quickly "whitened", even if it took longer for the Irish than for the Germans. Indeed, throughout the entire ante-bellum period the status of white person and citizen were closely linked to one another (Jacobson 1998:25).

The major political struggles over the census in this early period concerned the incidence of mental illness among northern free blacks (an indicator of their supposed unfitness for the condition of citizenship), and fertility rates for mixed race persons (Schor 2009:49–50, 80–81). In sum, the racial classification scheme predominant in the early nineteenth century opposed free whites to blacks not immigrants to citizens. The appearance of the immigrant as a racial threat was a later historical development.

Intellectuals

By the 1820s a culture of quantification spread throughout American society partly as a result of first two censuses. In 1839 the *American Statistical Association* was founded in Boston under the impetus of Lemuel Shattuck (Schor 2009:47). The role of these statistical experts increased with the census of 1840, the first count under a superintendent of the census rather than the cabinet. Experts began to take on a

greater role in this period as they mediated public concerns about the status of free blacks to the Census Board and Congress (Emigh, Riley and Ahmed 2016a:167).

However, census intellectuals in this period remained predominantly gentleman scholars. Men like Josiah Nott and James DeBow, southerners who sought to use the census to prove radical biological differences between whites and blacks, were not professionally trained statisticians or social scientists, and they did not form highly cohesive professional organizations (Emigh, Riley, and Ahmed 2016b:55). Their specific racial theories, although they resonated with wider social categories, were not rooted in a highly prestigious academic discourse. Thus their data collection initiatives often seemed quixotic and personal, and were resisted by the very southern interests one might expect to have supported them (Emigh, Riley, and Ahmed 2016b:56–57).

Class and Interest Group Politics

The American labor market in the late nineteenth century was marked by abundant land and scarce and expensive labor (Gallman 2000:19; Margo 2000:224). Most of the population was made up of farmers, the main occupation in the United States until 1850 (Margo 2000:215). The class structure of the South differed. There a relatively small class of plantations owners extracted a surplus from African American enslaved persons while a large poor white population eked out a hardscrabble existence in the region's uplands. Prior to the Civil War, and particularly prior to the 1840s, there was no major class of industrialists or wage laborers in manufacturing. Thus, although immigration picked up in the 1840s,

there was no major economic constituency for immigration restriction in this period.

During this early period of US census politics there was little impetus to politicize immigration through the census. The Constitution itself based apportionment on the *de-facto* not citizen population. Furthermore, throughout the nineteenth century the main lay categories opposed whites to African-Americans, not citizens and non-citizens. Finally there was no organized movement of immigration restriction. The frontier was open and European immigrants were quickly "whitened".

§ 3 – Census Politics and Immigration Restriction in the Progressive Era:

Challenging White Homogeneity

The social configuration that insulated the US census from immigrant politics in the early years of the republic, changed toward the end of the nineteenth century. The wave of mass migration that flooded into the US after Reconstruction was both quantitatively immense, and qualitatively different from what had come before. As the cost of travel across the Atlantic Ocean tumbled following the invention and deployment of steamships a huge flow of migrant labor surged into the country; these migrants were partly attracted by economic opportunities, but they were also being driven out of their own countries by the sudden influx of cheap grain from the United States and Russia which put small scale European farmers under immense pressure from the 1870s onward (Hobsbawm 1989: 36; Kolko 1976:68; Perlmann 2018:14). Furthermore, the main sources of migration shifted from northern and western Europe, to southern and eastern Europe. As these new migrants arrived

they were politically organized into ethnic machines that popped up in all major American cities in this period (Kolko 1976:90–91; Wiebe 1967:30).

Asian immigrants to the United States were even more despised than the new immigrants from southern and eastern Europe. They were also much more firmly racialized and at an earlier period than their European counterparts. Indeed, the Supreme Court of California denied "Chinese" persons the right to naturalize in an 1854 ruling (Schor 2009:179). This was followed by the Chinese Exclusion Act of 1882 which suspended all immigration from China for 10 years (Schor 2009:182).

This reality of immigrant-dominated politics in large American cities prompted a diffuse immigration restriction movement that politicized the US census in relation to immigration. There were two main issues that brought together the census and immigration restriction: apportionment, and a quota system.

We begin with apportionment. In 1920 the Republican controlled Senate blocked reapportionment, and Congress failed over the entire decade of the twenties to reapportion seats according to the census as mandated by the Constitution. The politics of this failure are easy to understand. Cities with significant immigrant populations who tended to vote Democratic were growing rapidly in population, while the population of rural areas, that was the base of the Republican party, was in relative decline (Anderson 1988:141–142). The solution that was finally arrived at in 1932, using data from the 1930 census, was to "reapportion congressional seats among the states but to allow the states themselves to malapportion those seats within the states" (Anderson 1988:157).

