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THE HAYES - TILDEN ELECTION

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OCT 27 1939

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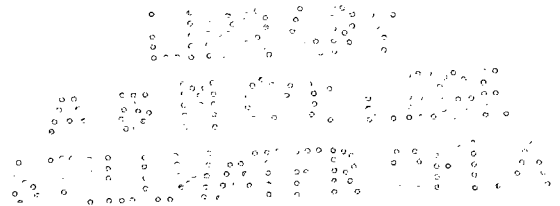
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## INTRODUCTION

Writers in the daily periodicals of the present day are making a great defense of our form of government. The American people today are breathing a deep appreciation of thanksgiving that they live in a land that is not headed by an executive whose every word is law. Very few critics of the administration are opposed to the system of government we enjoy.

The constitution of the United States stands as one of the greatest protectors of man's liberty and freedom that this earth has ever known. As one looks about on every continent he finds governments that have a similar constitution but whose government is actually that of the dictator. The American people are enraged at the medieval tortures practiced by these self-imposed monarchs upon their cringing populations. Stories of almost unbelievable barbarisms are current news in the tabloids. While Americans are indeed proud and grateful that they do not live under the iron hand and mailed fist of the Hitlers and Mussolinis, it is not the intention of the author here to plead the case of democracy. That it is the best form of government is assumed as a fact.

History records that on several occasions the United States has tread dangerously close to the precipice of governmental destruction. One of these occasions occurred in 1876. Volumes have been written upon the presidential election of that year and many charges of fraud made. Partisanship often clouds the eyes of reason in a shroud when the perspective is close. In reviewing the works of specialists on this subject, as well as the conclusions reached by those writers dealing in general history, there was found to be many varying viewpoints. The nearer the authors lived to the event under question,

the wider apart their opinions diverge. To investigate the charges of fraud both in the presidential nominations and election is the first purpose of this work. For this the author has available no new information but must rely upon the testimony given to the investigating committees, the reports of the Electoral Commission, and the Congressional record.

The second purpose is to draw a conclusion as to the effect of this election on the government of the United States, then and today. To say definitely what would have been the effect if Mr. Tilden had been chosen, or the effect if Congress had failed to accept the decision of their Electoral Commission, would perhaps be the sheerest audacity, but, from the recorded reaction of the people to the decision that Congress did make, some fairly definite conclusions may be reached. From the evidence presented it is readily seen that perfect government can be obtained only in the mind of the Utopian. Is it a good thing for us that today America still holds to a form of government organized 150 years ago, or would it have been better if in 1876 the tide of events had given us a different deal? To arrive at a conclusion to the questions the author has pondered for himself, a study has been made of the events back of the nominations, the nominating conventions, the election, the Electoral Commission reports, and the findings of the Potter Investigating Committee.

The usual charges of fraud made about the 1876 election are those pertaining to the counting of votes in the states of South Carolina, Florida, and Louisiana on the one hand, and the choice of an elector in Oregon on the other. The winner of any contest is the one who is usually under fire when charges of corruption are brought and little

is heard about the sins of the loser. This work tends to look behind the scenes of the two major parties, both before and after the 1876 election. Time tends to mellow public judgment and usually brings to light facts that are withheld at the time that they would do the most good and bring about justice.

If the author in the first chapter appears to unduly refer to the works and conclusions of others, it is to show the reaction of authors, politicians, and the general public of the time, and not as a source from which to draw the best conclusions. The writer's own conclusions are based upon the testimony given by sworn witnesses as recorded in government documents, and upon his own observations. This evidence is presented in the latter chapters.

In my search for material, I am especially indebted to the library staffs of the Oklahoma Agricultural and Mechanical College, Stillwater, Oklahoma, and Phillips University, Enid, Oklahoma. For the organization of this work I am grateful to the guiding hand of Dr. T. H. Reynolds. Professor E. L. Williamson has greatly assisted me in checking the sources and preparing the table of contents. Finally, I acknowledge a debt to the tenth Muse, whose constant encouragement made the completion of this task possible.

William Todd Coldiron

## CHAPTER I

## THE REPUBLICAN CONVENTION OF 1876

In 1875 it was rumored that President Grant would accept a third term candidacy. There was a great hue and cry over the country against it. The newspapers took up the issue and brought forth such words as dynasty, dictatorships, and Caesarism. On May 29, 1875, President Grant wrote a letter for public purposes to Harry White, Chairman of the Pennsylvania Republican State Convention, which may be interpreted as a declination to a third term. Democratic success in 1874 was the cause of this letter.<sup>1/</sup>

When Congress convened in December, 1875, a Democratic member from Illinois offered a resolution:

- - - that in the opinion of this House, the precedent established by Washington and other Presidents of the United States, in retiring from the Presidential office after their second term, has become by universal concurrence, a part of our Republican system of government, and that any departure from this time honored custom would be unwise, unpatriotic, and fraught with peril to our free institutions.

This resolution passed by the vote of 234 to 18.<sup>2/</sup> Grant thought no more about a third term.<sup>3/</sup>

Between 1860 and 1876 the Presidential nominations of the Republican party had been predetermined and practically unopposed.

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1/ Rhodes, James F., History of the United States, The Macmillan Company, New York, 1928, V. VII, p. 237.

2/ Congressional Record, 44th Congress, 2nd Session, V. II, p. 2280.

3/ Stanwood, Edward, History of the Presidency, Houghton-Mifflin Company, Boston and New York, 1898, V. I, p. 360.



In 1876 for the first time since the Republican party had acquired national power, the candidate was not selected in advance, and the National Convention had to make a choice. This freedom of action gave a personal interest to the preliminary canvass and a struggle in the convention itself.<sup>4/</sup>

Of the men considered before the convention, James G. Blaine of Maine to all outward appearances had the best chance of securing the nomination. His personality was one of magnetism, and he had gained much public attention as a representative and speaker. At this time while in the congress, he had systematically baited the southern members into issuing false utterances which could be used by their party opponents.<sup>5/</sup> Senator Conkling was opposed to him due to the fact that Blaine had compared him to a turkey gobbler.<sup>6/</sup> There was some opposition to Blaine because of the "Mulligan Letters", which held a record of his improper relations with the Little Rock and Fort Smith Railroad.<sup>7/</sup> He was sure of Maine and could count on enough votes from the other states to make him a more promising nominee than any of the other candidates.

Another leading contender was Senator Conkling. He had the support of almost all the delegates from his home state, New York.<sup>8/</sup>

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<sup>4/</sup> Blaine, James B., 20 Years of Congress from Lincoln to Garfield, The Henry Bill Publishing Company, Norwich, Conn., 1886, V. II, p.567.

<sup>5/</sup> Hoar, George F., An Autobiography of Seventy Years, Charles Scribner's Sons, New York, 1903, V. I, p. 378.

<sup>6/</sup> Johnson, An American Statesman, p. 91.

<sup>7/</sup> Stanwood, Edward, J. G. Blaine, American Statesman Series, Boston, 1905, p. 66.

