

Careerism, Status Quo Bias, and the Politics of Congressional Apportionment

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ABSTRACT

The apportionment of House seats to the several states based on population is one of the defining features of the U.S. Congress. The fact that power in the lower chamber and in the electoral college routinely shifts as the population shifts is taken as a given by most political observers today. This has not always been true, however. Apportionment was a controversial issue for much of American history, culminating in the failure of Congress to enact a reapportionment bill following the 1920 Census. In this article, I recount the history of apportionment and analyze the apportionment failure in the 1920s. I argue that a series of electoral reforms combined with institutional changes inside Congress to increase the value of House seat to incumbent members and made retention of a seat more dependent on the actions of individual incumbent members. I demonstrate that members responded to these institutional changes by pursuing strategies that would increase their likelihood of retaining their seats and extending their House careers. This growth of individualistic and careerist behavior by members of the House best explains why the crisis occurred and persisted in the 1920s. This article highlights the important role that institutions — both endogenous and exogenous — play in shaping political outcomes.

Keywords: Congress; institutions; apportionment; careerism

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Introduction

The question of how to determine representation in the new Congress was one of the most consequential and controversial issues dealt with by the Constitutional convention of 1787. Large states supported plans that would have apportioned seats in a bi-cameral legislature based on population, while many small states supported the concept of corporate representation that kept the equal representation of states from the *Articles of Confederation*. Conflict between these two positions threatened to end the convention without completion of a new governing document (Zagarri, 1987). The deadlock ended when a majority of state delegations agreed to what came to be known as the “Great Compromise,” which called for a House of Representatives with representation based on population and a Senate with two members per state. The relevant language from Article I §2 of the Constitution states in part:

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.¹ 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.

Apportionment of Senate seats is mechanical under the Constitution. Each state gets two seats resulting in a chamber that has twice as many seats as the union has states. Apportionment of House seats is not mechanical and Congress has a great deal of latitude in making apportionment decisions. The language of the Constitution clearly implies a direct linkage between the decennial census and the apportionment of House seats, but the document neither explicitly requires decennial apportionment, nor provides a method for distributing seats among the several states.² It also does not set maximum size for the chamber. All of these choices — timing, method, and chamber size — are to be made by Congress itself (Ladewig and Jasinski, 2008).

¹The three fifths language was supplanted by §2 of the 14th Amendment which reads, “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.”

²This lack of clarity was noted by several state ratifying conventions and an amendment clarifying the mechanics of apportionment was submitted to the states along with what came to be known as the Bill of Rights. The apportionment amendment fell one vote short of ratification. Oddly, Massachusetts failed to ratify the amendment despite being one of the states that explicitly called for an amendment addressing apportionment (Eagles, 1990).

Collective action problems of this nature are inherently conflictual — a state or states cannot gain power in the House without other states losing power. As such, the apportionment of House seats was controversial from the early days of the republic. The combination of vague constitutional language and the necessity of redistributing power in the House as the population grew and shifted across the country made conflict inevitable. The 2nd Congress (1791–1793) struggled to craft an apportionment bill as various factions debated the appropriate size for the House, the proper ratio of population to House members, and how to deal with fractional remainders. In fact, the first ever presidential veto targeted an apportionment bill that President Washington judged to be unconstitutional due to the method used to apportion seats (Eagles, 1990).³

Most subsequent apportionment bills generated considerable controversy, but were, nonetheless, typically enacted in the months after the recent census data became available (Celler, 1952). This century-long streak of congressional compromises on apportionment formulas came to a dramatic end in the wake of the 1920 census. The 1920 census revealed that more than 105 million people lived in the United States, a 15% increase over the 1910 census result.⁴ Rep. Isaac Siegel (R-NY), the chair of the Census committee, upon seeing the new census numbers estimated that the accounting for the population growth would require either an addition of 60 seats to the House or a reduction in the size of delegation for more than 20% of states. As it turned out, neither of these options was politically tenable. Congress had neither the political will nor the arrangement of institutions sufficient to force action, so stalemate ensued. Congress failed to enact an apportionment plan based on the 1920 census results, creating a constitutional crisis that was not resolved until 1929.

In the analysis below I recount the history of apportionment and analyze the apportionment failure in the 1920s. The institutional flaws and collective action problems that produced the crisis were present from the outset of the republic so what made the 1920s different? The short answer is institutional change. The method by which members of Congress were chosen changed dramatically in the early decades of the twentieth century. At the same time, changes inside Congress dispersed power to rank and file members and increased the value of seniority for individual members. These changes combined to make a career in the House more desirable than it had been in the past and made retention of one's seat more dependent on the actions of the individual member and less dependent on the fortunes of a member's political party. I demonstrate that members responded to these institutional changes by pursuing strategies that would increase their likelihood of retaining their seats and extending their

³Washington's objections included a lack of a clear divisor and that some states would receive more than one representative per 30,000 people.

⁴The 1920 Census also revealed that for the first time in American history the population of urban areas outnumbered that of rural areas.

House careers (Mayhew, 1974b). I argue that this growth of individualistic and careerist behavior by members of the House contributed to the apportionment crisis that persisted for almost a decade.

I also discuss the key role that policy reversion points plays in determining political outcomes such as apportionment. By preserving the apportionment formula put in place after the 1910 Census, the lack of congressional action on apportionment in 1920s left in a place a distribution of seats that was in clear violation of the intent of the Constitution and likely caused great representational harm to citizens of the affected states. Importantly, it also left in place a policy that all incumbent House members had succeeded in getting elected under. As such, agreeing to a change in apportionment presented a great deal of career risk for incumbent members.

The eventual solution, enacted in 1929, not only ended the 1920s apportionment crisis, but it changed the reversion point for future apportionment battles. By setting a default policy in the absence of congressional action, the Apportionment Act of 1929 provided a durable solution to a vexing and regularly occurring collective action problem for Congress. The underlying political dynamics of apportionment have not changed — if anything they have grown more intense — but the process has occurred smoothly and on schedule from the 1930s to the present. This episode highlights the important role that institutions — both endogenous and exogenous — play in shaping political outcomes.