The second issue that linked immigration and the census in this period was restriction itself. This was the attempt to establish a quota system for immigrants based on the nationalities present in the United States in 1890 (Anderson 1988:141).

The politics of immigration in this period was distinctive in three ways. In the first place the lay category of whiteness now came to refer not just to European immigrants, but more specifically to immigrants from northern and western Europe. The experience of mass migration had changed the specific valence of this lay category. Secondly, on the basis of this broader change in lay categorization a highly developed intellectual discourse emerged that sought explicitly to theorize racial differences, particularly among Europeans. Third, by the late nineteenth century there was little determined opposition to immigration regulation from capitalists as labor markets were generally quite slack in sharp contrast to the first period discussed above. This allowed for a cross class coalition between the white working class and Northeastern industry on a program of immigration restriction. These were the three factors that came together to produce the Johnson Act.

Whiteness and North-Western Europeans: Lay Social Darwinism

The history of immigration restriction in the progressive era demonstrates its close dependence on lay categorization. Joel Perlmann has carefully reconstructed the history of the *Dictionary of Races or Peoples* published by the Immigration Commission in 1911. Perlmann's work shows that the first attempt to track the "racial" or "national" origins of the immigrant population emerged from quite a low level within the US Bureau of Immigration. A surgeon at Ellis Island, Victor Safford,

and a political appointee, Edward McSweeney, who had previously had a career as a union organizer in a Massachusetts shoe makers union (Perlmann 2018:15) drew up a "List of Races and Peoples" to aid customs clerks in recording information on immigrants (Perlmann 2018:25).

The initial impetus for this classification came from a squabble among immigration clerks at Ellis Island over how to classify new arrivals from the multi-ethnic empires of Eastern Europe (Perlmann 2018:17). Since it seemed to these clerks that different peoples were arriving from the same political unit it was necessary to develop a consistent usage that could differentiate residence from nationality (Perlmann 2018:17). Eventually Safford and McSweeney compiled a report advocating for the collection of data by race in 1898 (Perlmann 2018:22). This report mutated into an official List of Races and Peoples, and then finally into the prestigious *Dictionary of Races and Peoples* issued as an official congressional report in 1911 (Perlmann 2018:106–107). Although Perlmann does not present evidence about how immigration clerks were classifying arrivals before the development of the more elaborated intellectual products, it seems from his evidence that these classifications were developed independently of Social Darwinist theory per se.

The racialization of Asian immigrants in the census was even firmer than the southern and eastern European ones. Thus the 1870 census introduced new racial categories for Chinese, Japanese, Koreans, Hindus, and Filipinos during the period from 1870 to 1920 (Schor 2009:175) The addition of these categories crystallized an already broad anti-Asian sentiment that was especially strong in California.

During the progressive era a large sector of the population espoused a crude sort of Social Darwinism. This categorical scheme then became the basis of official government statistics, and ultimately immigration restriction based on the census.

Immigration Restriction and the Intellectuals

Intellectuals were extremely important in providing scientific legitimacy to racial categorizations of immigrants in the late nineteenth century. Their role in the progressive era was mostly one of elite lobbying.

Although the term "progressive" today vaguely connotes someone on the liberal left, in the late nineteenth century it had a slightly different meaning, indicating middle class urban reformers (Wiebe 1976:166).¹ The late nineteenth century progressives were enamored of scientific knowledge and social reform. Although they generally rejected equalitarianism, they claimed to speak in the name of a broad public interest (Kolko 1976:30). It was progressives who pushed prohibition, and many of them also supported eugenics (Perlmann 2018:74). The Immigration Restriction League (IRL), established in 1894 by a group of Harvard graduates (Prescott F. Hall, Robert DeCourcy Ward, and Charles Warren), was the key social link between progressivism, scientific racism, and the census (Tucker 1994:88).

The IRL, like many of the other progressive era lobbies, undertook three main activities: it disseminated putative scientific information to the general public, it directly interacted with the Bureau of Immigration and with the Public Health Service, and finally it drafted legislation and interacted with members of Congress to

¹ In his infuriatingly allusive language Wiebe (1967:166) describes progressivism as "the ambition of the new middle class to fulfill its destiny through bureaucratic means."

get laws passed (Decker 2014:168). Although there are no comprehensive membership lists of this organization, according to Jacobson (2001:197) "the membership rolls read like a *Who's Who* of American education and civic leadership".

Although not a formal member of the IRL the eminent economist and president of MIT, Francis Asama Walker provided the most coherent theoretical statement of the group's position (Perlmann 2018:51; Wiebe 1967:89). Walker argued that that the effect of wage levels on new immigrants and the "old-stock" American workers differed. The immigrants, since they were used to a lower standard of living, would continue to have high levels of fertility even with low wages. But the American workers would "curtail fertility in order to preserve a decent standard of living for themselves and their children" (Perlmann 2018:52). The result would be "race suicide" as the newer stock replaced the older.

