

Electing a President

# The Contentious Election of 1876

by Michael F. Holt

The presidential election of 1876 is better known for its controversial aftermath than for the campaign that preceded it. The basic outline of events after Election Day, November 7, 1876, is familiar. The Democratic candidate, Governor Samuel J. Tilden of New York, had carried a majority of the popular vote, and by the morning after the election he had 184 of the 185 electoral votes necessary for a majority.[1] Tilden's Republican opponent, Governor Rutherford B. Hayes of Ohio, had at best 166 electoral votes (or 165 if the eligibility of one of Oregon's three electors was successfully challenged). The nineteen votes from the three ex-Confederate states Republicans still controlled—Florida, Louisiana, and South Carolina—were in dispute. According to the Democratic version of events, corrupt returning boards in the three southern states had overturned Democratic majorities of the popular vote and awarded the electoral votes to Republicans. Crying foul, the Democratic electors from those states sent their own votes to Washington as well for Congress to consider when it officially counted the nation's electoral votes in February 1877.

With control of Congress split between a Democratic House and a Republican Senate, disagreement about exactly who could count the votes produced a constitutional crisis that evoked threats of armed violence from some Democratic quarters. To resolve it, Congress created an unprecedented and as-yet unreplicated Federal Electoral Commission consisting of fifteen members of Congress and justices of the Supreme Court. There was no bargain, usually described as the Compromise of 1877, to end Reconstruction; the Commission's Republican majority, voting on a party line of 8-7, awarded all twenty disputed votes to Hayes. The resulting 185-184 victory proved the narrowest margin in American history. Bitter Democrats declared the election "the Fraud of the Century."

This brief outline raises some questions and gives short shrift to some of the most intriguing aspects of the election. Why did Congress have to resort to the creation of a Federal Electoral Commission to determine who deserved the disputed electoral votes? It had never done so before and has never done so since, even when different parties controlled its two branches. What was so vexatious about the dilemma Congress faced in the winter of 1876–1877?

HIDE FULL ESSAY ▲

Aspects of the usually neglected campaign itself raise important questions. The 1876 race elicited the highest rate of voter turnout in American history, 81.8 percent nationally. In six northern and three southern states over 90 percent of the potential electorate came to the polls. To be sure, in a few states—Florida and South Carolina, for example—fraud clearly helped inflate turnout rates. But what explains the evident popular interest in this campaign?



*The artist depicted a crowded chamber in the Capitol where the Federal Electoral Commission (the fifteen men at left) made their decisions in 1877, although in the crowd she added important political figures who did not actually attend the meetings. ("The Florida Case before the Electoral Commission," by Cornelia Adele Strong Fassett, oil on canvas, 1879. [US Senate Art Collection])*

Even more significant than the turnout rate is the unusual relationship between economic conditions and political results in 1876. The election occurred in the midst of a severe depression that had begun in the fall of 1873. Hard times are usually poisonous to incumbent parties, and the Republicans were then the incumbents. In the depressions starting in 1837, 1893, and 1929, the “out” party won the off-year congressional elections following the onset of hard times, and then also won the following presidential election. Anti-Republican candidates, including a few Independents, did win the majority away from the Republicans in the House of Representatives in the congressional elections of 1874–1875, but the incumbent Republicans regained a significant number of their House seats and retained both their majority in the Senate and the presidency in 1876. Yet this unique comeback was not simply the result of stolen electoral votes from Florida, Louisiana, and South Carolina. In all those states both Democratic and Republican officials were guilty of fraud, lying, and attempts at bribery to sway the returning boards that decided who had won their electoral votes. The Republicans’ remarkable recovery in 1876 occurred primarily in the North, where Republicans carried eighteen of twenty-two states, two-thirds of the region’s congressional seats, and a popular-vote majority of more than a quarter of a million votes.[2] Both the heavy turnout rates and the Republican comeback in the midst of ongoing hard times cry for explanations.

## WOOING THE SWING VOTERS

At first blush, voters’ apparently intense interest in this election is puzzling. Following precedent, neither Hayes nor Tilden campaigned personally, and there’s no evidence they could have ginned up the massive turnout if they had. Nor were the partisan differences on most issues raised during the campaign as sharp as one might have expected. However, both parties sought to win the support of the group that each regarded as the key swing group—the Liberal Republicans who had bolted the Republican Party in 1872. They had joined Democrats that year in futilely supporting Horace Greeley against Ulysses Grant’s re-election.