History of Apportionment

As noted above, the politics of apportioning seats in the House was controversial for most of the nation's history.⁵ Most apportionment debates concerned the intertwined questions of how large the House should be and what formula should be used to divide the seats among the several states. Thomas Jefferson and Alexander Hamilton disagreed strongly on these questions. According to Eagles (1990), Jefferson preferred setting a ratio of population to seats (i.e., one member per 33,000 people) and letting that ratio determine the number of total seats in the House.⁶ Hamilton, on the other hand, preferred setting a fixed number of seats and then allocating the seats to each state based on their proportion of the total population.⁷ Jefferson's method, which tended to favor large states, was employed for the first five apportionments in U.S.

⁵Federalist #55 and #56 dealt with arguments regarding the proper size of the House of Representatives.

⁶Jefferson's method included dividing each state's population by the ratio and ignoring all remainders.

⁷Hamilton's plan would have awarded any "extra" seats to states with the largest fractional remainders.

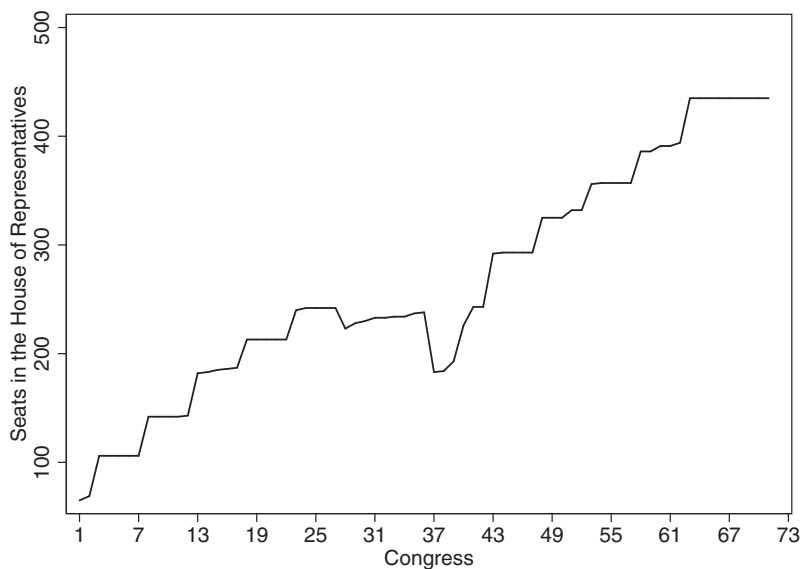


Figure 1: Number of seats in the U.S. House.

history (Eagles, 1990). Seat losses due to population and territorial growth were kept to a minimum by expanding the size of the House, which can be seen in Figure 1.

The first major change in apportionment methods came after the 1840 Census. The 1842 Apportionment Act reduced the size of the House by 17 seats, resulting in seats losses for 14 states, led by Virginia’s 6 seat loss (Canon and Egar, 2014). The 1842 Apportionment Act was also the first to count fractional remainders (i.e., the leftover population after the seat ratio was applied to a state’s population), with Congress adopting what came to be known as the Webster method. Congress used a slightly different method of counting fractions — the Vinton method — after the 1850 Census.⁸ No general apportionment bill was enacted after the 1860 Census, instead the Secretary of the Interior apportioned seats based on the Vinton method. With reentry of the southern states and the full accounting of the African-American population, many feared major controversy after the 1870 Census, but Congress conveniently adopted a bill that including the exact number of House seats (283) that would produce identical seat distributions under the competing Webster and Vinton methods (Eagles, 1990). The solution of finding a size

⁸See Balinski and Young (1982) and Ladewig and Jasinski (2008) for more background on these methods. Also see Gaines and Jenkins (2009) for a discussion of the biases of the competing apportionment methods.

for the House that kept states from losing seats and that produced nearly identical seat distributions continued to be employed for the apportionments following the 1880, 1890, and 1900 Censuses.⁹ The House was increased to 435 seats after the 1910 Census and Congress readopted the Webster method of major fractions for apportioning seats. This apportionment of seats would remain in place for two decades as Congress failed to find an apportionment plan that could garner majority support in both chambers.

Reapportionment Failure

The 66th Congress

The House began considering legislation to reapportion seats in December 1920 during the lame duck session of the 66th Congress (1919–1921). As had typically been the case, the major conflicts were over how many seats should be awarded and what method to use for awarding them.¹⁰ New dimensions of conflict emerged during the apportionment debate, however. The 1920 Census results highlighted the growth of the urban population in the United States and the large number of immigrants residing in the United States. In addition, Rep. George Tinkham (R-MA) sought to enforce §2 of the 14th Amendment, which reads in part:

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.

⁹Eagles (1990) notes that Congress was failing to deal with what was called the Alabama Paradox. This referred to fact that a state's allotment of seats would vary nonlinearly based on the size of the House. For example, following the 1900 Census, Maine would receive three seats if the size of the House was set between 350 and 382, four seats if the House had 383–385 seats, three seats if the House had 386 seats, four seats if the House had 387 or 388 seats, three seats if the House had 389 or 390 seats, and four if the House ranged from 391 to 400 seats (Eagles, 1990).

¹⁰In addition, some members openly questioned the accuracy of the 1920 Census, with several arguing that dislocations caused by World War I may have temporarily shifted population to urban areas leading to an inaccurate count. Others simply seemed unwilling to believe that people would choose to live in urban areas and that the results must contain inaccuracies. As Eagles (1990) details, the floor debate reflected elements of this urban/rural conflict.

Tinkham argued that most southern states were in open violation of this language and that their seat shares in the House should be reduced accordingly.