The IRL had key allies in Congress some of whom were themselves progressive reformers. One of the most eloquent supporters of immigration restriction in the 1890s, and a key political ally of the IRL, was Henry Cabot Lodge. He had grown up in an elite Boston family that was Republican and anti-slavery (Perlmann 2018:41). Before his participation in immigration restriction, Lodge was most well-known for introducing the "Force Bill" in 1890 which would have guaranteed federal control over local elections. This legislation was partly aimed at cleaning up corrupt urban machines, but more importantly undermining the "near total restrictions in the South on black suffrage" (Perlmann 2018:47). Lodge's critique of the suffrage restrictions in the South focused on their hypocrisy. Although he thought it was

completely legitimate to exclude illiterates from voting, he saw no reason to distinguish between illiterate blacks and whites. Lodge's support for immigration restriction was closely connected to his progressive reforming vision. For Lodge saw immigration from southern and eastern Europe as a threat in the first instance because the new immigrants were *illiterate* (Perlmann 2018:47–50).

Arguments such as Lodge's however could easily blend into scientific racism, partly because of the deep ambiguity of the term "race" in this period. By 1890 Lodge could state in the House of Representatives that, "I do not desire to see these race problems multiplied or complicated. I do not want to see the quality of American citizenship decline beneath the effects of unrestricted immigration" (quoted in Perlmann 2018:52).

Immigration restriction in the period from 1890 until the passage of the Johnson Act in 1924 was fundamentally a progressive cause championed by many prestigious intellectuals. As we show below this constitutes a dramatic contrast with the current period.

Class Coalitions and Immigration Restriction

The third factor allowing for immigration restriction was the emergence of a cross class coalition between white workers and manufacturers. One of the bases of this coalition was sharply decreased demand for labor from American capitalists after 1920. US capitalists in the late nineteenth century were ambivalent about immigration. Cheap immigrant labor helped them lower costs; however immigrants were associated with radical ideologies, such as anarchism and socialism, and ethnic differences within the workplace created inefficiencies in production. As US capital

became more mechanized after the turn of the century its demand for labor dropped, and so did any defense of mass migration (Kolko 1876:92–3). In this political environment immigration restriction could emerge as a serious political demand particularly within the Republican Party (Bensel 2000:150). Indeed, Fitzgerald and Cook-Martin (2014:95) note the emergence of a "Sinophobic cross class consensus" behind the various pieces of anti-Asian legislation in the late 1880s.

The Outcome: Successful Immigration Restriction Using the Census

The threat of "new immigrants" from southern and eastern Europe was so severe that in 1920 the Republican-controlled Congress refused to reapportion representation on the basis of the census (Emigh, Riley, and Ahmed 2016b: 62). Under pressure from a powerful eugenics lobby organized as the Immigration Restriction League and connected to Congress through the Immigration Committee, the legislature passed a series of increasingly restrictive immigration laws culminating in the 1924 National Origins Act, which based immigration quotas on the 1890 census (Emigh, Riley, and Ahmed 2016b: 62, 66).

The National Origins Act froze the politics of immigration and the census in the eugenicist mold for approximately four decades. All Europeans now became unconditionally white although "ethnic" differences were still important among them. It was only from the sixties that a new period of immigration and census politics emerged.

§ 4–Census Politics and Immigration Restriction in the Contemporary Period:

A Reaction to Civil Rights

We now turn to contrasting the experience of the Progressive Era censuses leading up to the Johnson Act with those of the period after 1965, before focusing in more narrowly on what is likely to be an intensely politicized 2020 count.

We start, however, with a very brief sketch of the basic transformation in the census's position with the rise of the "welfare state". From the late 1940s Congress began to distribute resources called "grants-in-aid" on the basis of funding formulas determined by census data. Grants-in-aid were distributed in this way for highway construction, housing, school lunch, anti-poverty, and employment programs and municipal government improvements (Anderson 1988:203). Population counts now determined the allocation of federal resources. This change gave the census a fundamentally new role.

Furthermore, by the early sixties, and connected to the broader Civil Rights Movement, activists and their allies were winning apportionment cases in federal courts. In the 1962 *Baker versus Carr* case, the Supreme Court ruled that the state of Tennessee had to reapportion its congressional districts in order to comply with the equal protection clause of the Fourteenth Amendment to the Constitution. Accurate census data for ever smaller geographic areas now became crucial (Anderson 1988:209).

These political reforms culminated in the Voting Rights Act (VRA) of 1965 that enforced the Fifteenth Amendment to the US Constitution prohibiting the denial of the vote on the basis of race (Anderson 1988:209). The VRA required six southern states, and several counties in other states, to "preclear" their voting registration rules with the Justice Department; census data was crucial to demonstrating

compliance or non-compliance (Anderson 1988:209–210). Over time the purpose of the voting rights was extended. In later years it not only attempted to guarantee African Americans effective suffrage in the south, it also sought to ensure that specific racial and ethnic groups were adequately represented by their co-ethnics in representative bodies (Thernstrom 1987:327). To implement these new provisions of the act required detailed information from the census. The legislation also set off a process of ethnic lobbying in which representatives of various groups tried to make sure that they had electoral districts guaranteed to make their interests count.