Liberal Republicans had four policy priorities that explain much about the nature of the 1876 campaign:

1. Complete cessation of federal intervention in the South to protect black voters and bolster up Republican state administrations, which most northerners by 1876 regarded as corrupt
2. Resumption of payment in gold specie on the paper money national banknotes and legal tender greenbacks issued during the Civil War, a priority supported by most leaders in the Northeast, Republican as well as Democrat[3]
3. A draconian retrenchment of government expenditures and tax rates at all levels of the federal system
4. Honesty in government to be achieved by an abolition of partisan control over appointive government positions and the implementation of impartial civil service exams

Democrats seemed to hold trump cards on almost all these issues. The incumbent Republicans had not only presided over an economic disaster, they were also responsible for federal intervention in the South. In addition, they bore the stigma of corruption, fairly and unfairly attached to Grant, that had made the President’s name a synonym for sleaze. The main thing Democrats did with their new control of the House, starting in December 1875, was to investigate every department of the executive branch for evidence of corruption; this was to be the centerpiece of their campaign in 1876.

By the end of August 1876 the apparently sharp differences between the two parties on these issues as well as a new one that had emerged in 1875—Democrats’ supposed support for an alleged Catholic assault on public school funding—had been significantly blurred, if not entirely eliminated. “Reform” was the central theme of the Democrats’ 1876 campaign, but Grant’s decision in May 1875 not to seek a third

term allowed those Republicans eager to appease Liberal Republicans to run a clean government man, Ohio's Rutherford B. Hayes. Hayes, unlike the well-known spoils men and presidential hopefuls James G. Blaine, Oliver P. Morton, and Roscoe Conkling, pledged to reform the civil service. Enough of the Liberals returned to the Republican fold in 1876 to allow Republicans to carry eighteen of the twenty-two northern states. In those states Republicans outgained Democrats by 325,000 votes between 1874 and 1876. Most of the 950,000 additional Republican votes in 1876 came from men who had abstained in 1874, but Liberals contributed to the Republicans' comeback in the North .

In addition, neither party gained a clear advantage on economic issues. Despite widespread depression-induced unemployment, neither advocated federal or even state fiscal expenditures that might stimulate recovery and create jobs. In part, wariness about offending Liberals who wanted to shrink government, not expand it, explains this reticence; equally important, however, is the fact that theories of countercyclical government spending to offset economic hardship did not yet exist. In his letter accepting the Democratic nomination, Tilden implausibly attributed the depression to excessive state and federal tax rates and contended that recovery depended upon slashing government expenditures and taxes.

On the matter of specie resumption, the key economic issue in the race, both major parties were split into "hard" and "soft" money camps that pitted northerners against midwesterners, divisions that spawned platform fights at both national conventions. Republicans had actually passed a law in January 1875 calling for full resumption of specie payments on January 1, 1879 but neither the Republican national platform nor Hayes explicitly endorsed that law, even as they touted the idea of resumption. The Janus-faced Democratic ticket of hard-money Tilden and soft-money Indiana Governor Thomas Hendricks labeled the law a "hindrance" to specie resumption and called for its repeal. A stalemate had been reached, and by late August both parties said less and less about the money question.

In several northern state elections in 1875, most notably Ohio, Republicans made gains by falsely claiming that Democrats supported Catholic demands to use local public tax revenues to finance Catholic parochial schools. Hayes, for one, believed this issue made him governor in 1875. President Grant publicly echoed the anti-Catholic charge in a speech in September 1875 and later called on Congress to pass a constitutional amendment prohibiting any such public expenditures. In December 1875 former House Speaker Blaine, then the frontrunner for the Republican nomination, introduced that constitutional amendment. Most Republicans expected anti-Catholicism to be a decisive and winning issue for them in 1876, no matter who won their nomination.

Democrats had been caught off-guard by the anti-Catholic campaign in 1875, but in 1876 they skillfully neutralized it; every Democratic state platform in both the North and the South opposed any division of public school funds to support sectarian institutions. The Democratic national platform denounced Blaine's proposed amendment as unnecessary and an unconstitutional infringement on state rights. Then, in early August, Democrats in the House, who had ignored Blaine's amendment until then, passed it word-for-word but added a clause that prohibited Congress from enacting legislation to enforce the ban on public aid to Catholic schools. In response, Senate Republicans wrote their own version with a section inviting congressional enforcement, but they lacked the two-thirds majority in the Senate to adopt it.[4] For most voters, however, the point was that the Democrats had passed the amendment Blaine had introduced. By August, in short, nothing seemed to distinguish the parties on the religious issue that had proved so lethal for Democrats in 1875.