<sup>8/</sup> Conkling, A. R., His Life, p. 504.

It was generally thought that he had the blessings of the administration. This might be taken as a sign of weakness due to the fact that the administration was at this time at low ebb. Any man chosen who was opposed by the administration would mean a new source of life in the party.<sup>9/</sup>

Indiana's favorite son was Senator Morton. He was recognized as a leader with great ability. He was a radical of the most intense type but was credited with having defended the Civil Service as the best in the land. His nomination was opposed in the East because he was known to be a soft money man. His newspaper, Indianapolis Journal, was demanding the repeal of the Resumption Act. Also he was so infirm physically that he had to use crutches to get around. He was very popular with the negroes of the South, who even went so far as to hold a convention in Nashville, Tennessee, on April 7 and were unanimously in his favor. The New York World began an attack on his personal honesty,<sup>10/</sup> and thus enabled him to come forth with his splendid service record as war governor of Indiana.

The politicians and public alike realized that reform must come either in or out of the party. Of all the candidates fitted to run on the motto, "Reform within the Party", Benjamin H. Bristow of Kentucky led the field. As Secretary of the Treasury he had conducted the fight against the Whiskey Ring; had not hesitated to obtain the conviction of personal friends of the President; and had even brought

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<sup>9/</sup> Harpers Weekly, 1875, V. XIX, p. 1023.

<sup>10/</sup> New York World, April 29, 1875.

about the trial and indictment of Orville E. Babcock, the President's private secretary.<sup>11/</sup> For this he had gained the disfavor of the President and of the Radical official group and had been blackballed by the New York Union League Club.<sup>12/</sup> Mr. Bristow held the high regard of the reformers and the reputable press. His principal drawback was that he had not been known to the country at large long enough. This factor prevented his gaining the nomination but did allow him to control the balance of power. It was his influence that was in a large manner responsible for the nomination of Hayes.<sup>13/</sup>

Every presidential nominating convention finds among its candidates men who do not expect to get the nomination. Their principal purpose seems to be to trade or barter the votes that they control in the most profitable manner. Among this type of candidates were to be found John F. Hartranft of Pennsylvania and Marshall Jewell of Connecticut.<sup>14/</sup>

At most nominating conventions there are three types of candidates -- the logical, the favorite son, and the dark horse. The logical candidate in 1876 was Blaine of Maine. In regard to Blaine's candidacy for the presidency, there is no doubt of his desire to win the nomination.

Mr. Blaine had been speaker of the House of Representatives for six years and had gained extraordinary popularity among the members of Congress. At the beginning of the 44th Congress in 1875 the

<sup>11/</sup> North American Review, October, 1876, p. 280.

<sup>12/</sup> Harpers Weekly, 1875, V. XX, p. 418.

<sup>13/</sup> Ibid., p. 182.

<sup>14/</sup> Blaine, James B., op. cit., V. II, p. 568.

Democrats gained control of the House. He immediately became the natural leader of the minority. <sup>15/</sup> When the movement came to make him a Republican candidate, he immediately found opposition. Whispered charges were made of graft and fraud on the part of Blaine in connection with the sale of bonds of the Little Rock and the Fort Smith Railroad Company and the Union Pacific Railroad Company. <sup>16/</sup> Proof of Blaine's misdeeds was supposed to be in some letters which Blaine himself had written. These letters were held at the time by a Mr. Mulligan. <sup>17/</sup> Blaine secured the letters from Mulligan by trickery and on the twenty-fourth of April, 1876, he took the floor in the House of Representatives and said:

For some months past a charge against me has been circulated in private and was recently made public - - designing to show that I had in some indirect manner received the large sum of \$64,000 from the Union Pacific Railroad Company in 1871 - - for what purpose has never been stated. <sup>18/</sup>

Blaine then proceeded to deny the charges, produced the letters he had procured from Mulligan and proceeded to read extracts from those letters to vindicate himself. Then turning to Proctor Knott he flashed furiously:

I heard that you got a dispatch last Thursday, completely and absolutely exonerating me from this charge and you have suppressed it. <sup>19/</sup>

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<sup>15/</sup> Stanwood, Edward, History of the Presidency, p. 362.

<sup>16/</sup> Hamilton, Gail, Biography of James G. Blaine, The Henry Bill Publishing Company, Norwich, Conn., 1895, p. 336.

<sup>17/</sup> Rhodes, James F., op. Cit., p. 246.

<sup>18/</sup> Congressional Record, 44th Congress, 1st Session, V. VIII, p. 680.

<sup>19/</sup> Ibid., p. 680.

Despite this defense some still believed in his guilt, while his friends drew closer.<sup>20/</sup> Blaine had made his report to the great tribunal, to the highest Court of Appeal on earth, the people, and had received from them at once and forever, not merely the award of innocence, but the plaudit of righteousness. Henceforth he became, and remained as long as he lived, the one prominent Republican candidate for the presidency, more eagerly desired by a larger number of the people than any president had ever been.<sup>21/</sup>

On Sunday, June 11, three days before the convention, Mr. Blaine had the misfortune to be stricken by the heat. It was an untimely misfortune, and his enemies made the most of it.

The remaining candidate was one of the many favorite sons. He was a dark horse, and his nomination did not seem at all likely, but he had Fate and the most skillful politicians on his side.<sup>22/</sup>

In January, 1876, John Sherman began to suggest Hayes for the Presidency, thus paying his own debt for retaining his senatorship. James A. Garfield was in the field for Hayes. Garfield wrote to Hayes on March 2, 1876: "We should give you the solid vote of the Ohio delegation and await the break up, which must come when the weaker candidates drop out."<sup>23/</sup> One by one, the Ohio Republicans trooped into his camp. The Ohio State Republican Convention, on March 29, 1876, unanimously declared for Hayes.<sup>24/</sup>

<sup>20/</sup> Hamilton, Gail, op. cit., p. 359.

<sup>21/</sup> Ibid., p. 394.

<sup>22/</sup> Eckenrode, H. J., Rutherford B. Hayes, Dodd, Mead and Company, New York, 1930, p. 122.

<sup>23/</sup> Hayes Papers, (Taken from Eckenrode).

<sup>24/</sup> Eckenrode, H. J., op. cit., p. 122.

Hayes was serving a third term as governor of Ohio, having defeated two outstanding Democrats. He was sound on the money question, had a good war record, and was without any important enemies, but was not well-known outside his own state. <sup>25/</sup>

Hayes' candidacy had been determined upon soon after he was elected governor in 1875. The Ohio politicians were deeply interested in getting the great prize for their state, and Hayes offered them their chance. They formed, and still form, the most astute political group in the United States, and the Presidents they made are known as the "Ohio Dynasty". Hayes was their first candidate. <sup>26/</sup>

Between Blaine's defeat in April and the convention in June, there was held a meeting in New York City known as the "Fifth Avenue Conference". About 200 of the leading political independents of the nation met there to discuss the political situation. This meeting was in session the 15th and 16th of May and, in addition to adopting a resolution in favor of civil service reform, issued an elaborate Address to the American People. This paper, which was from the pen of Mr. Schurz, was a warning to both parties. The Address stated that the independents would not accept a candidate like Blaine, Conkling, or Morton, but would support only a genuine reformer. The conference had in reality been in favor of Bristow. <sup>27/</sup>

For Hayes a preliminary victory of importance was won when the Ohio strategist succeeded in having Cincinnati chosen as the convention

<sup>25/</sup> McClure, Recollections of Half a Century, p. 99.

