

Rutherford B. Hayes

OVERVIEW

The US Constitution provides an orderly process for electing the President, as described in Article II and the Twelfth Amendment. However, in the election of 1876, two conflicting sets of electoral votes were submitted by each of four states. The Constitution provided no process for determining the legitimate set of votes. Acting outside any constitutional mandate, Congress created a special commission to investigate the returns from Oregon, South Carolina, Louisiana, and Florida. Voting along party lines, the commission ruled that Rutherford B. Hayes had won the disputed election.

OBJECTIVES

Students will:

- Trace the events that led to the election of Rutherford B. Hayes.
- Analyze the provisions of the US Constitution that describe the presidential election process.
- Evaluate Congress' appointment of a special commission in absence of any constitutional provision for disputed electoral vote counts.
- Predict solutions should a similar situation arise in the future.

BACKGROUND/HOMEWORK

Have students read **Handout A: Rutherford B. Hayes and the Disputed Election of 1876** and answer the questions.

CONSTITUTIONAL CONNECTION

To create a context for this lesson, students complete **Constitutional Connection: Electing The President.**

CRITICAL ENGAGEMENT QUESTION

Evaluate Congress' decision to devise an "extra-constitutional" solution to the electoral vote controversy of 1876.

MATERIALS

- **Handout A:** Rutherford B. Hayes and the Disputed Election of 1876
- **Handout B:** Setting the Scene
- **Appendix B:** The United States Constitution
- **Handout C:** What Would You Do?
- **Handout D:** Tilden's Response to the Election

WARM UP [5 MINUTES]

- Have five students present the brief role play in **Handout B: Setting the Scene.**
- Go over the questions from **Handout A** and clarify any questions students have.

ACTIVITY I [25 MINUTES]

- A. Have students work in small groups to skim the parts of **Appendix B: The United States Constitution** that pertain to the election of the President in 1876: Article II and the Twelfth Amendment.
- B. Ask students: According to the Twelfth Amendment, who is responsible for the actual counting of the votes? Who has the authority to decide, in the event of a dispute, which set of votes to count? *The Amendment is not clear about who counts the votes. It might be reasonably inferred that, since the President of the Senate is directed to “open all the certificates,” he has the authority to decide which set of votes to count.*
- C. Have students remain in their small groups to brainstorm responses to the questions on **Handout C: What Would You Do?**
- D. Have students share their responses to the last two questions and have the class vote on the best solution.

ACTIVITY II [20 MINUTES]

Have students complete **Handout D: Tilden’s Response to the Election**. Next class, have students share their paraphrases, as well as their responses to question eight.

THE ISSUES ENDURE

Historians still debate whether Hayes entered office rightfully. A similar set of questions reappeared in 2000, when the nation faced another close election with a controversial settlement. Have students research the presidential elections of 1876 and 2000. How did the political solution devised in 1876 result in a political outcome? Contrast the process and solution in 1876 with those in 2000.

EXTENSION

Cartoonist Thomas Nast chronicled the developments of the campaign and election of 1876 in *Harper’s Weekly*. Use the materials available at elections.harperweek.com/09Ver2Controversy/cartoons-list.asp?year=1876 to review Nast’s approach to the events. Have students select two or three cartoons they believe would be most important to tell the story of the election of 1876. Then challenge students to create their own cartoons.

Rutherford B Hayes and the Disputed Election of 1876

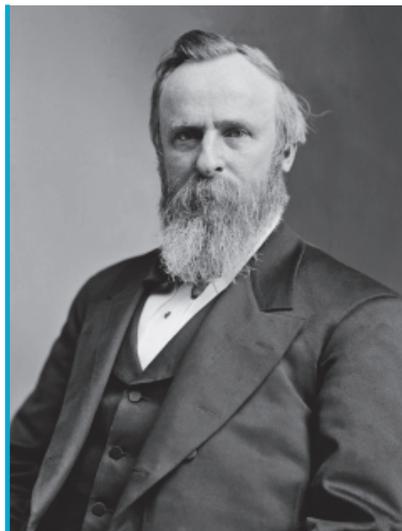
A

The US Constitution provides an orderly process for electing the President, as described in Article II and the Twelfth Amendment. According to the Twelfth Amendment, electors meet in each state capital, cast ballots for President and Vice President, and transmit the results to the US Capitol. “...The President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted...” The person winning a majority of the electoral votes is elected President. However, in the election of 1876, four states submitted two conflicting sets of electoral votes. Which set would be counted? The Constitution provided no process for determining the rightful set of votes. Venturing into uncharted territory, Congress appointed a special commission to investigate the returns from Oregon, South Carolina, Louisiana, and Florida.