Despite the controversies, all signs pointed toward an apportionment bill passing during the 66th Congress. The Census committee reported an apportionment bill that would have increased the size of the House to 483 members. At this size, no state delegations would have been reduced. It immediately ran into difficulty on the floor, however, as a large number of members opposed such an increase, arguing that further increasing the size of the chamber would make the House floor too crowded, slowing the business of the chamber.¹¹ In addition, some members pointed out that expansion would be quite expensive, requiring new office space and additional salaries for members and their staff. The House considered several amendments to the bill, some dealing with apportionment methods, but most dealt with the size of the House.¹² Amendments to set the size of the House at 460 and 307 were defeated by teller votes in what the *Washington Post* described as a “roar of noes.” The only meaningful roll call vote taken on the bill was on an amendment by Rep. Henry Barbour that proposed maintaining the House at 435 members. This amendment was favored by the Republican leadership and it passed the House by a rather comfortable margin of 276 to 83, with more than 75% of Democrats and Republicans voting in the affirmative. Shortly after this vote was taken — on January 20, 1921 — the House agreed to pass the apportionment bill via voice vote.

The bill was referred to the Senate’s Census committee and most initial media accounts did not indicate serious opposition to the bill in the Senate. However, the *New York Times* reported that a group of Senators from states that would lose seats hoped to either amend the bill to increase the size of the House or stop action on the bill altogether. Keeping the House at 435 would have resulted in 11 states losing seats in the House, but those 22 Senators alone would not have been able to prevent cloture on the bill. The bill was never reported from the Senate committee¹³ and was given up on as the Congress ended on March 4.¹⁴ This seemed to be an issue of timing with the apportionment bill being crowded out by other measures, but it did mark the first time in U.S. history that a Congress had failed to reapportion after receiving data from the Census.

¹¹“Leaders To Fight Increase of House.” *New York Times* January 9, 1921, p. 3.

¹²Tinkham’s amendment regarding disenfranchised voters was ruled to be nongermane.

¹³The Senate did initiate a fascinating debate among leading statisticians about the proper apportionment formula that went on for most of the decade (Eagles, 1990).

¹⁴“Bonus Bill Given Up; Budget Plan Shut Out; Meat and Coal Regulation, House Reapportionment and Other Measures Dropped.” *New York Times*, March 3, 1921.

The 67th Congress

At the outset of the 67th Congress (1921–1923), the House again considered reapportionment legislation. Due to large gains in the 1920 congressional elections, the Republicans opened the 67th Congress with 302 out of 435 seats, a 62 seats increase over the 66th Congress. Given that more than 75% of House Republicans supported reapportionment with 435 members in the 66th Congress, it appeared that the House would not have difficulty in passing a reapportionment bill. This proved not to be the case, however. After intense debate, the Census committee reported a bill that would have reapportioned seats in a 460-member House. Under this plan only Maine and Missouri would have lost seats and the two competing methods of apportionment returned the same distribution of seats in the chamber.

The House debate on the bill was heated, lasting more than nine hours. Some members again claimed rural superiority, with Rep. Cyrenus Cole (R-IA) stating that, “A home on the farm stands for something more than a tenement in the city” (Eagles, 1990, p. 49). Rep. Tinkham again raised the issue of the disenfranchisement of African-Americans in the South. He put forth an amendment that would reduce apportionment in 11 Southern states by 28 total members. Other members again protested that it was unfair — though constitutionally required — to count noncitizens for the purposes of apportionment. In addition, many members expressed concerns about a provision in the bill that would have allowed the Governor, Secretary of State, and Attorney General to redraw district lines in states if the legislature did not meet or was unable to agree on a districting plan. The House again considered an amendment by Rep. Barbour to keep the House at 435 seats, which had the unified support of the Republican leadership. Despite the leadership support, the amendment failed on a tie-vote, with more than 100 members not voting. The House then successfully recommitted the bill to the Census committee where it remained for the rest of the Congress.

The Stalemate Continues

There was a very little congressional action on reapportionment in the remainder of the 67th Congress and the entirety of the 68th Congress (1923–1925). Census committee chairman Charles Faust (R-MO) was not eager to move a reapportionment bill given that Missouri was slated to lose seats under all feasible reapportionment plans. Representative Hart Fenn (R-ME) took over the chairmanship of the Census committee at the outset of the 69th Congress (1925–1927) and held hearings on several bills. None of the bills garnered enough support to be reported from the committee, however. Rep. Barbour tried to bring a reapportionment bill directly to the floor in April 1926 as a matter of constitutional privilege but lost an appeal of a point of order by an

overwhelming vote of 87 – 265. Rep. Fenn again held hearings on a bill in February 1927, but he was unable to get majority support in the committee despite support from the Republican leadership, including Speaker Longworth. Rep. Fenn then offered his apportionment bill under suspension of the rules on March 2, 1927, but the bill — which needed a two-third of majority — failed by a vote of 183–197, marking the end of reapportionment efforts in the 69th Congress.

Substantial action on reapportionment took place in the 70th Congress (1927–1929), the House eventually passed a bill, but despite spending considerable time on debate, the Senate failed to pass a bill before the end of the Congress. Though the effort ultimately failed, the politics of reapportionment changed in at least three important ways during the 70th Congress. First, the bill put forward by the Census committee was a forward looking bill. It provided for a 435-member House to be reapportioned after the 1930 Census. This change was an admission by proponents of reapportionment that the 1920s were going to be a lost decade for their cause. The new bill was still controversial, however. Some thought it was improper for Congress to pass anticipatory language, while others wanted to see the 1930 Census results before committing to reapportion based upon it (Sweeting, 1956). Second, the bill called for the Commerce department to conduct the reapportionment “automatically” after receiving the census results by applying the major fractions method (Eagles, 1990). The automatic language was included in an effort to prevent further stalling by Congress, but it generated new controversy as opponents claimed it gave too much power to the executive branch. Third, for the first time during the reapportionment debate, the Senate became an active player in the process through the efforts of freshman Senator Arthur Vandenberg (R-MI). Vandenberg campaigned on the reapportionment issue and became a strong advocate for reapportionment upon entering the Senate.¹⁵

The Census committee was able to report a bill by a 10–8 margin in March 1928. The bill received the support of the House steering committee in addition to Speaker Longworth and Majority Leader Tilson (Eagles, 1990). The House held two days of debate on the bill in April 1928, but the bill failed to advance when it was successfully recommitted to the Census committee by a vote of 186–164. This ended consideration of the bill in the first session of the 70th Congress, but the bill was later revived in January 1929.