<sup>26/</sup> Eckenrode, H. J., op. cit., p. 121.

<sup>27/</sup> Harpers Weekly, June 3, 1876.

city; in fact, it really decided the issue. Hayes would have never been nominated in New York, St. Louis, or Chicago because he could not have commanded a tithe of the publicity given him in his home town. He was no national figure of large stature. In Cincinnati his name was on everybody's lips. This mass suggestion had its effect on the convention. <sup>28/</sup>

Hayes had as his manager one of the shrewdest of Ohio politicians, General Edward F. Noyes, which is to say that he had as good an agent as could be found in the world. However, the man who cinched the nomination for Hayes, or did the most to that end, appears to have been Stanley Matthews. Matthews was a Bristow leader but was also very close to Hayes. <sup>29/</sup>

On the eve of the convention it was found that Blaine had largely recovered from the shock of his illness; that Bristow was strong but could not be nominated; that Conkling had no chance, as he had no delegates but those of New York and Pennsylvania; that Morton was not taken seriously; and that Hayes was the dark horse in a race between the favorite and the field. <sup>30/</sup>

The convention was held in one of these vast barn-like auditoriums in which thousands of people could be jammed in those days with safety, since the men chewed tobacco instead of throwing burning cigarettes on the floor. Its decorations were those of a country barbecue on a four-acre scale. But this was a fine setting for a

<sup>28/</sup> Eckenrode, H. J., op. cit., p. 122.

<sup>29/</sup> Ibid., p. 125.

<sup>30/</sup> Ibid., p. 125.

picnic, and was not a political convention in that age a picnic?<sup>31/</sup>

The convention was called to order at high noon on Wednesday, June 14, 1876, by the chairman of the National Republican Committee, ex-Governor Edwin D. Morgan of New York, who had performed the same service at Philadelphia at the first National Republican Convention twenty years before.<sup>32/</sup>

Speeches of welcome were made and the platform started. On the second day the platform was finished and the presentations were made.<sup>33/</sup>

Bristow actually held the key to the situation though having very little chance for nomination himself. The reformers were for Bristow and were strong enough to make themselves felt from the first. It remained to be seen if they were strong enough to break Blaine. The fight, first and last, was negative, to defeat Blaine, not to nominate anybody in particular.<sup>34/</sup>

The Hayes managers approached the Connecticut delegation with the proffer of the second place to Marshall Jewell. Both the Conkling and Blaine workers came to Hayes with the offer of the vice-presidency, showing his strong position. Hayes remained noncommittal.<sup>35/</sup>

On the second night of the convention, the managers of Bristow, Morton, and Hayes agreed to support Hayes. It is said that John M.

<sup>31/</sup> Eckenrode, H. J., op. cit., p. 126.

<sup>32/</sup> Muzzey, David Saville, James G. Blaine - A Political Idol of Other Days, Dodd, Mead and Company, New York, 1935, p. 101.

<sup>33/</sup> Stanwood, Edward, History of the Presidency, p. 369.

<sup>34/</sup> Eckenrode, H. J., op. cit., p. 124.

<sup>35/</sup> Ibid., p. 125.



Harlan, Bristow's manager, was promised a place on the Supreme Court Bench for bringing the Kentucky delegation over to Hayes. Never were politics better played than by Noyes that night. When morning came the only defeat Hayes would get was by a stampede. They had loaded the dice against Blaine. <sup>36/</sup>

Noyes and Stanley Matthews must have argued, promised, and lied that June night to bring the reformers over to Hayes, for he had supported Grant, the patron of corruption. <sup>37/</sup>

The balloting took place on the third day of the convention, Friday, June 16. The first ballot ran true to form. Below are the results showing the count on the first, sixth and seventh:

TABLE I

## VOTES CAST IN REPUBLICAN CONVENTION - 1876

|            | 1st ballot | 6th ballot | 7th ballot |
|------------|------------|------------|------------|
| Blaine     | 285        | 308        | 351        |
| Morton     | 124        | 85         | ---        |
| Bristow    | 113        | 111        | 21         |
| Conkling   | 99         | 81         | ---        |
| Hayes      | 61         | 113        | 384        |
| Hartranft  | 58         | 50         | ---        |
| Jewell     | 11         | ---        | ---        |
| All others | 3          | 7          | ---        |
| Total      | 754        | 755        | 756        |
| Necessary  | 378        | 378        | 379        |

<sup>38/</sup>

<sup>36/</sup> Eckenrode, H. J., op. cit., p. 130.

<sup>37/</sup> Ibid., p. 132.

<sup>38/</sup> Ibid., p. 133 and Stanwood, Edward, History of the Presidency, p. 373.

Blaine received no votes on the first ballot from New York, Pennsylvania and Ohio. On the third he received some votes from Pennsylvania. The support of any two of these three states would have won for him the nomination.<sup>39/</sup> As the balloting continued there was a slow sifting of the candidates.

Hayes had risen steadily, and Blaine, sitting in his library at Washington, predicted on the fifth ballot that Hayes would be nominated.<sup>40/</sup>

Between the sixth and seventh ballot, Blaine's enemies decided it was now or never. Kentucky cast all her votes for Hayes and the march was on.<sup>41/</sup> At the end of the seventh ballot Hayes had 334 votes to Blaine's 351.<sup>42/</sup>

New York was informed that she could have the selection of the Vice-President and Wheeler was given the nomination.<sup>43/</sup>

The nomination of Hayes and Wheeler were made unanimous and the convention adjourned.<sup>44/</sup>

In order to show the reaction of some of the leading thinkers of the country to the defeat of Blaine for the Republican nomination in 1876, the following quotations are given.

<sup>39/</sup> Muzzey, David Saville, op. cit., p. 111.

<sup>40/</sup> Ibid., p. 113.

<sup>41/</sup> Eckenrode, E. J., op. cit., p. 134.

<sup>42/</sup> Ibid., p. 134.

<sup>43/</sup> Ibid., p. 135.

<sup>44/</sup> Stanwood, Edward, History of the Presidency, p. 373.