THE “LAST BATTLE OF THE CIVIL WAR”

The election of 1876 has been called the “last battle of the Civil War.” The entire nation was weary of Reconstruction. Northerners, concerned about economic depression and corruption in their own states, no longer worried about the civil rights of Southern blacks.

Southerners were tired of federal interference in their politics. After the Civil War, federal troops had been stationed throughout the South in order to keep the peace and protect the rights of former slaves. As the troops left, the Republican state governments established under Reconstruction were replaced by allwhite, Democratic



administrations determined to reestablish the former social systems of the south. By 1875, federal troops had been withdrawn from all Southern states except Florida, Louisiana, and South Carolina. The end of Reconstruction was coming, regardless of which party won the presidency in 1876.

The Republican candidate was Rutherford B. Hayes. Hayes was a lawyer and former Civil War Union general. In 1876 he was Governor of Ohio and was widely esteemed for integrity. The Democrat was New York Governor Samuel Tilden. Tilden was also widely respected. As district attorney, he had taken on corruption in New York City politics. There was little difference between the candidates’ platforms. They agreed on the need for civil service reform, more responsible economic policies, and, as Hayes put it, “an intelligent and honest administration of government, which will protect all classes of citizens...” in the South.

ELECTION RESULTS

Based on telegraphed reports by the end of election night, both Hayes and Tilden were confident that Tilden had won the presidency. It became clear that Tilden had won the popular vote and had won 184 of the needed 185 electoral votes. Hayes, with only 165 electoral votes, would win the presidency only if he won all twenty electoral votes from the remaining states.

In South Carolina, Louisiana, Florida, and Oregon, each party claimed victory and charged the opponent with fraud. In Oregon, a single elector was challenged as being ineligible.

In the three Southern states,

Reconstruction Republican governments were still in control. In South Carolina, Louisiana, and Florida, each state had a “returning board” whose task was to throw out fraudulent votes. The Republican-controlled boards identified widespread Democratic fraud. In reality, both parties used violence and intimidation: Democrats to prevent blacks from voting, and Republicans to ensure that blacks voted Republican. Both sides bought votes.

The state returning boards determined that Hayes had won the decision—and the electoral vote—in each case. However, Democratic electors met and voted in these state capitals anyway. The result was that two sets of electoral votes were sent to Washington, D.C. from each of these Southern states.

THE ELECTORAL COMMISSION

The Constitution does not address a situation where states submit conflicting sets of electoral votes. Congress created its own solution: a special electoral commission to investigate the disputed results. The commission included Senators, Representatives, and Supreme Court Justices—seven Democrats and eight Republicans.

Tilden opposed the commission, believing the election should be decided in the House of Representatives. Hayes thought the commission arrangement was unconstitutional: “... the appointment of the commission by act of Congress violates that part of the Constitution which gives the appointment of all other officers to the President” (Article II, Section 2, Clause 2).

Beginning Feb. 1, 1877, before a joint session of the House and Senate, electoral reports from the states were opened in alphabetical order. For the next few weeks, the electoral commission listened to testimony from lawyers on both sides as each disputed state’s turn came. Each time the vote was eight to seven to award the state to Hayes. The Democrats in Congress tried various stalling strategies, but when the last of the electoral votes was counted on March 2, Hayes had received all twenty of the disputed electoral votes and won the election by 185 – 184.

On Monday, March 5, 1877, Rutherford B. Hayes was sworn in as the nineteenth President of the United States, and soon the last of the federal troops were removed from the South. The closest election in our history up to that point had been settled in a manner not provided by the Constitution.

CRITICAL THINKING QUESTIONS

1. According to Amendment Twelve, how are electoral votes to be counted?
2. Why was the electoral result in doubt in 1876?
3. On what issues did Hayes and Tilden agree?
4. Why was Reconstruction coming to an end regardless of who won the election?
5. In what ways did both parties violate the principles of a free and fair election?

Setting the Scene

B

NOTE: The statements of Hayes, Tilden, and Grant are actual quotes from 1876-1877.

NARRATOR: Since the 1876 election a few days ago, which is still too close to call, we have asked several of America’s political leaders for comments.

REPORTER #1: Governor Hayes, you have stated that you believe you have won the election fair and square, and that the Republican Party must avoid any trace of dishonesty or fraud. How do you think the election should be decided?

RUTHERFORD B. HAYES: “Let Mr. Tilden have the place by violence, intimidation, and fraud, rather than prevent it by means that will not bear the purest scrutiny ... we are not to allow our friends to defeat one outrage and fraud by another. There must be nothing crooked on our part.”