Eagles (1990, pp. 67–68) cites a growth in newspaper editorials criticizing the failure to reapportionment as evidence of a shift in public opinion about reapportionment. At the outset of the second session of the 70th Congress, the Republican leadership again united behind the bill proposed by Rep. Fenn

¹⁵Perhaps not coincidentally, Michigan was slated to gain seats in all proposed reapportionment plans.

and promised quick action on it in January 1929. The bill was reported out of the Census committee by a one-vote margin and headed to the House floor. The bill was considered under a special rule that limited debate to 3 hours. The Committee of the Whole dispatched with several amendments and the bill again faced a critical vote on the motion to recommit. This time the vote on the motion to recommit failed 135 – 227 and the House then passed the bill by voice vote on January 11, 1929. For the first time since 1921 a reapportionment bill had passed a chamber of Congress. Unlike in 1921, the Senate did not ignore the bill. It was placed directly on the calendar and was briefly debated twice before the end of the 70th Congress, but was never brought up for a vote on passage. This marked the second time since 1920 that apportionment failed because the Senate did not act on a House passed bill.

Why Did Reapportionment Fail?

What explains the failure of Congress to reapportion the House in the 1920s? There is scant extant literature on this topic. The most comprehensive account of the failed reapportionment is by Eagles (1990) who argues that the failure was largely a result of an unbridgeable divide between urban and rural interests in the House. A similar argument is put forward by Okrent (2011) who directly links the politics of reapportionment to the politics of Prohibition. Okrent argues that “dry” interests deeply feared the redistribution of seats to urban and “wet” regions of the country. Okrent notes that wets were primarily located in urban areas so in many ways his argument parallels that of Eagles.

There appears to be some merit in both of these arguments. Okrent notes that members of the Anti-Saloon League explicitly warned supporters in the 1910s that the upcoming reapportionment could harm their interests, while Eagles quotes a number of House members expressing deep concern about the loss of rural influence in the House. There seems to be no doubt that some combination of dry advocates and rural members either opposed reapportionment or wanted to enlarge the House to minimize seat loss for some states.

However, upon closer examination both explanations fall short of fully explaining the failure of reapportionment. With respect to the conflict between the wet and dry interests, the dry advocates had convincingly won the policy argument. Both the 18th Amendment and the Volstead Act had been ratified/enacted at least 18 months before consideration of reapportionment legislation based on the 1920 Census. At the time the House was considering reapportionment, strict enforcement of the 18th Amendment was the status quo policy. It is hard to see how the addition of a few new wet members to the House would have changed federal alcohol policy given that the Senate

was not being reapportioned.¹⁶ To preserve the status quo policy, the dry interests only needed to preserve a majority — or in the case of the Senate a committed minority — of one chamber of Congress.

With respect to the conflict between urban and rural interests, the opposition of rural members certainly occurred, but it is insufficient to explain the failure to reapportion. Opponents of reapportioning at 435 seats repeatedly claimed that reapportionment would dilute rural representation and lead to a House dominated by urban interests. This argument implicitly assumes a linkage between population and House districts. In a post *Wesberry v. Sanders* (1964) and *Reynolds v. Sims* (1964) world this argument would be stronger, but in 1920 the one-person, one-vote standard was not being consistently applied at the state or federal level (Jewell, 1955). Many state legislatures were malapportioned in ways that benefitted rural areas and in most states, congressional districts followed the same pattern (Ansolabehere *et al.*, 2002). States varied widely in the district population variance after the 1910 Census. Michigan's largest district in 1912 had more than double the population of its smallest district. None of the apportionment bills considered in either the 66th or 67th Congress required equal population in districts, so it is not at all clear that rural interests would have been irreparably harmed by reapportionment.¹⁷

What then does explain the failure of reapportionment? The reapportionment failures occurred during a period of rapid institutional change both inside the House chamber and in how members sought and gained election to the chamber. Electorally, most states replaced party printed and distributed ballots with a state printed and distributed Australian or secret ballot around the turn of the twentieth century (Engstrom and Kernell, 2005; Rusk, 1970). As Engstrom and Roberts (2020) demonstrate, the widespread adoption of the Australian ballot and later adoption of direct primary cut many of the electoral ties between representatives and their parties. Members no longer needed the support of their party to gain ballot access and voters could more easily consider and choose candidates from different parties. These two electoral changes spurred an increase in split-ticket voting and thus made it easier for members to develop a personal vote to gain more control over their own electoral fate.

At the same time, careerism was taking hold in the House as members regularly began to seek and attain longer House careers (Katz and Sala, 1996; Kernell, 1977; MacKenzie, 2015; Polsby, 1968). Fewer than 75% of House

¹⁶One possibility is that a House more aligned with wet interests could have reduced funding for Volstead Act enforcement.

¹⁷It is also not clear that rural interests should have been able to garner enough votes to block reapportionment. Eagles (1990) counts 104 districts as being the most rural (i.e., less than 20% urban), but also counts 93 predominately urban districts. Even if these two groups voted as blocks, the outcome would be determined by states and districts that were neither overly urban or rural.

members sought reelection in the 1890s, but by the 1920s more than 87% of members were seeking reelection. In addition, in the wake of the revolt against Speaker Cannon in 1910, new rules were adopted that increased the power of committees in the House and reduced the powers of the Speaker and other party leaders. As noted in the previous section, the Census committee was a major impediment to apportionment legislation despite the fact that the House leadership supported reapportionment at a chamber size of 435. The rules changes also made it easier for members to retain their existing committee seats from one Congress to the next (Katz and Sala, 1996). Committee seats became both more valuable to members and easier to retain from Congress to Congress at the same time. Taken together, these changes to institutions both inside and outside the House combined to increase the value of a House seat to incumbent members and to make retention of a House seat more dependent on the actions and reputation of the incumbent and less dependent on the fate of the member's party. I argue that members responded to these changes by pursuing strategies that would increase their likelihood of retaining their seats and extending their House careers (Mayhew, 1974a).