Carl Shurz in a private letter to Hayes said:

I oppose Blaine because I believe that the election to the Presidency of the United States of a man who wrote the Mulligan Letters, and who stands before the country as a representative of the practices they disclose, would be a precedent fraught with incalculable evil, a fatal blow at the moral foundations of our republican government. It would be a terrible thing to teach our young people that such a record does not disqualify a man for the highest honors and trusts of the Republic.<sup>45/</sup>

John Hay in a letter to Blaine on June 17, 1876, said:

It is a bitter disappointment to all of us, but still we can see that you received the greatest personal tribute yesterday which has ever been given to a public man in this country. Without a single machine vote, in face of the most energetic machine work, you had not only your 351 votes, but also the cowardly good-will of the Ohio and Pennsylvania delegation, three-fourths of whom would have voted for you if they had dared defy the machine lash.<sup>46/</sup>

Hoar's opinion on the defeat of Blaine is stated when he says:

I did not think it wise to nominate Mr. Blaine, either in 1876 or later. I believed then, and now believe, that he would have been an admirable President of the United States. But I did not think it wise to put at the head of a movement for reform and for purity of administration, a man whose supporters must defend him against charges of fraud, and who must admit that he most unwisely of his own accord put himself into a position where such charges were not only possible, but plausible.<sup>47/</sup>

The reaction of Blaine was really remarkable. He never complained, and if he felt any bitterness he never let it show. He went his way as cheerful, as unpretending, as simple-hearted as the schoolboy whistling along the brook.<sup>48/</sup>

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<sup>45/</sup> Hayes Papers, (Taken from Eckenrode).

<sup>46/</sup> Hamilton, Gail, op. cit., p. 413.

<sup>47/</sup> Hoar, George F., op. cit., p. 379.

<sup>48/</sup> Hamilton, Gail, op. cit., p. 402.

## CHAPTER II

## THE DEMOCRATIC CONVENTION OF 1876

A history of the Democratic party in the years preceding 1876 is closely associated with the life of Samuel J. Tilden of New York. From his earliest manhood Mr. Tilden had been a close student of political affairs. In his early political life he was considered more as a respectable figurehead than as a powerful statesman. His reputation for honesty became nation wide at the exposure of the "Tweed Ring". The extermination of the "Tweed Ring" was Mr. Tilden's opportunity, and he promptly grasped it. He started out to secure the 1876 presidential nomination. His plan embraced three principal points: first, to gain the governorship of New York; second, to install administrative reforms; and third, to promote party organization.<sup>1/</sup>

The Democratic Party was divided on fiscal questions, was loaded down with an odious war record, and for twelve years had been fighting a losing political battle. Mr. Tilden found that his only pathway to success would be through radical administrative reform. He stepped into the New York governor's chair just in time to reap credit for a fifty per cent tax budget decrease, extermination of the "Tweed Ring" and exposure of the Erie Canal King.

It would be unjust to deny to him the merit of resisting the canal extortionists and hastening their extinction, but it

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<sup>1/</sup> Blaine, James B., op. cit., p. 574.

would be equally untrue not to say that in the work of the reformer he did not forget the shrewd calculations of the partisan. He understood better than any other man the art of appropriating to himself the credit of events which would have come to pass without his agency,<sup>2/</sup> and of reforms already planned by his political opponents.<sup>2/</sup>

When the Democrats met in St. Louis for their convention on June 28, 1876, two weeks after the nomination of Hayes and Wheeler, the party leaders and managers came together with more hope of success than they had dared to entertain at any period since the beginning of the Civil War. They were recovering possession of the South; profiting from political discontent in the North; gaining confidence and assurance as the war feeling died out; and were taking the usual advantage that accrues to the opposition party when the administration is in the midst of a financial depression.

The convention was dominated by Tilden throughout. The platform, which was dictated by him, was a powerful arraignment of the Grant administration and the Republican Party; declaring that reform was impossible within the party now in power and that the situation needed a change of measures and men.<sup>3/</sup>

Several candidates were nominated, but Tilden was the obvious favorite. He was chosen by a unanimous vote before the second ballot was completed.<sup>4/</sup>

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<sup>2/</sup> Blaine, James B., op. cit., p. 575.

<sup>3/</sup> Rhodes, James F., op. cit., p. 276.

<sup>4/</sup> Blaine, James B., op. cit., p. 578.

Thomas Hendricks of Indiana was nominated for the vice-presidency.<sup>5/</sup>  
The convention adjourned leaving the leaders to marshal their forces  
for one of the bitterest and hardest fought presidential campaigns in  
the history of the United States.

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<sup>5/</sup> Stanwood, Edward, History of the Presidency, V. I, p. 378.

## CHAPTER III

## THE CAMPAIGN AND ELECTION

Tilden, then sixty-two years of age, was a man of varied talents. An able corporation lawyer, he had a good head for business and had amassed a fortune.<sup>1/</sup>

Tilden was the greatest reformer the United States had produced. He had made honest government respectable, almost fashionable.<sup>2/</sup> Selfish and exacting, he believed honesty the best policy and acted accordingly.<sup>3/</sup> He had taken no part in the war, and the soldiers looked upon him as a rebel.<sup>4/</sup>

Though his Republican opponents said that his zeal for the purification of politics was both belated and insincere, his reputation as the great reformer was solid in the Democratic party; and his hold upon the organization was remarkable.<sup>5/</sup>

Tilden remained the head of his party and directed the storm, so far as it could be directed; but Hayes was nothing more than a symbol of the powers behind him. These were steered by the practical party leaders.<sup>6/</sup>

<sup>1/</sup> Rhodes, James F., op. cit., p. 276.

<sup>2/</sup> Eckenrode, H. J., op. cit., p. 137.

<sup>3/</sup> Rhodes, James F., op. cit., p. 277.

<sup>4/</sup> Eckenrode, H. J., op. cit., p. 137.

<sup>5/</sup> Muzzey, David Saville, op. cit., p. 116.

<sup>6/</sup> Eckenrode, H. J., op. cit., p. 139.

The Republicans taxed the officeholders for their campaign expenses. The Democratic fund was small, and it was supported chiefly by Tilden. If this had been more ample, there might not have been a disputed election.<sup>7/</sup>

This was a campaign of abuse and slander. The Republicans were fighting for place and power -- jobs, contracts, prestige. If they lost they might be out a long time because of Grant's term of graft and corruption. The Democrats had to win or sink because they had been out a long period of time.<sup>8/</sup>

The Republican press accused Tilden of being a liar, a traitor, a hypocrite, a briber, a conspirator, a thief, a counterfeiter, a defrauder, a perjurer, a robber, a swindler, a railroad wrecker; and, in fact, there was hardly a crime save murder of which he was not charged by the regular Republican newspapers of the country.<sup>9/</sup>

As Tilden was not a soldier, the Republicans waved the "bloody shirt", and caused the revival of the Civil War.<sup>10/</sup>

The Republicans were afraid of a solid South, and yet they knew the Federal Government had control of Louisiana, South Carolina, and Florida.<sup>11/</sup>

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<sup>7/</sup> Eckenrode, H. J., op. cit., p. 139.

<sup>8/</sup> Ibid., p. 140.

<sup>9/</sup> New York Times Supplement, May 18, 1876.

<sup>10/</sup> Eckenrode, H. J., op. cit., p. 143.

<sup>11/</sup> Muzzey, David Saville, op. cit., p. 119.