In sum, the contemporary politics of the census takes place in a world in which the census is now a key mechanism for distributing federal resources and determining the nature of electoral districts. But of course there is a further feature of this that needs to be discussed: the transformation of immigration law in the Hart Cellar Act of 1965. This legislation replaced the National Origins Act with a system instituting two broad caps on immigration, one from the Americas and the other from the rest of the world. Within these areas visas were distributed according to family re-unification and job-skills. This legislative decision created the groundwork for a new era of mass migration (Perlmann 2018:337–338).

The Politics of Mass Migration and the Census after the Civil Rights Era

The politics surrounding the 2020 census are strikingly analogous to those of a century or more ago. In the first place levels of immigration since 1970 have been very high. Indeed, immigrants constituted about 13% of the total U.S. population in 2016 (American Community Survey 2016; Grieco et al. 2012: 19), a percentage comparable to that around 1910. These immigrant populations have tended to

concentrate in coastal "blue areas." Given the reapportionment mechanisms of the U.S. Constitution, they are a cause of increased political representation for these states.

Second, just as at the turn of the last century, this influx threatens one main political party: the Republican Party. This organization is increasingly a party of elderly, less-educated whites; but the white population is shrinking. Meanwhile, the population as a whole is becoming more educated; but level of education correlates negatively with Republican Party identification. These basic demographic trends give the party a powerful incentive to undercount certain parts of the U.S. population.

Thus, the U.S. faces a situation in which one of the two major political parties has an interest in undercounting the population while the other political party has an interest in an extensive count. Combined with the structural features of the U.S. census that lead to its politicization, these facets of the contemporary situation tend to politicize the count even further. What is currently occurring then is in many respects a repeat of the debate of the twenties.

Finally, the two issues that linked immigration and the census in the 1920s are the same ones that do so today: apportionment and a potential quota system. Concern over apportionment is central to one of the most controversial policies of the current administration: the attempt to place a citizenship question on the general census for the first time since 1950; previously, sample surveys had captured this information (Wines 2018). The Secretary of Commerce's proposed change was purportedly in response to a Justice Department memorandum of 12

December 2017, which claimed that a citizenship question was necessary in order to "enable the Department [of Justice] to protect all American citizens' voting rights under Section 2" (Gary 2017). E-mails disclosed from the summer of 2017 show that Kris Kobach was espousing an argument closely similar to the DOJ letter prior to August 2017. Kobach argues, in a July 17 2017 e-mail sent "at the direction of Steve Bannon" that the lack of a citizenship question "leads to the problem that aliens who do not actually 'reside' in the United States are still counted for congressional apportionment purposes" (Kobach 2017). The rightist Federation for American Immigration Reform (FAIR), an organization close to the Trump administration, made similar arguments years before. Key members of this organization hold that counting undocumented immigrants dilutes the representation of citizens (Martin 2008:1-2).² Indeed Jack Martin, a leading figure in FAIR, in 2008 suggested that non-citizens be thought of as analogous to untaxed Indians in the nineteenth century. As he put the point (Martin 2008:2):

[T]he law governing the composition of congressional districts does not say that all residents of the United States will be the basis for determining the size of congressional districts. Excluded from that representation system are, '...indians not taxed.' This exclusion is *analogous to the exclusion from U.S. citizenship governed by the 14th Amendment that specifies that all persons, '...subject to the jurisdiction...' of the United States acquire our citizenship when born in the United States* [my emphasis]. That phrase, '...subject to the jurisdiction...' excluded Indians living in tribal nations among others.

² This argument has led left liberals, such as Robert Reich (2018) to refer to this plan as "an unconstitutional power grab." Reich's case is persuasive to the extent that it is clear that the Trump administration's attempt re-institute a citizenship question has nothing to do with the VRA as conventionally understood. But it is probably not true that the only, or even main, purpose of re-instituting the citizenship question is to undercount "neighborhoods that are heavily Latino or Asian" (2018). It is instead one part of a much more ambitious program to transform the way that political representation is organized in the United States.

The project of the Trump administration, in close coordination with groups like FAIR, is therefore not only to undercount hard to count populations, but more radically, to change the basic theory behind the composition of the denominator for congressional apportionment.

