



## The Political Situation

In 1876, Americans marked their centennial as an independent nation with celebrations ranging from small-town barbecues to big-city parades. The festivities reached their peak in Philadelphia, historic site of the Continental Congress and Constitutional Convention, which hosted the first World's Fair held in the United States. It was also fitting in that anniversary year that the oldest existing democracy should hold a presidential election—the capstone event of American representative government which had endured even a civil war. Amidst such jubilation, few would have dared to predict that the selection of the nation's chief executive would itself become a challenge to the constitutional system of government.

The first returns on Election Day, Tuesday, November 7, 1876, indicated a clear victory for the Democratic presidential nominee, Governor Samuel J. Tilden of New York. He had won his home state, the swing states of Connecticut, New Jersey, and Indiana, and was expected to carry the solid South and most of the West. Both Tilden and his Republican challenger, Governor Rutherford B. Hayes of Ohio, went to bed assuming that the Democrats had captured the White House for the first time in twenty years. Similarly, the *New York Tribune* and other major newspapers across the country reported Tilden's victory in their morning editions.

In dismay, Republican Daniel Sickles decided to attend the theater in New York on election night. The colorful Sickles was a former congressman who had been acquitted in 1859 of fatally shooting his wife's lover on a Washington D.C. street in broad daylight. A courageous Union general, he lost his leg at the Battle of Gettysburg in 1863, and later served as U.S. minister to Spain (1869-1873). At nearly midnight, on his way home on election night, Sickles stopped by the Republican headquarters to check the returns. He soon realized that if Hayes lost no more Northern states and won the states of Florida, Louisiana, and South Carolina, then the Republican nominee would win the Electoral College tally by one vote. Sickles rushed off telegrams to Republican leaders in those states, under the signature of Republican national chairman Zachariah Chandler, who was sleeping off a bottle of whiskey, urging them to hold their states for the Republicans. At 3 a.m., Republican governor Daniel Chamberlain responded: "All right. South Carolina is for Hayes. Need more troops."

When John Reid, managing editor of the *New York Times* and an ardent Republican, received insistent inquiries from Abram Hewitt and D. A. Magone, respectively the national and New York state chairmen of the Democratic Party, demanding an immediate dispatch of the Republican paper's electoral count for Tilden, he deduced that the Democrats were in doubt. Unlike other newspapers, the *New York Times* did not project the Democratic nominee as the assumed victor. The early edition of the *Times* on November 8 characterized the election as undecided; "The Results Still Uncertain," read the headline. Its second edition gave Hayes 181 electoral votes, with Florida too close to call. At 6 a.m. on November 8, Reid rushed to Republican headquarters to rally the party leadership. He and Senator William Chandler of New Hampshire roused Zach Chandler out of bed and sent additional telegrams to the uncertain states to hold the Republican line.

When the dust settled, Tilden had won the popular vote, with 4,284,020 (51%) to Hayes's 4,036,572 (48%), a margin of less than 250,000. The only thing that mattered, though, was the Electoral College count, and there, Tilden's 184 electoral votes were one short of a majority, while Hayes's 165 electoral votes left him 20 ballots shy of the presidency. The remaining 20 electoral votes were in dispute: one from Oregon and 19 from the three Southern states which still retained Reconstruction governments—Florida (4), Louisiana (8), and South Carolina (7).

In the three Southern states, both parties were claiming victory in close elections and charging the other party with vote fraud. Being the party in power in those states, the Republicans had a majority on the returning boards, which would certify the election results. They threw out enough Democratic votes to give the election in their states to Hayes and the Republican gubernatorial candidates. In Louisiana and South Carolina, Democrats declared their gubernatorial candidates elected, established rival state administrations, and certified Tilden the winner in their states. In Florida, the state Supreme Court ruled in favor of the Democratic gubernatorial candidate, but let Hayes's margin of victory stand. The new Florida governor promptly appointed a Democratic returning board which announced that Tilden had carried the state.

## The Constitutional Problem

The lack of an Electoral College majority in 1800 between Thomas Jefferson and his running mate, Aaron Burr, led to the election of Jefferson by the House of Representatives and to the eventual passage of the 12<sup>th</sup> Amendment to the U.S. Constitution, which required electoral votes to be cast separately for president and vice president. In 1824, the lack of an Electoral College majority among four presidential nominees resulted in the House choosing John Quincy Adams over the winner of a plurality of the popular vote, Andrew Jackson.