In these three states, carpet bag rule was still running rampant. The North was beginning to believe the stories of injustice that were being perpetrated upon the whites of the South. After twelve years the Northerners were becoming aware of the fact that the negro was not an Anglo-Saxon brunette.

The only reason that can be given for the retention of the carpet bag government in these states was the expectancy of the Grant administration that their Electoral votes could be secured for the Republicans in 1876. The fight, first and last, was between North and South, the whites and the blacks, honesty and corruption, Tilden and the Republican Party, and not a battle between parties or Hayes versus Tilden.

November 7, 1876, election day, arrived. There was more excitement on this day than there had been at any day during the campaign. Business stopped, and the people gathered in groups to talk of the election. The two parties were evenly divided, and everyone felt that the election would be a close one. <sup>12/</sup>

When the returns began to come in and Tilden showed a large New York vote, Hayes wrote in his diary, "From that time, I never supposed there was a chance for Republican success." <sup>13/</sup> At midnight he went to bed, feeling that he had lost.

On November 8, 1876, Stanley Matthews wrote to Hayes:

I seemed all day to walk through the valley of the shadow of death. I felt as if a great conspiracy of ignorance,

<sup>12/</sup> Eckenrode, H. J., *op. cit.*, p. 174.

<sup>13/</sup> Hayes Diary, November 7, 1876.

superstition and brutality had succeeded in overthrowing the hopes of a Christian civilization represented and embodied in the Republican Party.<sup>14/</sup>

To the unbiased today this reaction of Mr. Matthews no doubt seems quite amusing when one considers that the Democrats were running on a platform of honesty and governmental reform.

The New York Tribune, bitterest of the Republican press, conceded Tilden's election in its first edition on November 3. That the New York Times did not follow suit was the result of a deliberate plot to snatch the election from Tilden.

It came as a result of a blunder of the Democratic managers. While John C. Reid, managing editor of the New York Times, and his assistant were in a conference as to what to say in their next edition, they received this message from the Democratic headquarters: "Please give your estimate of the Electoral votes secured for Tilden. Answer at once. D. A. Magone."<sup>15/</sup>

The message was a blunder since it showed Reid and his friends that even the Democrats did not know the true results in Louisiana, South Carolina and Florida. These men knew that the Republicans controlled the canvassing board in these three states and thus could produce any majority necessary. If the votes of Louisiana, South Carolina and Florida, which totaled nineteen, could be given to Hayes, he would win 185 to 184. Cary, Reid's assistant, persuaded the others not to concede Tilden's election.<sup>16/</sup> Reid then started out to find the

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<sup>14/</sup> Hayes Papers, November 7, 1876.

<sup>15/</sup> Eckenrode, H. J., op. cit., p. 179.

<sup>16/</sup> Ibid., p. 179.

Republican national chairman, Zachariah Chandler, who had retired satisfied that Tilden had won. Reid accidentally located William Chandler first, and the two together routed Zachariah out of bed and received his permission to do what they could.<sup>17/</sup>

They then sent telegrams to the three States: "Hayes is elected if we have carried South Carolina, Florida, and Louisiana. Can you hold your State. Answer immediately." It was an order to return majorities for the Hayes electors, and it was obeyed.<sup>18/</sup>

The Times in its first edition claimed the election for Hayes and repeated it in every edition afterwards.<sup>19/</sup>

Zachariah Chandler, on the morning of November 8, sent out his now famous dispatch: "Hayes has 185 Electoral votes and is elected."<sup>20/</sup>

The Republicans had every chance of winning the election if they claimed it. After the claim was made there would be plenty of time to substantiate it. The Republicans based their claims on the Republican control of the canvassing boards of the three states in question.<sup>21/</sup>

Some of the leading Republicans felt no qualms whatever in obtaining the desired results from the Canvassing boards by an inversion of the election, since they looked on the southern states as

<sup>17/</sup> Muzzey, David Saville, op. cit., p. 120.

<sup>18/</sup> Ibid., p. 120.

<sup>19/</sup> New York Times, November 8, 1876.

<sup>20/</sup> Eckenrode, H. J., op. cit., p. 184.

<sup>21/</sup> Ibid., p. 186.

so much territory filched from them. Anything to be won in the South seemed to them to be so much territory regained.<sup>22/</sup>

When the official returns of all states save the three in dispute were in, it was definitely understood that Hayes could win the election if he secured the nineteen Electoral votes of these states. The eyes of the nation immediately turned to the South. Preparations were made for a counting of the votes by the canvassing board in each of the three states. Democrats and Republicans alike were invited to send delegations to each state to look out for their interests. Both parties accepted.

President Grant took precautions against disturbance by strengthening the military forces at points where violence was most feared; and on November 10 he sent the following message to General Sherman:

Instruct General Augur in Louisiana and General Ruger in Florida to be vigilant with the force at their command to preserve peace and good order, and to see that the proper and legal boards of canvassers are unmolested in the performance of their duties. Should there be any ground of suspicion of a fraudulent count on either side it should be reported and denounced at once. No man worthy of the office of President should be willing to hold it if counted in or placed there by fraud. Neither party can afford to have the result tainted by the suspicion of illegal or false returns.<sup>23/</sup>

While Grant's warning was patriotic enough in tenor, everyone understood well enough that this was a warning to the Democrats to keep hands off. The troops were not intended merely to coerce the Democrats; it was even more important to coerce the canvassing boards. The weakness of the Republicans lay in the rascality of the canvassers.

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<sup>22/</sup> Eckenrode, H. J., op. cit., p. 187.

<sup>23/</sup> Blaine, James B., op. cit., p. 581.

They were nearly all scoundrels and there was nothing to prevent them from deciding in Tilden's favor if they were sufficiently bribed. Such a decision would be most embarrassing to the Republican leaders.

In each of the three states under question, Tilden had a distinct majority if all votes placed into the ballot boxes were counted. According to the Constitution of the United States, each state shall be the judge of its elections. The business then of the visiting statesmen was to assist the state canvassing board to determine what presidential electors had been chosen.

Each county or parish had its own canvassing board. Having canvassed the returns under their own jurisdiction, the results were certified and forwarded to the state returning board.

In order to return a Hayes majority these state returning boards must find some legal justification for throwing out the votes in the overwhelmingly Democratic precincts or counties. The Republican visiting statesmen arranged this justification by securing affidavits of intimidation on the part of the white citizenry against their colored brethren. If the Democrats expected to get an electoral vote, they would have to secure it by bribery. This they tried to do, unsuccessfully, as evidence later to be presented will bear out.

Failure of the Democrats to win the decision of the returning boards did not prevent them from seeing to it that they had electoral votes cast for their candidate. This resulted in from two to four sets of certificates being forwarded to the President of the Senate, <sup>24/</sup> from the three Southern states of Florida, Louisiana and South Carolina;

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<sup>24/</sup> Congressional Record, 44th Congress, 2nd Session, V. VI, Part II, p. 1145.

and the Northwestern state of Oregon. The two or more sets of certificates from the Southern states were a direct result of the Democratic refusal to accept the decisions of the returning boards.