Nor did the Republican experiment of Reconstruction in the South elicit much discussion outside of the South itself. Since 1872 Democrats had repeatedly pledged their acceptance of the Thirteenth, Fourteenth, and Fifteenth Amendments as final settlements of the slavery issue. Those pledges did not,

however, prevent Democrats from race-baiting in the North when they saw an opportunity or from criticizing the insertion of federal troops in the South to protect freedmen's voting rights and defend Republican state administrations. By the spring of 1875 many Republican voters and officeholders in the North also denounced continued federal intervention in the South as an outrageous infringement on republican self-government.

The tipping point came with events in Louisiana in the winter of 1874–1875 that exposed a chasm between incumbent President Grant and other Republican politicians increasingly worried about carrying the upcoming 1876 election. An armed uprising against the Republican state administration forced Grant to send troops to the state capital of New Orleans in the fall of 1874. He kept them there to protect black voters in the November election that year, but in January 1875 the local commander marched troops into the state house of representatives to expel Democrats and preserve a Republican majority. Even Republican state platforms that year expressed outrage at this action. Given the reign of violence armed Democratic thugs inflicted on blacks in Louisiana, Mississippi, South Carolina, and elsewhere, Grant declared to the Senate that so long as he was president, “Neither Kuklux Klans, White Leagues, nor any other association using arms and violence to execute their unlawful purposes can be permitted in that way to govern any part of this country.”[5] He asked Congress to enact a law giving him the power to suspend habeas corpus and declare martial law to suppress white terrorism against blacks as he had in South Carolina in the fall of 1871. Led by Speaker Blaine, House Republicans killed this measure because they thought it would end any chance they had of carrying northern states in 1876. If there was a specific moment when northern Republicans abandoned Reconstruction, this was it, not the usually cited post-election maneuvering in Washington in the winter of 1876–1877.

## INCITING SECTIONAL DISCORD

Republicans, in sum, made no effort to maintain federal enforcement of black suffrage and Republican governments in the South in 1876. However, they did attack white southerners who had supported the Confederacy as despicable traitors who now dominated the Democratic Party. Known as “Waving the Bloody Shirt,” this attempt to reignite northern hatred of Confederates and thus of the Democratic Party was without doubt the chief reason for the Republican comeback in the North in 1876 despite the continuance of the depression.

Sectional animosities against Yankees had hardly abated in Dixie by 1876 and coupled with southern Democrats' calls after 1872 to restore white supremacy to the South by any method possible, that hatred primarily explains the explosion of the Democratic turnout in the South as well. Between the elections of 1872 and 1876 the Democratic vote in the nation as a whole increased by almost 1,500,000 votes, fully three times greater than the Republican increase in those years. Two-fifths of that increase occurred in former slave states compared to a piddling gain of 35,000 for Republicans in those states. Outside of the three closely divided southern states that sent competing electoral votes to Washington, in fact, the average Democratic proportion of the vote in the remaining ex-slave states was 60.8 percent. In comparison, the average Democratic percentage in the four northern states that Tilden carried—Connecticut, Indiana, New Jersey, and New York—was only 50.8 percent, while the Republicans' average in the eighteen northern states they carried was 52.3 percent.[6] The South, in short, had become a Democratic fiefdom, and partisan competition between Republicans and Democrats had become much more sectionally polarized than it had been as recently as 1872 when Grant carried nine of the fifteen former slave states as well as West Virginia.

## MAKING THE CALL

Limitations of space permit the examination of only two more related questions growing out of this fascinating election. Why did Congress find it necessary to create a Federal Electoral Commission to resolve the disputed electoral votes? Given its results, moreover, why had Democrats gone along with its creation, for they in fact voted far more heavily in its favor than did Republicans in the House and Senate?

The dilemma the nation faced derived from two clauses in the Constitution and a joint-rule of Congress Republicans had passed in 1865 after Lincoln's re-election. The Twelfth Amendment specified that the states' electors should send their votes under seal to the president of the Senate, normally the vice president of the United States, but in the winter of 1876–1877 Republican Senator Thomas Ferry of Michigan.[7] When the two chambers met together in the February after the election, that officer would open the sealed votes and, the amendment read, "the votes shall then be counted." But counted by whom—the president of the Senate, members of each chamber separately, or a majority vote of the combined membership? Never had the imprecision of the passive voice been so important. But another provision of the Constitution regarding presidential elections was far more precise. Should no candidate have a majority of the electoral vote, the House of Representatives, with each state casting only a single vote, would determine who had won. Here is where the arguably unconstitutional Twenty-Second Joint Rule became crucial.