The Constitution, however, did not provide for the unprecedented scenario of 1876: disputed multiple Electoral College returns from four states. The 12<sup>th</sup> Amendment merely stated that the president of the Senate shall open and count the election certificates before a joint session of Congress, without any mention of who had the authority to determine contested returns. Since the death of Vice President Henry Wilson in 1875, the president pro tempore of the Senate was Republican Thomas Ferry of Michigan. The Democrats did not want him to determine which returns were legitimate. Since the Democrats controlled the House in both the outgoing and incoming Congresses, the Republicans did not want that body to choose the new president. The Electoral College controversy would drag on for months, not reaching resolution until almost the eve of the scheduled inauguration on Monday, March 5, 1877.

## The Southern Three: Intimidation, Fraud, and Bribery

After the Civil War, federal troops were stationed throughout the South in order to keep the peace, ensure the enforcement of Reconstruction policies, and to protect the rights of the former slaves and their white supporters. Between 1869 and 1875, federal troops were removed from political duty in all of the other former Confederate states, except for Florida, Louisiana, and South Carolina. When that occurred, the biracial, Republican state governments established under Reconstruction soon collapsed and were replaced by white-only, Democratic “Redeemer” administrations.

Because of their race and association with the Republican Party, Southern blacks were often intimidated with threats or acts of violence by paramilitary groups of Democrats in order to keep black men from casting their ballots. In East Feliciana, Louisiana, for example, the majority of registered voters in 1876 were black and Republican, yet the election results recorded only one Republican vote for the parish. In South Carolina, the paramilitary Red Shirts were a formidable force in preventing blacks from voting. In Florida, Democrats distributed Tilden tickets decorated with Republican symbols among the illiterate former slaves. In all three states, ballot boxes were stuffed with multiple Democratic votes. Had elections in 1876 been free and fair, Hayes and the Republicans might have carried not only the three contested states, but other Southern states as well.

At the same time, the Republican returning boards in Florida, Louisiana, and South Carolina left themselves open to reasonable charges of conflict of interest and even corruption. The members of the boards were appointed state government officials whose self-interests were vested in Republicans retaining control of their states and the White House. Before the enactment of a merit bureaucracy, patronage was the lifeblood of the party system, and this was especially true in the South where Republicans were fighting for their political lives. The returning board in Louisiana

rejected over 13,000 Democratic ballots and nearly 2,500 Republican ones, thereby delivering the election to Hayes and the state governorship to the Republican, Stephen Packard.

Outright corruption was even more of a concern than conflict of interest and, in fact, it undermined the notion that the boards were resolutely loyal to their party. The head of Louisiana's returning board, James Madison Wells, tried to sell the state's electoral votes locally at a price of \$200,000 for each Republican board member, but both parties rejected the corrupt deal. He then sent his associate, Colonel John T. Pickett, to Congressman Abram Hewitt, chairman of the Democratic Party, with an offer to sell the votes for \$1,000,000. Hewitt and Tilden refused the offer. However, Tilden's nephew, Colonel William Pelton, did negotiate with Wells and with Republicans in Florida in an attempt to buy an Electoral College victory for his uncle, allegedly without the nominee's knowledge, even though he lived in his bachelor-uncle's house. The negotiations lasted too long to produce results, except for a series of incriminating coded telegrams, which were later used as evidence in a Congressional investigation in 1878.

## The Trouble in Oregon

In Oregon, Tilden and his Democratic surrogates disputed a Republican elector, John Watts, on a technicality. The U.S. Constitution stipulates that no elected or appointed official may serve as a presidential elector. Watts served in the appointive position of postmaster, but resigned his job a week after winning a slot as one of Oregon's electors and well before the scheduled meeting of the Electoral College on December 6. The Democratic governor of Oregon removed Watts as an elector and replaced him with C. A. Cronin, the Democrat who received the most votes of any Democrat in the race for presidential elector. At the December 6 meeting of the Electoral College in Oregon, the two Republican electors refused to recognize Cronin and recertified Watts. The three Republicans then cast their ballots for the Hayes/Wheeler ticket. On his own accord, Cronin reported his vote for Tilden and two votes for Hayes. The Oregon situation was important to the Democrats because they hoped it would force an investigation of the electoral returns, rather than just deciding which certification to accept.

## The Reaction to the Controversy

During the Electoral College controversy, both political camps hurled accusations, debate sometimes reached a fever-pitch, and General William Sherman ordered four artillery companies to the nation's capital to maintain order. The crisis sent newspaper sales soaring, although responsible commentators tried to quiet fears of renewed civil war. The presidential candidates themselves remained publicly mum

during the tense interval. As he searched through law books for legal precedents, Tilden's characteristic silence prevented him from convincing the public that the winner of the popular vote should become president. Hayes used the time to conciliate Republican President Ulysses S. Grant, who had let it be known privately that he believed Tilden had carried Louisiana.