For a self-interested, career-minded legislator, reapportionment and its sometimes companion redistricting creates considerable career uncertainty. A House member could rightfully fear having his or her district eliminated or redrawn in a way not conducive to their reelection. As Fernandez and Rodrik (1991) demonstrate, in the face of uncertainty over the outcomes of a reform, a strong status quo bias exists. This bias would likely affect all members, but the extent to which a member's career was at risk due to reapportionment should be conditional on a number of factors. First, the anticipated seat gain/loss for the member's state should be related to the member's stance on apportionment.¹⁸ For members representing states that were slated to lose seats, I argue that opposing reapportionment would be an easy call. A reduction in seats would be bad for the state as a whole and the required redistricting could imperil the member's career. For members representing states that were slated to gain seats the calculation was likely a bit more complex. A self-interested member would likely find it difficult to be on record as voting against an apportionment plan that would have increased the size of his or her state's delegation, but could still fear an unfavorable redistricting outcome. For members representing states slated to maintain their current delegation size, members could simply focus on self-interest as the state interest issue would be less salient.

A second factor likely affecting the decision-making calculus was the partisan composition of the state legislature. As Engstrom (2013) documents, state legislatures in this time period were ruthlessly efficient at using the line

¹⁸Senators, of course, did not face the same concerns with respect to reapportionment and redistricting, but seat losses in the House would dilute the power of a Senator's state delegation in the House and in the electoral college.

drawing process to generate seat gains for their party. Regular mid-cycle redistricting had declined by this time period, but many members were surely aware of the potential of redistricting to prematurely end a congressional career (Cox and Katz, 1996). Members were also likely to be acutely aware of the partisan composition of their state legislature and could have reasonably inferred how the alignment of preferences in the state legislature would affect the construction of the new district.

Taken as a whole, I argue that the institutional changes that were occurring inside and outside of Congress during this time period combined to make the interest of individual members much more salient in considering apportionment plans than had been the case in previous decades. Indeed, Eagles (1990, p. 49) notes that charges of “self-interest” were leveled against several prominent members of the Census Committee. Rep. Beedy (R-ME) explicitly charged that the committee bill had sought a House of 460 to protect the seats of committee members John Langley (R-KY) and Horace Towner (R-IA). Thus, the status quo apportionment policy was quite appealing for a large set of members. The set of members who likely preferred the status quo policy include those representing states that were expected to lose seats, those who had more valuable committee assignments, and those who faced the possibility of the out-party redistricting their state in the wake of reapportionment. The next subsection analyzes the roll calls that occurred on the various proposals in order to test these theoretical claims.

Analysis of Roll Calls

In Table 1, I analyze the various explanations for the failed apportionment with an analysis of four roll call votes on apportionment. The first is the vote on Barbour’s amendment to reapportion the House at 435 members in the 66th Congress. A “yea” vote on the amendment is coded as being in favor of a 435-member House. The second vote is the motion to recommit on the Siegel bill in 67th Congress. Members voting “yea” on this vote are also coded as being in favor of a 435 member House.¹⁹ The third and fourth votes occurred during the 70th Congress as the House rejected a reapportionment bill via the motion to recommit during the first session in May 1928 (vote 3), but then approved a virtually identical bill via voice vote 8 months later after first refusing to recommit the bill (the recommittal is vote 4). For both votes on recommitment in the 70th Congress the “nay” position corresponds with favoring a 435-member House. I recoded the values of these votes to match the earlier votes for ease of interpretations. Thus, for all four votes being analyzed the dependent variable is coded 1 for a vote in favor of reapportioning with a

¹⁹Republican leaders urged members to vote for recommitment because they feared that the bill with a 460 member House would pass if the bill were taken to final passage at that time.

435-member House and 0 if the member voted in opposition to a 435-member House.

To test the theoretical expectations from the previous section, I employ a number of explanatory variables. Two of these are used to measure the extent to which a member was potentially endangered by reapportionment and redistrict. Proportion of seats gained/lost is the proportion of existing seats that a member's state was projected to lose/gain as a result of apportioning a House with 435 members.²⁰ These estimates were produced by members of the Census committee and were regularly printed in the *New York Times* among other sources. I expect that a member would be more likely to support reapportionment if his or her state was slated to gain seats. I also include an two indicator variables for the control of the legislature in the member's state. Same party state is coded 1 if the member's state legislature was controlled by the party that the member caucused with in the House, divided state is coded 1 if the member's state legislature was split between the two parties. I expect that a member would be more likely to support reapportionment if the state legislature was controlled by the member's party.²¹

Two variables are employed to assess the career orientation of a member. First, years prior service is a count of the number of years a member spent in political office before becoming a House member. MacKenzie (2015) shows that this is a valid and reliable measure of a member's career orientation. I expect that a member who had spent more of his or her professional career in politics would be more invested in keeping a seat in the House and less likely to support reapportionment thus preserving the status quo. Similarly, committee portfolio value is the "Grosewart" score for a member's slate of standing committee assignments (Canon and Stewart, III, 2009; Groseclose and Stewart, III, 1999; Stewart, III and Groseclose, 1998). Members with higher Grosewart scores hold more valuable and influential committee positions. Therefore, I expect members with higher committee portfolio values to be more hesitant to pass a reapportionment bill.²² I also include a variable for urban and rural districts as identified by Eagles (1990) via census data. Eagles (1990) argues that members from urban areas were more likely to support reapportionment at 435 members, while member's from rural areas preferred either a larger House or the status quo policy. This variable is coded 1 for

²⁰These models were also fit two additional operationalizations of seat gain/loss: (1) the raw number of seats gained/lost and (2) indicator variables for seat gain and seat loss. The results across all three specifications were quite similar.

²¹I also fit models that interact this variable with the seat gain/loss, but doing so adds no predictive value to the model.

²²I also fit models that interacted these variables with the seat/gain loss variable, but doing so adds no predictive value to the model.

Table 1: Reapportionment failure in the 1920s.