The second element of the new census politics focuses on the establishment of a quota system, just as in the 1920s. Indeed, many journalists and political actors have been struck by the similarity (e.g. Hing 2017). In fact, Jefferson Sessions, until recently Attorney General of the United States, has explicitly drawn such a connection. During a radio interview with Breitbart News in 2015, Sessions, stated,

Some people think we have always had these numbers [of immigrants], and it's not so, it's very unusual, it's a radical change. When the numbers reached about this high in 1924, the president and congress changed the policy, and it slowed down immigration significantly, we then assimilated through the 1965 and created really the solid middle class of America, with assimilated immigrants, and it was good for America. We passed a law that went far beyond what anybody realized in 1965, and we're [now] on a path to surge far past what the situation was in 1924. (Serwer 2017 for similar comments without the explicit reference to 1924 see Sessions 2014:21)

Sessions's comments clearly imply that he sees the 1924 National Origins Act as a model for immigration policy. This well encapsulates the project of the Trump administration. It would like to return the country to a demographic profile reflecting the mid-twentieth century U.S. The census will be a key tool in achieving this.

However, the historical context of census politics in the contemporary period differs from that of the 1920s in three important respects. First immigration restriction in the contemporary period cannot rely on "lay social Darwinism" as occurred in the 1890s. This is because, although racism certainly exists, classifying

immigrant populations according to a hierarchical racial scheme is profoundly illegitimate. As a result, immigration restriction policies in the contemporary period are cast in terms of economics, or, paradoxically, citizenship rights. Second, in sharp contrast to the late nineteenth century, prominent intellectuals are rarely supportive of immigration restriction. Immigration restrictionists cannot draw on serious scholars and immigration restriction lacks a distinctive ideology. To give some sense of the difference in context it useful to draw on the publications of the Federation for American Immigration Reform (FAIR) which has clearly had a decisive effect on the immigration and census policies of the current administration. Third, there is massive resistance to immigrant restriction not only among the affected populations, but also among capitalists.

The Non-Legitimacy of Racial Classification

In the post-Civil Rights era openly restricting immigration by race has little popular legitimacy. Thus, contemporary immigration restrictionists articulate their arguments in two not explicitly racist forms: they emphasize the economic costs of immigrants, and they stress immigrants' purported impact on citizenship. The restrictionists claim that immigrants pose a serious burden on government services. For example, a report written by Jack Martin entitled "The Fiscal Burden of Illegal Immigration on California Taxpayers" states that "Californians bear enormous fiscal burden as a result of an illegal alien population estimated at almost 3 million residents" (Martin 2014:1). Indeed, one of FAIR's main activities is to produce state level reports making this argument.

The second argument for immigration restriction, as I indicated above, is paradoxically based in Civil Rights era legislation. Consider again the Arthur Gary letter dated December 12th 2017 that constituted the supposed basis for Wilbur Ross's attempt to reinstate a citizenship question on the census short form. The letter argues that counting non-citizens risks vote dilution. The scenario that letter considers is a case in which a citizen ethnic or racial minority lives in a district with many non-citizens of another ethnic group. According to the document this could lead to mal-apportionment in violation of the VRA; true, the letter provides no instances of when this might occur, and its logic is smoky (Gary 2017). However, its key point is clear enough: the letter seeks to suggest that apportionment should be based on citizens, not on a de-facto count of persons present in the area. Ross's extraordinarily mendacious memo of March 26 2018, which presents the secretary, falsely, as responding to an initiative from DOJ, follows the same logic (Ross 2018). In short, the underlying logic of the policies at the Department of Commerce points to the creation of a categorical division within the US population between citizens and non-citizens that could become the basis for a new method of apportionment and presumably distribution of federal funds. Perversely, however, this project is cast in the language of the VRA; it has no explicit foundation in scientific racism.

Intellectuals and Immigration Restriction

While a substantial body of intellectuals supported the counting and classification of the immigrant population by race and national origin in the early part of the twentieth century, intellectuals are almost universally opposed to adding a citizenship question to the 2020 census.

The *Findings of Fact and Conclusions of Law* issued by the Southern District of New York on January 15th 2019 assessed the balance of "stake-holder" advice received by Secretary Ross in response to the possibility of adding a citizenship question to the census. The American Sociological Association wrote that if the question were added "'the integrity of the 2020 Census data will be fundamentally compromised'" (S.D.N.Y. January 15, 2019:48). The Census Scientific Advisory Committee, an organization comprised of demographers and data scientists from various interest groups, business, and academia chimed in by stating that included the citizenship question would be "'serious mistake which would result in a substantial lower of the response rate'" (S.D.N.Y. January 15, 2019:49). A joint letter from the Acting President of American Scientists, the President of the American Political Science Association, and the Director of 2020 Census Counts, rejected the addition of a citizenship question as "'ill-conceived for a number of reasons'". It would, the letter stated "'lead to a lower participation rate and substantial undercount of certain geographic regions and demographic populations, undermining the scientific integrity of the entire project'" (S.D.N.Y. January 15, 2019:51).