Earlier, a Democratic victory in the 1874 elections led Colorado's congressional delegate to convince his party colleagues to support a statehood bill for the territory because Colorado was solidly Democratic. When Congress reconvened in December, following the election, some Democrats wanted the House to refuse to recognize Colorado's legitimacy as a state, and thus render its electoral votes null and void. After much debate, the House passed a resolution confirming Colorado as a state and seating its elected representative.

More militant Democrats warned that Tilden would be inaugurated as president or there would be blood in the streets. Henry Watterson, congressman and editor of the *Louisville Courier-Journal*, threatened that 100,000 men would march on Washington if Tilden was not installed. The headlines in other Democratic newspapers screamed, "Tilden or War!" For all of their bellicose rhetoric, Democrats were restrained in their actions by the presence in the White House of the Union war hero, General Grant, whom many political opponents could envision establishing a military dictatorship if provoked.

In reality, President Grant was not concerned about personal or partisan empowerment. In a November 10 telegram to General Sherman, Grant firmly stated: "No man worthy of the office of President should be willing to hold it if counted in or placed there by fraud. Either party can afford to be disappointed in the result, but the country cannot afford to have the result tainted by the suspicion of illegal or false returns." The president could have been referring to Hayes as readily as to Tilden. As the situation unfolded, Grant refused to recognize the Republican gubernatorial administrations in Louisiana and South Carolina.

Republicans, in fact, found themselves more divided than the Democrats. Senator Oliver Morton of Indiana and congressman-elect Benjamin Butler of Massachusetts wanted a vigorous defense of the Republican claims to the presidency and governorships. Senators Roscoe Conkling and James Blaine, both of whom lost the Republican nomination to Hayes and looked forward to 1880, were more amenable to a Tilden presidency. Black Americans were reportedly anxious that a Democratic victory could lead to the reestablishment of slavery.

## Possible Solutions

Initially, most Republicans wanted the president of the Senate—who, after the death of Vice President Henry Wilson in 1875, was Senator Thomas Ferry, a Michigan Republican—to decide which election returns to count. A few Republicans, such as Senators Carl Schurz of Missouri and George Edmunds of Vermont, thought the Supreme Court should settle the matter. Edmunds's bill allowing a settlement by the Supreme Court was easily defeated in the Senate. Democrats wanted the Democratically-controlled House to decide jointly with the Republican-controlled Senate. Senator Conkling, the disgruntled Republican also-ran, agreed with the preferred Democratic method, and asserted that Tilden had won Louisiana and Florida.

Two Republican senators offered solutions addressing not the immediate situation, but possible future ones. Senator John Ingalls of Kansas sponsored a joint resolution calling for a Constitutional convention to revise presidential election procedures. Senator Oliver Morton presented a joint resolution for a Constitutional amendment to allow the direct popular election of the president and vice president. Both measures were unsuccessful.

## Electoral Commission Act

When Congress reconvened in December, Republican Representative George McCrary of Iowa introduced a resolution to establish a special committee of each house to develop a process for resolving the conflict, and it passed Congress in December. On December 21, Senate president Ferry announced the members of the Senate committee: Republican George Edmunds, chairman; Republicans, Roscoe Conkling of New York, Frederick Frelinghuysen of New Jersey, and Oliver Morton of Indiana; and Democrats Thomas Bayard of Delaware, M. W. Ransom of North Carolina, and Allen Thurman of Ohio. On December 22, Speaker of the House Samuel Randall of Pennsylvania announced the members of the House committee: Democrat Henry Payne of Ohio, chairman; Democrats Abram Hewitt of New York, Eppa Hunton of Virginia, and William Springer of Illinois; and Republicans George Hoar of Massachusetts, George McCrary of Iowa, and George Willard of Michigan.

On January 10, 1877, Edmunds and McCrary, chief Republicans on the Senate and House special committees, respectively, proposed the creation of a commission independent of Congress for final adjudication of the disputed electoral returns. It was an orderly, multi-institutional, bipartisan solution. The Electoral Commission bill would establish a 15-member commission, consisting of five senators (three Republicans and two Democrats), five representatives (three Democrats and two Republicans), and five members of the Supreme Court (four chosen based on geographic diversity, who would then select a fifth). The commission's decisions were to be legally regarded as final unless overridden by both houses of Congress.

Although Tilden and Randall thought it was a bad plan, Democrats were heavily in favor of it (rather than accept the alternative of Republican Senate president Ferry determining the votes), and enough Republican senators joined them to ensure passage. On January 25, the Senate accepted the measure, 47-17, with Democrats voting 23-1 and Republicans voting 24-16 in the affirmative. The next day, the House approved the bill, 191-86, with Democrats voting 181-19 in favor, and Republicans 84-57 in opposition. President Grant signed the bill into law on January 29.