The case of Oregon was entirely different. So far as the popular vote was concerned there was no argument as to who had won. The Republican electors had each received a clear majority. That, the Democrats did not deny. However, the Democrats felt that the election was being stolen from them because the Republicans had the legal advantage and political control in the three disputed Southern states.

Oregon presented to them their chance to gain the necessary additional electoral vote. John W. Watts, one of the Republican electors, was the postmaster of the fourth class office of Lafayette and received for his services about \$268 per year.<sup>25/</sup>

According to the Federal Constitution, section 1, article 2, no elector can hold a position of trust and profit under the United States. While the compensation was small, the fact remained that Mr. Watts was ineligible.

Another favorable aspect was Governor L. F. Grover, a partisan Democrat.

The State law was not so promising. It nowhere said anything about the power of the governor to appoint an elector or the right of a minority candidate to take the place of a successful but ineligible opponent; on the contrary, section 2 expressly provided that "if there shall be any vacancy in the office of an elector, occasioned by death,

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<sup>25/</sup> Senate Reports, No. 678, 44th Congress, 2nd Session, V. I, Part I, pp. 2 and 3.

refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill, by viva voce and plurality of votes, such vacancy in the electoral college." The governor's power in the premises, in accordance with the state law, was confined to being present when the secretary of state, who was the returning officer, should canvass the votes, and to granting certificates of election to the persons "having the highest number of votes."

These certificates were to be prepared by the Secretary of State, "signed by the governor and Secretary of State, and by the latter delivered to the college of electors at the hour of their meeting."<sup>26/</sup>

Despite the plain intent of the law, the Democratic leaders resolved to make the most of their opportunity. J. N. E. Patrick of Omaha, Nebraska, was promptly dispatched to Oregon to look after the Democratic interests.

Abram S. Hewitt wired Governor Grover:

Upon careful investigation, the legal opinion is that votes cast for a Federal officeholder are void, and that the person receiving the next highest number of votes should receive the certificate of appointment. The canvassing officers should act upon this, and the governor's certificate of appointment be given to the elector accordingly, and the subsequent certificate of the votes of the electors be duly made specifying how they voted. This will force Congress to go into merits of all cases, which is not only just, but which will relieve the embarrassment of the situation.<sup>27/</sup>

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<sup>26/</sup> Senate Miscellaneous Documents, No. 43, 44th Congress, 2nd Session, p. 31.

<sup>27/</sup> Senate Reports, No. 678, 44th Congress, 2nd Session, V. II, p. 18.

The Democrats admittedly did not believe that they could make an electoral vote from Oregon stand up, but did feel, as Mr. Hewitt had pointed out, that Congress would be forced to go behind the returns in all the disputed states.

Agent Patrick did not waste time. He wired W. T. Pelton of New York for \$10,000 with which to buy one of the Republican electors. Mr. Patrick was furnished over \$15,000, but his scheme was not carried <sup>28/</sup> out.

On the fourth of December the Secretary of State canvassed the returns in the presence of the governor and found that the Republican candidates -- Cartwright, Odell, and Watts -- had received "the highest number of votes." The governor then stated that a protest had been filed against the issuance of a certificate to Watts, and announced that on the following day he would hear arguments on the matter. At the appointed time he took a seat on the bench in the room of the State Supreme Court. The three Republican electors then presented a protest denying his jurisdiction in the case and insisting that, in the absence of judicial proceedings, his only power was to issue certificates to the persons receiving the highest number of votes as <sup>29/</sup> declared by the Secretary of State.

Governor Grover withheld his decision until the following day, which was the time appointed for the electors to cast their ballots. Shortly after noon of that day, he delivered to the Secretary of State

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<sup>28/</sup> Senate Reports, No. 678, 44th Congress, 2nd Session, V. II, p. 234.

<sup>29/</sup> Ibid., p. 103.



certificates containing the names of Odell and Cartwright, the two Republican candidates whose eligibility was not questioned, and of Cronin, the Democratic claimant for Watts' electorship. The governor pretended to act on the theory that since Watts was ineligible, the votes cast for him were void and hence the majority of legal votes were cast for his opponent. <sup>30/</sup>

Were it not for the seriousness of the situation, the following scenes would have been a joke. The Secretary of State signed the certificates given him by the governor, and took them to the room set apart for the electors. There he found Odell, Cartwright, and Watts (who had now resigned his postmastership), and also Cronin and the other two defeated Democratic candidates. To Cronin he handed the envelope containing the three certificates, and then retired. When Odell and Cartwright asked for their certificates, Cronin refused to deliver them, but condescended to read part or all of one of the certificates aloud. Odell and Cartwright nevertheless proceeded to organize the Electoral College; Cartwright was elected president, and he then chose Odell as secretary. Cronin now again refused to obey a resolution to that effect passed by Cartwright and Odell. At this point Watts, who hitherto had taken no part, presented his resignation, stating that the objections made to his eligibility were his reasons for doing so. His resignation was accepted, whereupon Cronin exclaimed:

I understand that by receiving Mr. Watts' resignation you refuse to act with me, and I shall proceed to fill these

vacancies. I declare there are two vacancies, and I shall proceed to fill them.<sup>31/</sup>

He then instructed Mr. Klippel, one of the defeated Democratic candidates, who now took charge of the door, to "call in Mr. J. N. T. Miller," who was waiting outside the door in readiness for such an emergency. Cronin thereupon appointed him to fill one of the "vacancies," after which the two chose a Mr. Parker to fill the other. After Parker had been called, the three proceeded to cast their ballots for President and Vice-President. Considering that all three were Democrats, they showed great forbearance in this matter, for they cast two votes for Hayes and Wheeler and only one for Tilden and Hendricks.<sup>32/</sup>

In the meantime Odell and Cartwright chose Watts to fill the vacancy caused by his own resignation, or disqualification, and then cast three ballots for Rutherford B. Hayes for President and three Ballots for William A. Wheeler for Vice-President.<sup>33/</sup>

Returns from both "colleges" were later forwarded, both by mail and by special messenger, to the president of the Senate. The Democratic returns, which were certified by Governor Grover, were conveyed to Washington by Cronin, who first forced the Democratic managers to pay him \$3,000 for doing so.<sup>34/</sup> The Republican returns, which were not certified by the governor but which were accompanied by

<sup>31/</sup> Senate Reports, No. 678, 44th Congress, 2nd Session, V. II, p.48.

<sup>32/</sup> Haworth, The Hayes - Tilden Election, Bobbs-Merrill Company, Indianapolis, 1926, p. 165.

<sup>33/</sup> Senate Reports, No. 678, 44th Congress, 2nd Session, p. 19 et seq.

<sup>34/</sup> Ibid., p. 88.

certificates of the results of the canvass furnished by the Secretary of State, <sup>35/</sup> were carried by Mr. Odell.

