The Compromise of 1877

Insights on Electoral Disputes, December 2000

Two slates of Florida electors—one pledged to Vice President Gore the other to Governor Bush—now appear possible. How would Congress respond faced with such an eventuality? Well, it has happened once before in American history. In the end, it took a political deal hammered out between political leaders of both parties to resolve a national crisis. In 1876-1877, the nation’s politicians turned not to the courts for resolution, but rather to politics and dealmaking. The present electoral dispute may require similar intervention.

As most Americans now know, there is far more to presidential elections than what occurs on the first Tuesday after the first Monday in November every fourth year. In recent weeks, Americans have learned that in 1824 John Quincy Adams was selected president in spite of the fact that he did not obtain either a plurality of the popular or electoral votes. Because no candidate in that election garnered a majority of the electoral votes, that election was decided by the House of Representatives, which chose Adams over Andrew Jackson, even though Jackson had received a plurality of the popular and electoral votes. And in 1888, challenger Republican Benjamin Harrison narrowly defeated incumbent Democrat Grover Cleveland in the electoral vote, 233-168, notwithstanding Cleveland’s near one hundred thousand-vote advantage in the popular vote. Cleveland got his revenge four years later, defeating the incumbent Harrison in both the popular and electoral votes.

But in 1876, neither the law nor the courts settled the most contentious, bitter, and protracted presidential election in American history. First the basic facts: The Democratic nominee, Samuel J. Tilden, defeated Republican candidate Rutherford B. Hayes by more than two hundred and fifty thousand votes. In the electoral tabulations, Tilden earned 184 votes out of a possible 369, one shy of the required majority. Hayes took 165 electoral votes, with twenty electoral votes in dispute. Those disputed electoral votes came from three southern states—Louisiana, South Carolina, and, yes, Florida. Both sides alleged fraud. The Democrats accused the Republicans of tossing ballot boxes in bodies of water and smearing Tilden ballots with black ink so as to make them illegible. The Republicans countered that Democrats had intimidated and used physical force to prevent blacks from participating in the election. By the Democratic count, Tilden had won the three disputed states. The Republicans, however, insisted that Hayes had been victorious in those states. Louisiana, South Carolina, and Florida thus each submitted two sets of election returns—one showing a victory for Tilden, the other for Hayes.

One elector from Oregon was in dispute. One of the Republican electors in Oregon was a postmaster. The Constitution, however, prohibits federal employees from serving as electors. Thus, the Democratic governor of Oregon replaced the Republican elector with a Democratic one. As a practical matter, this one electoral vote was quite significant. If Tilden acquired one more electoral vote, he would have the necessary 185 to claim the presidency. If such had occurred, the contest over the electors from the three disputed southern states would have been insignificant. The postmaster, however, perhaps recognizing the importance of his one vote, preferred to be an elector. Thus, he resigned his position as a postmaster. The Republicans immediately clamored for his reinstatement as the rightful elector.
When Congress met in early January 1877, it had before it four sets of electors, representing the three southern states and Oregon. Because the Constitution is silent on how to count electors under these circumstances, Congress was thrown into a tailspin. Democrats controlled the House and Republicans controlled the Senate, but after much debate, the Congress decided to hand the problem over to a special election commission. The law, signed by outgoing President Ulysses S. Grant, created a fifteen-member commission to rule on the disputed electoral votes. The commission was composed of five House members, five senators, and five justices of the Supreme Court. Of the ten members from the Congress, five were Democrat and five Republican. The political make-up of the justices on the commission was two Democrats (the only two on the High Court), two Republicans, and one Independent, David Davis. But Davis disqualified himself when the Illinois legislature selected him as the state’s newest U.S. Senator. Joseph Bradley, a Republican, then replaced Davis on the commission. Thus, the commission had seven Democrats and eight Republicans. This perpetuated the crisis, since Democrats expected the Republican-dominated commission to rule in favor of accepting all twenty Republican electors, which would have given Hayes the presidency by a vote of 185 to 184.

Throughout December, January, and February, a genuine constitutional crisis confronted the nation. Realizing that no legal mechanisms could adequately resolve the crisis, meetings among a variety of “interested” interest groups took place. These interests ranged from powerful railroad owners, members of Congress, leaders of both parties, and representatives of Rutherford B. Hayes. These secret negotiations, while successfully working out a solution to permit Congress, more specifically the southern Democrats, to accept the Commission’s recommendation that the Hayes electors be counted, in reality reinforced an historical evolution that was in the process of developing. The backroom negotiations provided a solution to the 1876 presidential election, while simultaneously reassuring the various interest groups that the developments they sought would be realized.

Simply put, southerners wanted the remaining federal troops pulled out of the south, something that had been completed except in Louisiana, South Carolina, and Florida. Hayes agreed to remove the remaining troops from the south, thus ending reconstruction and returning the south to its native sons. Southern Democrats also wanted control of a cabinet position. Hayes’s representatives agreed to make Democrat David Key, a U.S. Senator from Tennessee, the Postmaster General, the cabinet position controlling the largest haul of federal patronage. Southern railroad interests also wanted support for the construction of a southern transcontinental railroad, a proposal considerably energized in these meetings. The climax of these negotiations took place at the Wormley Hotel in Washington, D.C., about a week prior to the scheduled inauguration. There, representatives of Hayes agreed with a group of southern Democrats to the proposals that had been the subject of conversations over the past several months.

The consummation of what has become known as the Compromise of 1877 cleared the way for final resolution of the presidential contest. The commission had previously voted to award the disputed electors from each of the four states in question to Hayes, voting 8:7 along party lines, with Bradley siding with the Republicans on each count. This is how Hayes received 185 electoral votes to Tilden’s 184. The struggle had not concluded, however. A number of Democrats vociferously objected to the commission vote: “Tilden or blood” was their battle cry.
They threatened to filibuster, but in the end permitted the election of Hayes. And, true to his word, Hayes fulfilled the commitments made by his representatives.

In many respects, Hayes was more victim than victor. A middle-of-the-road conservative, Hayes was an avowed one-term president. He was honest, courageous, and a genuine reformer. His primary policy objective was the passage of civil service reform, which eluded him throughout his presidency. He spent most of his four years trying to regain control of executive appointments from a Senate oligarchy, which insisted on naming his cabinet, filling federal patronage positions, and acting indignant when he proposed even modest legislative initiatives. But Hayes could not escape the bitterness and rancor of the 1876 election. He was reviled by his critics and became known in popular circles as “Old 8 to 7,” “his fraudulency,” and “Rutherfraud B. Hayes.” Many Republicans were opposed to a deal that removed the last vestige of federal control over the south. Many Democrats hated him because they believed that his party stole the election from the popular vote winner, Tilden. In 1878, the Democratic controlled U.S. House launched an investigation into his election and talk of removing him from office was rife in the nation’s capitol. Unhappy, Hayes referred to his presidency as “a life of bondage, responsibility, and trial.” He hated virtually every moment of his presidency, and slipped into relative obscurity when his term ended.

(Still the most complete and brilliant account of the compromise of 1877 is Reunion and Reaction, written by C. Vann Woodward in 1951. Equally important, Woodward fits the compromise into the broader trends of sectional, economic, and party development.)

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