Against the weight of this intellectual consensus the only organizations supportive of the question were the Center for Immigration Studies (CIS), which is a spin-off FAIR³, and the well-known right wing think tank the Heritage Foundation.

³ Both FAIR and CIS were established by John Tranton a retired ophthalmologist and amateur eugenicist. He publishes a journal called the *Social Contract* which attacks the SPLC and other perceived pro-immigrant groups. The lack of intellectual legitimacy of the enterprise is revealed by the tendency of its editors to list "Ph.D."

The president of the Heritage Foundation, Dr. Kay Cole James, whose only apparent claim to the title "Dr." is a series of honorary degrees, (<https://www.heritage.org/staff/kay-coles-james>), stated that "a citizenship question would allow Heritage and other research organization to know the full cohort of what researchers are dealing with in terms of citizenship" (Department of Commerce 2018). This inanity is obviously neither here nor there. The Director of Research at CIS, Dr. Steven Camarota (holder of a Master's Degree in political science from U-Penn and a Ph.D. in something called "Public Policy Analysis" from the University of Virginia), averred that "although he is aware of the general sentiment that the addition of a citizenship question to the Decennial Census would decrease response rates, he has not seen any evidence to that effect" (Department of Commerce 2018). In short a dubiously qualified expert attesting to his own ignorance was the best the Trump DOC could do by way of mustering intellectual support for their position.

A further indication of the absence of substantial intellectual support for immigration restriction is the contradictory and ambivalent attitude of immigration restrictionists to information collection as such. FAIR claims that illegal immigration is an enormous but largely unknown problem. Thus the organization's president, Dan Stein, in defending the inclusion of a question about citizenship stated that "The American people need and have a right to this important information so that they, through their elected officials, can make informed decisions about the many issues

after their name. https://en.wikipedia.org/wiki/John_Tanton#cite_note-11. For the *Social Contract* see <http://www.thesocialcontract.com/artman2/publish/>.

affected by our nation's immigration policies" (fairus.org). But at the same time FAIR supports a Congressman, Mo Brooks of Alabama, who has filed a lawsuit to block the Department of Commerce from counting "illegal aliens" (Ham-Warren 2018). Thus the same organization advocates both for including a citizenship question to gather information about undocumented residents, and supports a politician who wants to block the DOC from counting undocumented immigrants at all.

The contrast between the restrictionists of the current period, and those of the 1920s is hard to overstate. The Immigration Restriction League was supported by high-powered academics at the pinnacle of American education, such as Francis Walker; but since the Civil Rights movement of the 1960s, census lobbies with actual mass memberships have played a much more decisive role. We can, therefore, expect any attempt to use the census as a tool in a neo-eugenicist project of whitening the population to face far greater resistance now than similar projects in the 1920s.

Related to the weakness of intellectual support for immigration restriction, at least as applied in the way that the Trump administration would like, is the illegitimacy of eugenics as an ideology. In the 1920s, the academic and corporate elite strongly backed the notion of racial improvement, and scientific racism was a respectable intellectual position. Although genetic determinism is a hardy perennial on the border-line between the social sciences and biology (D. Reich 2018), and genetic testing as a way to establish identity seems to have gained a strange popularity among the broader public, for now it seems unlikely that eugenic

thinking will sweep elite opinion in a way analogous to the 1920s, in part because it has few academic supporters.

Class and Interest Group Relations and Immigrant Restriction

Finally there is remarkably little support for immigration restriction from classes and interest groups in the contemporary period. This again is obvious from publically available court documents. Both the Leadership Conference on Civil and Human Rights, and the Latino Community Foundation made arguments against adding the question closely analogous to those of the social scientists discussed above (S.D.N.Y., January 15, 2019:49–50).

More strikingly, Ready Nation, a council of "American business leaders" argued that the inclusion of a citizenship question would undermine the accuracy of the census thus threatening decision-making abilities of their own members (S.D.N.Y., January 15, 2019:50). Even the rightist, pro-business, American Enterprise Institute (AEI), refused to provide support for the inclusion of a citizenship question (S.D.N.Y., January 15, 2019:47–48). This lack of organized support, especially from business interests, stands in striking contrast to the IRL and more generally the politics of immigration in the 1920s.

It is true that the most lucid ideologues of the Trump administration would like to mobilize labor along nativist lines. As Sessions (2014:21) puts the point,

The last 40 years have been a period of uninterrupted large-scale immigration into the U.S., coinciding with increased joblessness, falling wages, failing schools, and a growing welfare state. Would not the sensible, conservative thing to do be to slow down for a bit, allow wages to rise and assimilation to occur, and help the millions struggling here today...transition from dependency to self-sufficiency?

However, there is little indication that Trump administration has the capacity or the vision to recreate the cross coalition between white workers and manufacturers that was at the base of immigration restriction in the progressive era.