The nation at large, as well as Congress, were well aware of what had happened. However, the question of the Oregon votes like those of the other disputed states were left to the Electoral Commission.

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<sup>35/</sup> Senate Reports, No. 678, 44th Congress, 2nd Session, p. 25.

## CHAPTER IV

## THE ELECTORAL COMMISSION

Congress met on December 4, 1876,<sup>1/</sup> and three days later, December 7, in the House of Representatives, George W. McCrary, Republican from Iowa, made the resolution for a committee of five to be appointed, to act in juxtaposition with a similar committee from the Senate to prepare and report without delay a measure by which the contested electoral votes could be counted.<sup>2/</sup> This was turned over to the Committee on the Judiciary, which on December 14 reported favorably on the act, increasing the committee to seven by amendment.<sup>3/</sup>

The Senate on December 13 also passed a resolution for a committee of seven to meet with the House Committee.<sup>4/</sup>

This joint committee, after much work and planning, finally adopted a plan for an Electoral Commission.<sup>5/</sup> The Electoral Commission was to be composed of five senators (it was understood that three would be Republicans and two Democrats), five members of the House of Representatives (three Democrats and two Republicans), and four Justices of the Supreme Court, the act specifying the justices of the first, third, eighth, and ninth circuits; in other words, Miller and Strong,

<sup>1/</sup> Congressional Record, 44th Congress, 2nd Session, V. I, pp. 1 and 2.

<sup>2/</sup> Ibid., p. 91.

<sup>3/</sup> Ibid., p. 197.

<sup>4/</sup> Ibid., p. 260.

<sup>5/</sup> United States Statutes at Large, V. XIX, p. 227.

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Republicans, and Clifford and Field, Democrats; a fifth justice was to be chosen by his four colleagues in the court, to become the fifteenth member of the Commission.<sup>6/</sup>

So far the Committee would be seven Democrats against seven Republicans. Purely a party line up. The fifth justice was to be Judge Davis of Illinois, who was considered an Independent and, therefore, eligible. It was believed that he favored Tilden; in fact, the Democrats knew that he was in their favor or they would never have been for him on the Committee.<sup>7/</sup>

The manner in which the Electoral Commission was to work was planned and set down in detail. The process of counting the votes was also specified. The Senate and House of Representatives, meeting jointly, were to see the votes opened and hear them counted by the President of the Senate. If no objections were offered they stood as they were. If there should be more than one set of certificates and if there should be objection, the certificates were to be turned over to the Commission with council given by both sides. The Electoral Commission was then to decide which set of certificates to accept. The Senate and the House were to vote on the Commission's verdict. A rejection was to be given to the Electoral Commission's decision only in case both Houses of Congress voted against it.<sup>8/</sup>

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6/ Oberholtzer, E. L., History of the United States Since the Civil War, The Macmillan Company, New York, 1926, V. III, p. 295.

7/ Ibid., p. 315.

8/ Electoral Commission, p. 1.

The Democrats were for the bill, and the Republicans were against it. Grant called upon Conkling to press the bill in the Senate. "You might as well count Tilden in," said the Republicans.<sup>9/</sup> Even Tilden was against the bill.<sup>10/</sup> The country was in favor of the bill since it would settle the dispute one way or the other.<sup>11/</sup>

The bill passed the Senate by a vote of 47 to 17 on January 24.<sup>12/</sup> The following day the House passed the bill.<sup>13/</sup> On January 29, Grant signed it.<sup>14/</sup>

A study of the vote in both Houses shows without doubt that the bill passed with the support of most of the Democrats and a small number of Republicans. In the Senate twenty-six Democrats supported it, and only one opposed it; while only thirty-one Republicans supported and sixty-nine opposed. In the light of these figures it could be called a Democratic act.<sup>15/</sup>

The Democrats were shocked when on January 25, Davis was elected to the Senate from Illinois.<sup>16/</sup> The Tilden men were downcast, and the

<sup>9/</sup> Congressional Record, 44th Congress, 2nd Session, p. 301.

<sup>10/</sup> Bigelow, Letters and Men, p. 530.

<sup>11/</sup> Congressional Record, op. cit., p. 406.

<sup>12/</sup> Ibid., p. 913.

<sup>13/</sup> Ibid., p. 1050.

<sup>14/</sup> Ibid., p. 1031.

<sup>15/</sup> Blaine, James B., op. cit., p. 537.

<sup>16/</sup> Rhodes, James F., op. cit., V. VII, p. 327.

friends of Hayes elated.<sup>17/</sup> The news came as a stunning blow to the Democratic leaders in Congress for they realized that the election rendered him ineligible for the Commission and that the fifth justice would be a confirmed Republican. The Democrats felt that Davis's election to the Senate was the result of party bargaining on the part of the Republicans.<sup>18/</sup>

Bradley was given the fifth justice position on the Commission. Grant appointed him to the bench, and he was a Republican.<sup>19/</sup>

On February 1, 1877, the Senate and the House of Representatives in joint meeting started the count of the Electoral votes, the President of the Senate presiding. The clerk announced, in compliance with the law, "The President of the Senate will now proceed, in the presence of the two Houses, to open all certificates of the several States, in alphabetical order, beginning with Alabama. When no objections are given, the votes shall be counted as given by that State."<sup>20/</sup>

This was done throughout all the States. The main objections were in regard to Florida,<sup>21/</sup> Louisiana,<sup>22/</sup> Oregon,<sup>23/</sup> and South Carolina.<sup>24/</sup>

<sup>17/</sup> Hamilton, Gail, op. cit., p. 424.

<sup>18/</sup> Haworth, op. cit., p. 218.

<sup>19/</sup> Oberholtzer, E. L., op. cit., p. 298.

<sup>20/</sup> Congressional Record, op. cit., p. 1195.

<sup>21/</sup> Ibid., p. 1195.

<sup>22/</sup> Ibid., p. 1503.

<sup>23/</sup> Ibid., p. 1728.

<sup>24/</sup> Ibid., p. 1945.

These state electoral votes were turned over to the Electoral Commission for judgment.<sup>25/</sup>

When the Electoral Commission received the Florida certificates, they found one from the Hayes electors certified by Governor Sterns and Secretary of State McLin; one from the Tilden electors dated December 6, but irregular in form although certified by Attorney-General Cocke; and one from the same Democratic electors dated January 26, 1877, certified by the new governor, Drew. There was also an objection to one of the Republican electors, Frederick C. Humphreys, based on the claim that he was a Federal officeholder and, therefore, ineligible.<sup>26/</sup>

On February 2, 1877, the Electoral Commission started the hearing of the objectors.<sup>27/</sup> It was soon proved that Humphreys had resigned his office before November 7 and, therefore, was eligible.

The main point of the whole study of the Commission was made in regard to the Florida question. The Commission decided that it did not have the power to go behind the canvassing boards of the several states and take evidence. This forced them to use only the certificates and papers that were given them by the President of the Senate. If they had been allowed to go behind the returns, the story might have been vastly different. This would have consumed much time, and the United States would have been without a President for some time.<sup>28/</sup>

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<sup>25/</sup> Electoral Commission, p. 1.