Representing the Supreme Court on the Electoral Commission were: Nathan Clifford of Maine, presiding officer (Democrat); Stephen J. Field of California (Democrat); William Strong of Pennsylvania (Republican); Samuel Miller of Iowa (Republican); and Joseph Bradley of New Jersey (Republican). Representing the Senate on the commission were: George Edmunds of Vermont (Republican); Oliver Morton of Indiana (Republican); Frederick Frelinghuysen of New Jersey (Republican); Thomas Bayard of Delaware (Democrat); and Allen Thurman of Ohio (Democrat). Representing the House on the commission were: Henry Payne of Ohio (Democrat); Eppa Hunton of Virginia (Democrat); Josiah Abbott of Massachusetts (Democrat); George Hoar of Massachusetts (Republican); and James Garfield of Ohio (Republican).

Please read about the Congressional [Plan of Settlement](#) as reported in *Harper's Weekly* on February 3, 1877, page 82.

## The Davis Factor

The Supreme Court participants on the Electoral Commission included two Republicans and two Democrats. A key reason that Congressional Democrats supported the Electoral Commission Act was because they assumed that Justice David Davis would be selected as the fifth justice and the deciding vote on a commission otherwise evenly divided between Republicans and Democrats. Davis had once been a faithful Republican, beginning his life in national politics as Abraham Lincoln's campaign manager in 1860. Over the years, though, he had drifted away from the party's mainstream. In 1872, he joined the renegade Liberal Republican movement and was a leading, though unsuccessful, candidate for their presidential nomination. By 1876, he was considered to be an independent with Democratic leanings, who would be fair to Tilden's claim.

To nearly everyone's surprise, however, a Democratic-Greenback coalition in Illinois' new state legislature elected Davis to the U.S. Senate on January 25, just as the Electoral Commission bill was passing Congress. The Illinois Democrats considered the Senate seat an inducement for Davis to treat Tilden favorably. Neither Tilden nor Hewitt knew of the plan, but it had been urged by the Democratic candidate's shady nephew, Colonel Pelton. Contrary to expectations, Davis resigned from the commission, and once again a tactical error (like the admission of Colorado) probably

cost the Democrats the presidential election. The substitute fifth justice, Joseph Bradley, was a Grant Republican who would cast every vote for Hayes.

## Backroom Negotiations

As the political mechanism for resolving the Electoral College controversy was being established, a series of partially-related negotiations began behind the scenes. Those private deliberations have often been misleadingly characterized in the press and some textbooks as a compromise between the parties which bartered the presidency to the Republicans for the price of “home rule” in the South and a Democrat in the cabinet. The implication in such a retelling of the story is that none of those things would have occurred without the negotiations. A broader understanding of the historical context of the situation, though, reveals that the bipartisan meetings allowed both sides greater assurance about the outcome that was already developing. The backroom negotiations, therefore, were important to the resolution of the stalemate, yet were not critical to the change in federal policy toward the South.

Since the Civil War, perhaps the main issue separating the two major political parties was Reconstruction policy. Republicans consistently favored federal intervention in the former Confederate states in order to protect the basic civil rights of black Americans and their white Republican compatriots. Democrats vehemently opposed such federal intervention, voted against Reconstruction legislation, and called for the withdrawal of federal troops from political duty in the South. Beginning in the late 1860s, though, the number of federal troops in the South had dwindled from 15,000 in 1867 to 6,600 by 1870 to 3,000 by 1876. As the army was relieved of its political duties under Reconstruction policy, the Southern states elected white-only, Democratic governments.

Over those years, Northern Republican commitment to Reconstruction and black civil rights waned. In 1872, a Liberal Republican movement dedicated to the end of federal intervention in the South joined with the Democratic Party to nominate a presidential candidate (Horace Greeley, who lost to Grant). During the 1876 election, Republicans “waved the bloody shirt” by associating the Democrats with secession, civil war, and anti-black violence. For too many Republicans, however, it had become empty political rhetoric. Hayes himself had only talked vaguely of a fair and just policy for the South, a nebulous position he continued to espouse during the Electoral College controversy.