REPORTER #1: Republicans across the country might disagree with you.

HAYES: “He serves his party best who serves his country best.”

REPORTER #2: President Grant, you have also expressed an opinion about the possibility of fraud in the recent election.

PRESIDENT ULYSSES S. GRANT: “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 can not afford to have the result tainted by the suspicion of illegal or false returns.”

REPORTER #3: Governor Tilden, you have avoided making public comments about the election. It appears that you have won the popular vote and your supporters are threatening violence if the election is stolen from you. Do you have a statement for us?

SAMUEL TILDEN: “Be satisfied with the reflection that the people are too patriotic, too intelligent, too self-poised, to allow anything perilous to be done that may disturb or destroy our peculiar form of government. Don’t be alarmed.”

REPORTER #3: What do you say to your supporters who shout, “Tilden or Blood!”?

TILDEN: “It will not do to fight. We have just emerged from one Civil War, and it will never do to engage in another; it would end in the destruction of free government. We cannot back down. We can, therefore, only arbitrate.”

NARRATOR: The election’s outcome was settled by a special electoral commission in a process completely outside the provisions of the US Constitution. Hayes became President, but he was called, “Rutherfraud B. Hayes” and “His Fraudulency,” in spite of the fact that he took no part in the process that sent him to the White House.

What would you do?

C

DIRECTIONS: Applying what you know about the Constitution and the election of 1876, answer the questions below.

1. Brainstorm some other actions Congress could have taken in response to the electoral returns from South Carolina, Louisiana, and Florida in 1876.

2. Should Congress have devised the Special Commission—a solution to the controversy that was outside the Constitution?

3. How, if at all, might other levels and branches of government have gotten involved?

4. Imagine you and your group members are members of Congress. Your task is to draft an “Election Controversy Amendment” that specifically details what action(s) the federal government should take if states send conflicting electoral vote counts. Write your proposed amendment in the space below.

Tilden's Response to the Election

D

DIRECTIONS: Read the information below and answer the questions that follow.

Samuel Tilden was asked why he did not simply declare himself President based on the popular vote. Why did he not fight more visibly to claim the post in the months between the election and Hayes's inauguration? He said, "After the electoral scheme, which I always opposed, was complete, I never entertained the idea of taking the oath of office either in Washington or in New York or elsewhere. It would have been ridiculous. I had no evidence of title then—no claim—no warrant." He also commented, "I can retire to private life with the consciousness that I shall receive from posterity the credit of having been elected to the highest position in the gift of the people without any of the cares and responsibilities of the office."

In a speech he gave at a dinner in June, 1877, Tilden stated,

"In the world's history, changes in the succession of governments have usually been the result of fraud or force. It has been our faith and our pride that we had established a mode of peaceful change to be worked out by the agency of the ballot box. The question now is whether our elective system, in its substance as well as its form, is to be maintained. This is the question of questions. ...It involves the fundamental right of the people. It involves the elective principle. It involves the whole system of popular government. The people must signally condemn the great wrong which has been done to them. They must strip the example of everything that can attract imitators. ...But when those who condemn the wrong shall have the power they must devise the measure which shall render a repetition of the wrong forever impossible.

If my voice could reach through the country and be heard in its remotest hamlet, I would say: Be of good cheer. The Republic will live. The institutions of our fathers are not to expire in shame. The sovereignty of the people shall be rescued from this peril and reestablished."

Tilden died in 1886. The inscription on his headstone is: "I Still Trust the People."

WRITE EACH OF THE FOLLOWING TILDEN STATEMENTS IN YOUR OWN WORDS:

1. "I had no evidence of title then—no claim—no warrant."

2. "I shall receive from posterity the credit of having been elected to the highest position in the gift of the people without any of the cares and responsibilities of the office."

Tildon's Response

D

(Continued)

3. "Everybody knows that, after the recent election, the men who were elected by the people were counted out; and the men who were not elected were counted in and seated."

4. "It has been our faith and our pride that we had established a mode of peaceful change to be worked out by the agency of the ballot box. The question now is whether our elective system, in its substance as well as its form, is to be maintained."

5. "It involves the fundamental right of the people. It involves the elective principle. It involves the whole system of popular government. The people must signally condemn the great wrong which has been done to them."

6. "...they must devise the measure which shall render a repetition of the wrong forever impossible."

7. "Be of good cheer. The Republic will live. The institutions of our fathers are not to expire in shame. The sovereignty of the people shall be rescued from this peril and reestablished."

8. It has been said that Tilden's response to the election—accepting the result even though he believed a great injustice had been done—was an example of great patriotism. Discuss whether you agree or disagree and why.

