

19TH CENTURY ROOTS OF CONTENTIOUS LITIGATION OVER CENSUS COUNTS IN THE LATE 20TH CENTURY

Abstract

Although not originally intended as such, the US census has become a “Commons” in which private benefits are gained at the expense of public costs. The historical development of the census as a Commons first clearly emerged with the release of the 1970 census results, and since that time contentious litigation over census undercount error has become a standard part of the decennial census landscape. Political battles within the federal government have gone hand-in-hand with these litigation activities. They culminated with a Supreme Court decision on the legality of statistically adjusting census 2000 counts for estimated undercount error. As these battles raged, professional interest in providing methodological “fixes” for net census undercount error increased while public participation in the census generally declined. This paper examines the history behind these legal battles, the legislative acts, and judicial decisions that led to the 16th Amendment and the loss of the careful balance between public costs and private benefits crafted by the Founding Fathers in Article I of the Constitution. The paper identifies the role these 19th century actions played in making the census into a Commons, and setting the stage for modern day census litigation. We observe that as a Commons, the census is facing a potential collapse that can be prevented only by political action, not by methodological developments. If the census remains a Commons, tragedy is inexorable and nobody will be pleased with a national resource eroded by varying undercount estimates, littered with different adjustment methodologies, and stripped by numerous special interest groups.

Key words: Census, litigation, Commons, 16th Amendment