That rule allowed any member of the House or Senate to challenge electoral votes when the two chambers came together. The House and Senate would then go immediately into separate session and vote on whether or not to accept the challenge. Should either chamber do so, that electoral vote (or votes) would be thrown out and not counted. Under this rule, Democrats in the House could disqualify enough votes to ensure no one had a majority. Then the election would go to the House, which was certain to elect the Democratic candidate. Despite votes to repeal the rule in the Senate, as of the winter of 1876–1877 the Democratic House and Tilden himself insisted that the joint-rule remained in effect because it took both houses to repeal a joint-rule. During the counting process, they expected to use their challenges to the Republican electoral votes reported from the South to void those votes and throw the election into the House. Senate Republicans, in turn, insisted that only Ferry could count the votes, and House Democrats knew that Ferry would give Hayes the disputed electoral votes. In December many House Democrats threatened to refuse to meet with the Senate unless Republicans abandoned their insistence that Ferry alone could count the votes. Should that happen—i.e., no joint-meeting—no one would have a majority of electoral votes, and the House would choose Tilden.

By mid-December cooler heads prevailed, and it was decided to establish the unprecedented Federal Electoral Commission to determine who had won the twenty disputed electoral votes. After arguments about its size and composition, in January 1877, the two chambers agreed on a commission of fifteen men—five representatives and five senators, divided evenly between the two parties, and five associate justices. The Supreme Court members were the key. Congress designated four of them, two Republicans and two Democrats; those four would then choose the fifth associate justice. Everyone, certainly the Democrats who favored this scheme far more avidly than Republicans, expected Justice David Davis of Illinois, a genuine independent politically, to be the fifth and decisive justice. But on the night before Congress voted on this scheme, Democrats in the Illinois legislature elected Davis to the US Senate. Learning of this action by telegram, Davis announced on the day of the congressional vote that he would not serve on the commission. Congress nonetheless went ahead and created it, with Democratic votes in both houses far more preponderantly in favor than those from Republicans. The four associate justices then selected Joseph Bradley, their Republican colleague from New Jersey, as the fifth justice on the commission. And on every vote, save one on whether to allow a hearing on an elector's eligibility, Bradley would side with the other seven Republicans to give Hayes all the disputed votes by an

8-7 margin.

It had taken Congress over a month to count all the electoral votes because of the disputes and because of Democratic challenges to individual Republican electors, none of which was upheld. At 4 a.m. on Friday, March 2, Hayes was declared the winner. On Monday, March 5, he was publicly sworn in while bitter Democrats excoriated their members of Congress for ever agreeing to the creation of the Federal Electoral Commission. So ended the most contentious presidential election in American history.

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[1] If Colorado had not been admitted as a state on August 1, 1876, Tilden would have won with those 184 votes, and much that has made this aftermath so notorious would have been moot. The Democrats in Congress could do nothing to block its entry as the law offering Coloradoans admission stated that if they met the conditions prescribed, the President should admit Colorado “without any further action whatever on the part of Congress.”

[2] In 1874 Republicans had won slightly less than one-half of the House seats contested in the North, 85 of 174.

[3] For a more in-depth examination of the complex “money question,” consult Michael F. Holt, *By One Vote: The Disputed Presidential Election of 1876* (Lawrence: University Press of Kansas, 2008).

[4] The Democratic version achieved the necessary two-thirds majority in the House because virtually all of the outnumbered Republicans abstained on the vote.

[5] Ulysses S. Grant, Message to the US Senate, January 13, 1875, in *A Compilation of the Messages and Papers of the Presidents, 1789–1902*, vol. 7, comp. James D. Richardson (Washington DC: Bureau of National Literature and Art, 1907), 305.

[6] These average percentages are unweighted by the states’ populations, but Republicans were relatively strongest in the North in states with comparatively light populations—Rhode Island, Vermont, Kansas, and Nebraska. The new state legislature, rather than popular voters, cast Colorado’s three electoral votes for Hayes.

[7] Vice President Henry Wilson had died, making Ferry the acting president of the Senate.

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## RECOMMENDED RESOURCES

We recommend Professor Holt’s recent book for a more in-depth look at the questions introduced here and other factors that made the election of 1876 so complex and pivotal in our history:

Holt, Michael F. *By One Vote: The Disputed Presidential Election of 1876*. Lawrence: University Press of Kansas, 2008.

Professor Holt also recommends:

Morris, Roy, Jr. *Fraud of the Century: Rutherford B. Hayes, Samuel Tilden, and the Stolen Election of*

1876. New York: Simon & Schuster, 2003.

Polakoff, Keith Ian. *The Politics of Inertia: The Election of 1876 and the End of Reconstruction*. Baton Rouge: Louisiana State University Press, 1973.

And for more on Hayes's perspective:

Hayes, Rutherford B. *Diary and Letters of Rutherford Birchard Hayes: Nineteenth President of the United States*. Vol. 3, 1865–1881. Edited by Charles Richard Williams. Columbus: The Ohio State Archaeological and Historical Society, 1924.

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