Variable	Coefficient (Std. Err.)			
	70th House			
	66th House	67th House	1st Session	2nd Session
Proportion seat gain/loss	19.41*** (6.19)	11.59*** (4.11)	20.48*** (3.95)	21.21*** (4.85)
Urban/rural district	0.22 (0.33)	-0.49* (0.29)	0.08 (0.31)	0.62** (0.25)
Same party state	0.09 (0.62)	0.84* (0.45)	-1.35** (0.69)	-2.60*** (0.60)
Divided state	-0.83 (0.76)	-0.17 (0.55)	2.62*** (0.85)	-0.13 (0.85)
Republican MC	-0.20 (0.40)	-1.22** (0.51)	2.22*** (0.73)	3.60*** (0.59)
Years prior service	-0.07*** (0.03)	-0.01 (0.02)	-0.03 (0.02)	-0.04*** (0.01)
Committee portfolio value	0.09 (0.20)	-0.39** (0.16)	-0.25** (0.12)	-0.18 (0.13)
Constant	2.33*** (0.57)	0.67 (0.73)	0.53 (0.55)	2.10* (0.37)
<i>N</i>	348	357	385	402
Pseudo- R^2	0.31	0.20	0.44	0.55
Log-likelihood	-129.60	-198.03	-149.17	-118.79

Note: Estimates are from a logistic regression model with the vote of the member as the dependent variable. Standard errors clustered by state in parentheses. *** = $p \leq 0.01$, ** = $p \leq 0.05$, * = $p \leq 0.10$.

urban district, -1 for rural districts, and 0 for all other districts.²³ I also include an indicator for majority [Republican] status in the House.

The results are presented in Table 1. Across all 4 votes, proportional seat gain/loss is a statistically and substantively powerful predictor of votes on

²³I also fit models with different operationalizations of urban/rural. These including the percentage of the population in each district that was urban, the percent foreign born in a district, the illiteracy rate of a district, and the value of manufactured goods. The results were similar across all specifications so I elected to keep a variant of the Eagles variable.

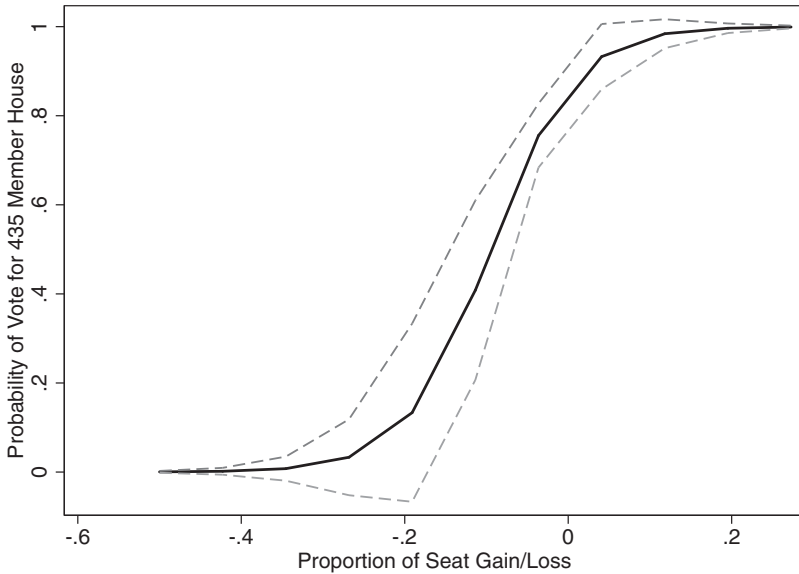


Figure 2: Proportion of seat gain and probability of supporting apportionment in the 66th Congress.

apportionment legislation. Members representing states that were slated to gain seats were more supportive of reapportioning the House with 435 members, while members representing states slated to lose seats opposed these plans. As Figure 2 demonstrates, the substantive effect of expected seat loss/gain is quite large. Holding all else equal, a member from a state slated to lose 10% of its seats had a 0.26 probability of supporting the motion to recommit on the Siegel bill, compared to a 0.52 probability of support with no seat change, and a 0.77 probability of support with an 10% expected gain in seats. These effects are consistent across all four votes analyzed in Table 1. There is little support for the same party state variable, as it is negative in the 70th Congress, and only achieves statistical significance in the expected direction for the vote in the 67th House. Overall, however, the results do provide strong support for the expectation that a member's voting behavior on apportionment legislation was related to the extent to which reapportionment threatened the member's hold on his or her House seat. It is clear that members representing states slated to lose more seats were eager to maintain the status quo apportionment policy, while those representing states slated to gain seats were equally eager to reapportion the House at 435 members.

Turning to the variables that tap a member's career ambitions, there is considerable support for the expectation that members with a careerist

orientation would be resistant to reapportioning the House at 435 members. On all four votes, the years prior service variable is negatively associated with voting for apportionment, with two reaching statistical significance. Again focusing on the vote on the Barbour amendment in the 66th Congress, a member with 2 years of prior service (the 25th percentile of the data) had a 0.89 probability of voting to reapportion, while a member with 11 years prior service (the 75th percentile of the data) had a 0.82 probability of voting to reapportion. For the motion to recommit on the Siegel bill in the 67th Congress, committee portfolio value has a similar effect on voting for apportionment legislation. Moving from the 25th percentile of portfolio value to the 75th percentile decreases the probability of voting to support reapportioning at 435 members by 0.08. The results meet my expectations on all four votes analyzed in that there is a clear negative relationship between a measure of a member's careerist orientation and their probability of voting to reapportion the House at 435 members.