Conclusion

Controversy over the census is nothing new. Politicization is built into the central role that the census plays in determining political representation. Features of the contemporary political landscape, where the parties have sharply opposed interests in securing an accurate count, exacerbate the phenomenon. Indeed, the contemporary period of census politics closely resembles that of the period from 1890 to 1920, when the census was used to implement exclusionist immigration policies; members of the Trump administration are aware of the parallel, and are deliberately seeking to recreate these policies. However, the transition from the politics of elite lobbying that marked the censuses of the earlier period, to the politics of mass lobbying and social movements that mark the censuses since 1965, combined with the fundamental loss of legitimacy of eugenic thinking, will constitute obstacles to any Trumpist attempt to re-play the census politics of the late nineteenth and early twentieth centuries.

The above paper has sought to put the contemporary politics of the census and immigration in a longer historical perspective. We have argued that census politics and citizenship intersected in three somewhat different ways in the early nineteenth century, during the progressive era, and today. The politics of immigration and the politics of race were largely separate issues before the Civil War. Naturalization was relatively easy for whites, and most immigrants were seen as at least potentially

white. During the Progressive Era immigration and race became more closely linked as southern and eastern European immigration was considered a threat to whiteness. Immigration restrictionists were able to mobilize considerable support for their position both from intellectuals, and from a broader cross-class coalition of manufacturers and the white working class. The Trump administration in the contemporary period is attempting to recreate this sort of coalition. However, it faces three main obstacles. In the first place Social Darwinism is profoundly illegitimate. This means that restrictionists must make their arguments in somewhat weaker economic and legal forms. Second, restrictionists lack a substantial intelligentsia. Their most serious intellectual allies have poor credentials and make ludicrous arguments. Third, the distinctive cross class coalition between industrialists and labor that lay behind the IRL and other immigration restrictionist lobbies in the Progressive Era, has failed thus far to emerge. We would like conclude our paper by surveying the political possibilities in the current conjuncture. It seems to us that for the moment the nativist coalition that Jefferson Sessions was proposing is unlikely to emerge. This is because it would require a fundamental transformation in the balance of forces within the Republican Party. However, it is possible that a citizenship question will appear on the 2020 census given the pusillanimity of the courts, and the infinite flexibility of constitutional interpretation. In any case it is important to understand that the ultimate goal of immigration restrictionists in the current period is not simply to provoke a massive undercount of minority populations. Rather, what FAIR and its allies in the

administration desire is a thoroughgoing redefinition of the basis of Congressional apportionment.

Immigration restrictionists' attempt to revise apportionment is possible precisely because of the unclear nature of representation in the US Constitution. The paradox is that the immigration restrictionists may make their stand on a more seemingly democratic basis than their opponents. For the restrictionists can argue that representative institutions should be representative of *citizens*, whereas their opponents may be left to stand on the ground of the southern states during the Constitutional Convention who argued that the House should represent the wealth and importance of the state in question, and therefore should count all residents. In this sense the US has not yet exited the politics of the eighteenth century that, "weighs like a nightmare on the brain of the living" (Marx 1963:15). An eighteenth century state with an eighteenth century census facing the political realities of a decaying capitalism has unsurprisingly produced a politics of enumeration as contradictory and nonsensical as is the overall historical situation. Whether the census will survive in anything like its current form is an open question.

References

American Community Survey. 2016. "Place of Birth for Foreign Born Population."

Accessible at

https://www.socialexplorer.com/tables/ACS2016_5yr/R11736787

Anderson, Margo J. 1988. *The American Census: A Social History*. New Haven and London: Yale University Press.

DeLeon, Cedric. 2008. "'No Bourgeois Mass Party no Democracy': The Missing Link in Barrington Moore's Civil War." *Political Party and Social Theory*. 19:38–92.

Decker, Robert Julio. 2014. "Citizenship and Its Duties: The Immigration Restriction League as a Progressive Movement." *Immigrants & Minorities*. 32:162–182.

Department of Commerce. 2018. Pre Decisional Draft. This is document 001206 of the administrative record of the decision.

Dow, Jay K. 2017. *Electing the House: The Adoption and Performance of the U.S. Single-Member District Electoral System*. Lawrence: University of Kansas Press.

Emigh, Rebeca Jean, Dylan Riley, and Patricia Ahmed. 2016a. *Antecedents of Censuses: From Medieval to Nation States*. Basingstoke: Palgrave Macmillan.

Emigh, Rebecca Jean, Dylan Riley, and Patricia Ahmed. 2016b. *Changes in Censuses from Imperialist to Welfare States*. Basingstoke: Palgrave Macmillan.

Fitzgerald, David and David Cook-Martin. 2014. *Culling the Masses: The Democratic Origins of Racist Immigration Policy in the Americas*. Cambridge: Harvard University Press.