Of the various negotiations, the most important took place at the Wormley House hotel in Washington D.C. on February 26 between four Southern Democrats and five Ohio Republican surrogates of Hayes. By early the next morning, the Democrats had agreed to stop the House filibuster which was blocking the final count giving Hayes the presidency, while the Republicans agreed that Hayes would withdraw the federal troops



from guarding the statehouses in the three contested Southern states, thus permitting the Democratic governors to take office. Republicans also agreed that Hayes would name Democratic Senator David Key of Tennessee as U.S. Postmaster General, a cabinet position with the largest amount of patronage jobs to distribute. The Wormley House negotiations, however, occurred *after* the Electoral College had awarded, and Congress had ratified, the disputed votes of Florida, Louisiana, and Oregon to Hayes. Only South Carolina remained to be resolved, and the positive result for Hayes was essentially only a matter of time.

## Electoral Commission Deliberation

On February 1, 1877, the Senate and House met in a joint session of Congress to count the electoral votes for president and vice president. Senator Thomas Ferry of Michigan, the Republican president pro tempore of the Senate, opened the electoral reports and began the count of state votes in alphabetical order. The procedure went smoothly until two sets of conflicting returns were presented for Florida, which were then referred to the Electoral Commission.

Over the next several days, the Electoral Commission met as a court in the Supreme Court chamber, listening to lawyers for both parties give arguments on the Florida returns and also on whether to admit into evidence information about the conduct of the elections and the returning boards, as the Democrats desired. On February 8, on a party-line vote of 8 to 7, the Electoral Commission ruled that it would not admit additional evidence; the next day, it ruled by the same margin that Florida's electoral votes belonged to the Republican ticket of Hayes and Wheeler.

Over the following few days, Congress assembled in joint session to receive the commission's finding on Florida, then met separately to vote on the issue. The Republican-controlled Senate swiftly affirmed the commission's directive, but the Democratically-controlled House, two days later, rejected it. Under the terms of the Electoral Commission Act, however, both houses had to reject the commission's ruling in order to nullify it legally. Congress reconvened in joint session, and Florida's votes were counted for Hayes. The same procedure and the same results followed for Louisiana, Oregon, and South Carolina.

Some Democrats used delaying tactics by calling into question electors from other states while in joint session, and calling for roll calls and other dilatory measures while in the House chamber. Although the Wormley House negotiators thought they had cleared the way for Congressional approval of the Electoral College's granting of all 20 disputed electoral votes to Hayes, a faction of House Democrats tried one last filibuster in the last days before the scheduled inauguration. After South Carolina's votes were recorded for Hayes and Wheeler, Congressman Abram Hewitt of New York, chairman of the Democratic Party, objected to Vermont's electoral count, then to

Wisconsin's. Meeting in separate session, the Senate quickly voted down the objections, but a filibuster began in the House. The boisterous House session lasted from 10 a.m. on March 1 to 3:38 a.m. on March 2, at which point the filibuster ended and the joint session resumed. At 4:10 a.m., the last of the electoral votes were counted, with the Hayes/Wheeler Republican ticket receiving all of the 20 contested ballots, giving them a one-vote Electoral College majority, 185-184.

## The Results

On Monday, March 5, 1877, Rutherford B. Hayes was sworn in publicly as president of the United States. As anticipated, within two months, President Hayes removed the remaining federal troops in the South from political duty (guarding the statehouses), Democratic state administrations gained power, and the era of Reconstruction formally ended. Democratic senator David Key was named to the cabinet position of postmaster general. The key job of secretary of state went to William Evarts of New York, the Republican chief counsel before the Electoral Commission and, previously, counsel to President Andrew Johnson during his impeachment trial in 1868. Carl Schurz, a leader of the 1872 Liberal Republican movement, was named secretary of the Interior. In 1880, James Garfield, one of the Wormley House negotiators and Electoral Commission members, was the compromise presidential nominee of the Republican Party. His narrow election victory that November demonstrated that the Republicans could win the White House without carrying any Southern state. The issue of black civil rights would largely remain off the national political agenda until the mid-twentieth century.

Sources consulted: William DeGregorio, *The Complete Book of U.S. Presidents*; Alexander Clarence Flick, *Samuel Jones Tilden: A Study in Political Sagacity*; Eric Foner, *Reconstruction*; *Harper's Weekly* via HarpWeek; Ari Hoogenboom, *The Presidency of Rutherford B. Hayes*; David Jordon, *Roscoe Conkling of New York*; Keith Ian Polakoff, *The Politics of Inertia: The Election of 1876 and the End of Reconstruction*; Sidney I. Pomerantz, "Election of 1876," in Arthur M. Schlesinger Jr., ed., *American Presidential Elections*; Donald Ritchie, "1876," in *Running for President: The Candidates and Their Images*, Vol. I: 1789-1896, ed. Arthur M. Schlesinger Jr.; Mark Summers, *The Era of Good Stealings*.

<http://elections.harpweek.com/09Ver2Controversy/Overview-1.htm>