The results in Table 1 provide limited support for Eagles (1990) urban/rural argument. In the 67th and 70th Congresses, members are more likely to support apportioning at 435 if they are from the most urban districts, but these findings are not consistent across all four votes. The results are also mixed for majority status in the chamber. Majority members were more likely to support the apportionment legislation on the two votes in the 70th Congress, but less likely to do so in the 67th Congress. This suggests a split in the party over this issue in the 67th Congress, given that the leadership was in favor of a House with 435 members and yet they were not able to secure the needed votes despite holding more than 300 seats in the chamber.²⁴

The results presented in Table 1 do support my expectations that member's self-interest is an important correlate of their voting on reapportionment legislation. This suggests the growth of careerism may be an overlooked part of

²⁴It is quite surprising that a party that held a 2:1 majority in the chamber during the 67th Congress could not manage to pass its preferred reapportionment bill a mere two months after seeing 75% of the caucus support a similar measure. What went wrong? It is hard to say definitely, but closer scrutiny of the roll call record does provide one potential explanation for the failure in the 67th Congress — absenteeism. Ninety-two members of the House did not record a vote on the motion to recommit. Of those 92, 70 were Republicans. Fifty-nine of the absent members had voted on the Barbour amendment in the 66th Congress, with 56 voting in support of the amendment. Of members who voted on reapportionment in both congresses, 74% were consistent in their vote. It seems fair to assume that the Republicans could have passed the leadership's preferred bill reapportioning a 435-member House if more of its members had been in attendance for the vote. One question raised by the high absenteeism on this vote (and other teller votes on reapportionment) is whether this was a result of strategic abstention? The short answer appears to be no. There were four roll call votes recorded on October 14, 1921 and the recomittal vote on apportionment had the highest number of members voting. For the entire month of October 1921, the average number of nonvotes on roll calls was 146.6, so there is no direct evidence of strategic abstention on the apportionment votes.

the story of reapportionment failure. The voting behavior of House members on apportionment legislation was broadly consistent with what we would expect from a group of elites who wished to preserve both their political career and their influence within the House chamber.²⁵

A Solution At Last

The 71st Congress

The long-delayed reapportionment process finally came to an end in the 71st Congress as both chambers came to agreement on a bill. The 1929 Apportionment Act not only solved the constitutional crisis created by the failure to reapportion in the 1920s, but it also set up a default mechanism for reapportionment that is largely in place today (Jenkins and Napolio, 2023). The Senate was the first mover in the 71st Congress, passing a reapportionment bill on May 29, 1929 by a comfortable margin of 61 – 29. The bill was not without controversy, however, as Senators from states slated to lose seats offered numerous amendments to the bill, including one that would have excluded noncitizens from the population count and one that would have changed the method of reapportionment from major fractions to equal proportions. All amendments were defeated on the floor of the Senate prior to final passage.

The House took up the Senate bill on June 29. The bill was not referred to committee, but came to the floor via a special rule that limited debate time, but was open to amendments. The open amending process almost led to the bill's demise as the issues that had stirred controversy in the past re-emerged with a vengeance. Rep. Homer Hoch (R-KS) introduced an amendment in the Committee of the Whole that read in part, "The word 'person' as used in the section shall not be construed to include aliens." According to Sweeting (1956) the amendment passed on a teller vote by a count of 183 – 123 with a coalition of Southerners and Corn Belt Republicans. Rep. George Tinkham (R - MA) finally had the opening he had sought for most of the decade. He immediately proposed an amendment that would not count citizens over the age of 21 who were disenfranchised for reasons other than crime. Tinkham's amendment initially failed on a division vote, but later passed 145 – 118 on a teller vote.

²⁵Though the results presented in Table 1 are consistent with my theoretical argument that the growth of careerism contributed to apportionment failure in the 1920s they are certainly not sufficient to demonstrate a clear causal connection as it could be the case that similar relationships existed before the growth of careerism in the House. The appendix contains results of an analysis of the apportionment vote in the 61st Congress (1909–1911). There is no empirical evidence that a member's careerist orientation drove voting behavior on apportionment during the 61st Congress.

In a few short minutes House members had added two amendments that would render passage of the reapportionment bill unlikely, if not impossible. Members from southern states would likely have opposed any bill that reduced their representation due to their discriminatory voting laws, and members from states with large immigrant populations would have been opposed to any bill not counting a large fraction of their population base. Sweeting (1956) claims that both amendments were technically out of order because they violated the single-subject rule, but Hoch's amendment had not been objected to because Majority Leader John Q. Tilson was at lunch. Someone alerted Leader Tilson to the proposed amendment, but it apparently passed before he could get to the House floor. Once Hoch's amendment was allowed, Tinkham's was then in order because the subject of the bill had expanded, but would not have been had Hoch's amendment not passed.

Sweeting (1956) argues that passage of a reapportionment bill was in serious peril after the Hoch and Tinkham amendments were added to the bill. The *New York Times* agreed and demonstrated the complex politics of the issue. Majority Leader Tilson blamed state delegations stating in part, "This is not a party issue but a state issue as most of the trouble has been caused by members from States which would lose under reapportionment." Others brought up the urban/rural and wet/dry conflicts with Rep. Clancy (R-MI) arguing that the purpose of the Hoch amendment was to, "decrease the number of Congressmen from the wet urban districts. The Anti-Saloon League and other dry organization are to be blamed if this legislation fails."²⁶

Both Sweeting and the *New York Times* credit Majority Leader Tilson for saving the bill through a deft parliamentary maneuver. Two days after the Hoch and Tinkham amendments had been added to Section 22 of the bill, Tilson proposed a new amendment that struck the entire language of Section 22 and replaced it with language that was similar, but did not contain the language of the Hoch and Tinkham amendments. A huge parliamentary battle ensued with many members accusing Majority Leader Tilson of violating House precedents. Rep. Otis Wingo (D-AR) argued that a "hell of a fix" was in and that the Majority Leader was attempting to "override the rules of the House by attempting to do by indirection that which you can not do by direction" (Sweeting, 1956, p. 448). After an extended debate, Tilson's amendment was ruled to be in order and adopted 202-129.

By packaging the removal of the immigrant provision and the disenfranchisement amendment, Tilson was able to remove the two potential "killer" amendments and salvage the bill (Finocchiaro and Jenkins, 2008). The bill then survived yet another attempt at recommittal and prevailed in a final passage vote by 271 – 104. For the first time since 1911, both chambers of Congress had passed a reapportionment bill. The bills were not, however, in

²⁶"Fear Row Will Bar Reapportionment," *New York Times*, June 6, 1929.

identical form and a conference committee was appointed to work out the differences. Conference negotiations were heated, with a sharp dispute centered on the date on which the 1930 Census should be taken, but this was eventually resolved and the bill was sent to President Herbert Hoover who signed the bill on June 19, 1929. After almost 8 years of delay, Congress had finally agreed to end the apportionment crisis.