- Gallman, Robert E. 2000. "Economic Growth and Structural Change in the Long Nineteenth Century." Pp. 1–55 in *The Cambridge Economic History of the United States*. Edited by Stanley L. Engerman and Robert E. Gallman. New York: Cambridge University Press.
- Gary, Arthur E. 2017. Letter of 12 December 2017. Accessible at:
<https://assets.documentcloud.org/documents/4500011/1-18-Cv-02921-Administrative-Record.pdf>
- Grieco, Elizabeth M., Edward Trevelyan, Luke Larsen, Yesenia D. Acosta, Christine Gambino, Patricia de la Cruz, Tom Gryn, and Nathan Walters. 2012. "The Size, Place of Birth, and Geographic Distribution of the Foreign-Born Population in the United States: 1960 to 2010." Working paper. Accessible at:
<https://www.census.gov/content/dam/Census/library/working-papers/2012/demo/POP-twps0096.pdf>
- Ham-Warren, Elizabeth. 2018. "Alabama Congressman Sues Census Bureau Over Counting Illegal Aliens." *Fairus.org*.
- Hing, Julian. 2017. "How to Make America White Again. Trump's Immigration Reform Plan: Bring Back 1890." *The Nation*, January 30, 24–25.
- Hobsbawm, Eric. 1989. *The Age of Empire: 1875–1914*. New York: Vintage.
- Kobach, Kris. 2017. Electronic Mail Message of 14 July 2017. Accessible at:
<https://assets.documentcloud.org/documents/4500011/1-18-Cv-02921-Administrative-Record.pdf>
- Jacobson, Matthew Frye. 1998. *Whiteness of a Different Color*. Harvard University Press: Cambridge.

- Jacobson, Matthew Frye. 2001. *Barbarian Virtues: The United States Encounters Foreign Peoples at Home and Abroad 1876–1917*. New York: Hill and Wang.
- Kolko, Gabriel. 1976. *Main Currents in Modern American History*. New York: Harper and Row.
- Margo, Robert A. 2000. "The Labor Force in the Nineteenth Century." Pp. 207–244 in *The Cambridge Economic History of the United States*. Edited by Stanley L. Engerman and Robert E. Gallman. New York: Cambridge University Press.
- Martin, Jack. 2008. *Who Represents Illegal Aliens?* Washington, DC: Federation for Immigration Reform.
- Martin, Jack. 2014. *The Fiscal Burden of Illegal Immigration on California Taxpayers*. Washington, DC: Federation for Immigration Reform.
- Marx, Karl. 1963. *The 18th Brumaire of Louis Bonaparte*. New York: International Publishers.
- Perlmann, Joel. 2018. *America Classifies the Immigrants: From Ellis Island to the 2020 Census*. Cambridge: Harvard University Press.
- Reich, David. 2018. "How Genetics is Changing Our Understanding of 'Race'." *The New York Times*, online edition, 23 March. Accessible at: <https://www.nytimes.com/2018/03/23/opinion/sunday/genetics-race.html>
- Reich, Robert. 2018. "The Unconstitutional Census Power Grab." *Robertreich.org*, 6 June. Accessible at: <http://robertreich.org>
- Robertson, David Brian. 2013. *The Original Compromise: What the Constitution's Framers Were Really Thinking*. New York: Oxford University Press.

- Ross, Wilbur. 2018. Memo of 26 March entitled "Reinstatement of Citizenship Question on the 2020 Decennial Census Questionnaire".
- Schor, Paul. 2009. *Compter et classer: Histoire des recensements américains*. Paris: Éditions de l'École des hautes études en sciences sociales.
- S.D.N.Y. 2019. January 15th Ruling in State of New York, et al., versus United States Department of Commerce et al.
- Serwer, Adam. 2017. Jeff Session's Unqualified Praise for a 1924 Immigration Law. *The Atlantic*, online edition, 10 January. Accessible at: <https://www.theatlantic.com/politics/archive/2017/01/jeff-sessions-1924-immigration/512591/>
- Sessions, Jeff. 2014. "Amnesty Won't Work: How the Republican Party Can Help Struggling Americans and Itself." *National Review*, March 24, 20–21.
- Thernstrom, Abigail. 1987. "Statistics and the Politics of Minority Representation: The Evolution fo the Voting Rights Acts Since 1965." Pp. 303–327 in *The Politics of Numbers*. Edited by William Alonso and Paul Starr. New York: Russell Sage Foundation.
- Wiebe, Robert H. 1967. *The Search for Order: 1877–1920*. New York: Hill and Wang.
- Wines, Michael. 2018. "Lawsuit Says Citizenship Question on Census Targets Minorities for Political Gain." *New York Times*, online edition, 31 May. Accessible at: <https://www.nytimes.com/2018/05/31/us/politics/2020-census-citizenship.html>
- Wright, Carroll D. 1900. *History and Growth of the United States Census*. Washington, DC: Government Printing Office.