Roll Call Analysis

The 71st Congress provides a more complete roll call record than was true of other congresses. For the first time there were recorded votes in the Senate and a recorded final passage vote in the House. In the Senate, the proportion of seats gained or lost for a state and party explains the lion's share of the voting on final passage. Of the 29 votes against final passage, 18 came from states slated to lose seats, with 8 more coming from states that would neither gain nor lose seats. More than two-third of the votes against passage came from minority party Democrats.

In the House, the votes on the immigrant and disenfranchisement amendments took place in the Committee of the Whole, so they were, unfortunately, not recorded. The House did take roll call votes on the motion to recommit and final passage. The patterns on these two votes are quite similar, so the analysis will focus only on the final passage vote. Table 2 reports the results of a logit model of the final passage vote as a function of the variables used in earlier analyses. These include the proportion of seat gain/loss for each member's state, two measures of careerist orientation, indicator variables for urban and rural districts, two indicator variables for partisanship of the member's state legislature, and an indicator variable for majority (Republican) party members.

The first thing to note about the results in Table 2 is that as with true with the analysis of apportionment failure above, the proportion of seats gained or lost remains a strong predictor of support for reapportionment. Substantively, a member's probability of voting for final passage is strongly rested to the projected net seat gain for his or her state. For a projected 10% seat loss, the probability of supporting final passage is 0.44, compared to 0.90 for a net gain of 0, and 0.98 for a projected 10% gain in seats. Committee portfolio value is also a significant predictor in this model. For a member with a committee portfolio value in the 10th percentile of the chamber the predicted probability of supporting a House at 435 is 0.06 higher than a member with a committee portfolio value in the 90th percentile of the chamber. This vote is also where the urban/rural divided pointed out by Eagles appears most prominently. Members from all the most urban districts voted in favor of the bill, while a majority of members from the most rural districts opposed the bill.

Table 2: Passage of reapportionment act of 1929.

Variable	Coefficient (Std. Err.)
Proportion seat gain/loss	20.51*** (3.66)
Urban/Rural district	1.39*** (0.38)
Same party state	-1.02 (0.70)
Divided state	3.09*** (0.98)
Republican	2.23*** (0.56)
Years prior service	0.01 (0.02)
Committee portfolio value	-0.35** (0.17)
Constant	1.92*** (0.71)
<i>N</i>	402
Pseudo <i>R</i> ²	0.51
Log-likelihood	-118.19

Note: Estimates are from a logistic regression model with the vote of the member as the dependent variable. Standard errors are in parentheses. *** = $p \leq 0.01$, ** = $p \leq 0.05$, * = $p \leq 0.10$.

Discussion and Conclusions

The failure of Congress to reapportion after the 1920 Census is a glaring example of the fact that constitutional provisions are not self-enforcing. No careful or casual reader of the Constitution would question that the document intended for seats in the House to be redistributed every decade based on the relative population of the several states. As this article illustrates, words alone do not produce action, strategic political actors do. My results suggest that the growth of careerism and the politics of self-interest combined to allow a determined group of actors to prevent the application of one of the key elements of the U.S. Constitution for a full decade. Polsby (1968) and others have noted the positive effects of the institutionalization of the House, but in this case the evidence suggests that an increase in professionalism contributed to the crisis. The consequences of the failure to reapportion were immense.

Two presidential elections occurred under with the improper distribution of electoral votes.²⁷ The 71st and 72nd Congresses (1929–1933) were two of the most malapportioned Congresses in U.S. history, yet they were charged with responding to the greatest economic crisis in the nation’s history.

While much of this story concerns congressional failure, two key components of the story illustrate the positive power of institutions to shape outcomes. First, the deft parliamentary work of Majority Leader Tilson was instrumental in passing Apportionment Act of 1929. By devising a way to combine the divisive issues of race and immigration into one vote, Tilson saved the reapportionment bill in the 71st Congress. When the 1929 Reapportionment Act was applied to the 1930 Census results, the reallocation of seats was jarring. Twenty-one states saw the size of their House delegation shrink, with Missouri losing 4 seats. Many states gained seats, led by California which saw its delegation increase from 11 to 20 members. We can only speculate as to when or if reapportionment would have occurred had it not happened in the 71st Congress, but the results of the 1930 Census demonstrate that the costs of reapportionment were continuing to grow for states that were slated to lose seats.

Second, 1929 Reapportionment Act minimized the likelihood of future crises by changing the nature of the collective action problem faced by Congress. The act changed the policy reversion point from the status quo policy to an automatic apportionment process. Congressional power was not reduced, but the default procedure now produces an outcome more in line with the language of the Constitution and in the best interests of the collective. To be sure, apportionment controversies did not end with the solution enacted in 1929 (Ladewig and Jasinski, 2008). States and groups continue to contest the way the Census is conducted, how temporarily out-of-state citizens are counted, and various other aspects of reapportionment, but this simple, yet crucial, policy changes insures that unless Congress acts, reapportionment now occurs on a regular, decennial schedule.

Given the difficulty that modern congresses have encountered in carrying out basic functions of governments such as enacting budgets, raising the debt ceiling, and staffing the federal courts, it is not difficult to imagine a 1920s style apportionment crisis occurring today if the reversion point was still the status quo apportionment. One of the takeaways from this analysis is that reformers who wish to see the modern Congress function at a higher level should consider advocating for more collective good enhancing reversion points to be enacted. A process similar to this was used on trade policy in the 1930s to great effect (O’Halloran, 1994). To be sure, legislation that automatically raised the debt ceiling to accommodate the taxing and spending decisions made by Congress would make it more difficult for some political actors to pursue their goals,

²⁷As Gaines and Jenkins (2009) note, “creeping” malapportionment skews most presidential elections even with decennial reapportionment, but the 1928 contest occurred with a plan based on data that was 18 years old.

but at the same time it would minimize the risk of a calamitous financial crisis caused by the failure of Congress to act. A system that incentivizes and rewards the pursuit of self-interest and self-preservation in the ways that the current system does could no doubt benefit from a growth in policies that promote system maintenance.

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