<sup>26/</sup> Ibid., p. 287.

<sup>27/</sup> Ibid., p. 4.

<sup>28/</sup> Ibid., p. 287.



On February 9 the Commission reported to the President of the Senate that they had decided that the four electoral votes of Florida were cast for Hayes and Wheeler.<sup>29/</sup> This was done by a party vote of 8 to 7.<sup>30/</sup>

The report of the Commission was read in the two Houses meeting jointly. There were objections, and the two Houses met separately to consider the report. The Senate soon sustained by a vote of 44 to 25 that the vote of the Commission should stand.<sup>31/</sup> The House rejected by a vote of 168 to 103.<sup>32/</sup> By the act of January 29<sup>33/</sup> both Houses had to reject in order for the decision of the Commission to fail; therefore,<sup>34/</sup> the four votes of Florida were given to Hayes and Wheeler.

On February 12 the President of the Senate opened the papers from Louisiana and found four certificates.<sup>35/</sup> The first was the original made by the Republican electors on December 6 and certified by Governor Kellogg. The second was from the Tilden electors. The third was the antedated Republican certificate in which two signatures were forged.<sup>36/</sup> The fourth was from "John Smith, bull-dozed, governor of Louisiana," certifying that the vote of Louisiana had been cast for Peter Cooper.

<sup>29/</sup> Electoral Commission, p. 56.

<sup>30/</sup> Ibid., p. 56.

<sup>31/</sup> Congressional Record, 44th Congress, 2nd Session, Part II, p. 1477.

<sup>32/</sup> Ibid., p. 1502.

<sup>33/</sup> Ibid., p. 1503.

<sup>34/</sup> Ibid., p. 1477.

<sup>35/</sup> Ibid., p. 1504.

<sup>36/</sup> Ibid., p. 1504.

This certificate was suppressed, but the Democrats claimed later that it had been sent to draw attention from the Republican certificate.<sup>37/</sup>

Objections were given and the certificates and objections were submitted to the Commission for their judgment.<sup>38/</sup> The Commission met on February 12 and started the hearing of the Louisiana case.<sup>39/</sup>

In pleading their case the Democrats gave as their reasons against the Republican certificates: that Kellogg was not the lawful governor of the State; that there was no law or joint resolution in force on November 7 directing the manner in which the electors were to be appointed; that the canvass made by the returning board was illegal and void because the statutes gave that body no power to canvass the vote for electors; because the board consisted of four persons instead of five as the law provided; that the board illegally changed the results; that the votes of A. B. Levissee and O. H. Brewster were of no value since both were Federal officeholders at the time of the election; and that none of the Republican votes should be allowed because at the time of appointment of the electors the state did not have a republican form of government.<sup>40/</sup>

The Republicans did not enter into such a detailed discussion. They merely stated that the signer of the Democratic electors was false because John McEnery was never governor during 1876, and Kellogg was

<sup>37/</sup> House Reports, No. 140, 45th Congress, 3rd Session, p. 58.

<sup>38/</sup> Congressional Record, op. cit., p. 1505 and Electoral Commission, p. 57.

<sup>39/</sup> Electoral Commission, p. 57.

<sup>40/</sup> Ibid., p. 119, 294.

governor and was so recognized by the Federal government. They defended their own electors.<sup>41/</sup>

The Commission, meeting February 16, voted the eight votes of Louisiana for Hayes and Wheeler.<sup>42/</sup>

The Commission explained its position to Congress as follows:

The brief ground of this decision is that it appears upon such evidence as by the Constitution and the law named in said act of Congress is competent and pertinent to the consideration of the subject, that the before mentioned electors appear to have been lawfully appointed such electors of President and Vice-President of the United States for the term beginning March 4, A. D. 1877, of the State of Louisiana, and that they voted as such at the time and in the manner provided for by the Constitution of the United States and the law; and the Commission has by a majority of votes decided, and does hereby decide, that it is not competent under the Constitution and the law as it existed at the passage of said act to go into evidence aliunde the papers opened by the President of the Senate in the presence of the two Houses to prove that other persons than those regularly certified to by the governor of Louisiana, on and according to the determination and declaration of their appointment by the returning officers for elections in the said State prior to the time required for the performance of their duties, had been appointed electors, or by counter-proof to show that they had not, or that the determination of the said returning officers was not in accordance with the truth and the fact, the Commission by a majority of votes being of opinion that it is not within the jurisdiction of the two Houses of Congress assembled to count the votes for President and Vice-President to enter upon a trial of such question.

The Commission by a majority of votes is also of opinion that it is not competent to prove that any of said persons so appointed electors as aforesaid held an office of trust or profit under the United States at the time when they were appointed, or that they were ineligible under the laws of the State or any other matter offered to be proved aliunde the said certificates and papers.

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<sup>41/</sup> Electoral Commission, p. 57-119, 295.

<sup>42/</sup> Ibid., p. 113.

The Commission is also of opinion by a majority of the votes that the returning officers of election who canvassed the votes at the election for electors in Louisiana were a legally constituted body, by virtue of a constitutional law, and that a vacancy in said body did not vitiate its proceedings.<sup>43/</sup>

On Monday, February 19, the two Houses convened and received the report from the Commission.<sup>44/</sup> There were objections so the Houses separated to make their decisions.<sup>45/</sup>

In the Senate Mr. Maxey declared that "the judgment in effect exalts fraud, degrades justice, and consigns truth to the dungeon."<sup>46/</sup> The Democrats were losing their enthusiasm for the Electoral Commission.

The Republican, John Sherman, answering Mr. Maxey's charges said, "A good deal is said about fraud, fraud, fraud -- fraud and perjury, and wrong. Why, sir, if you go behind the returns in Louisiana, the case is stronger for the Republicans than upon the face of the returns. What do you find there? Crime, murder, violence, that is what you find."<sup>47/</sup>

The Senate upheld the Commission's decision by the vote of 41 to 28. This was done after the above debates and others were extended for two hours.<sup>48/</sup>

<sup>43/</sup> Electoral Commission, p. 119.

<sup>44/</sup> Congressional Record, op. cit., p. 1666.

<sup>45/</sup> Ibid., p. 1670.

<sup>46/</sup> Ibid., p. 1675.

<sup>47/</sup> Ibid., p. 1677.

<sup>48/</sup> Ibid., p. 1683.

The debate in the House was even more furious than in the Senate. To the Democratic denunciations of fraud the Republicans replied with accounts of intimidations and talk of Oregon telegrams. One member stated that the Democrats had started with the impression they could buy every man they could not frighten or delude. <sup>49/</sup>

Upon the conclusion of the debate, the House voted to reject by the vote of 173 to 99. <sup>50/</sup> But, as the Senate had accepted it, the eight votes of Louisiana were counted for Hayes and Wheeler. <sup>51/</sup>

The same procedure was used in the Oregon case as in the other questionable states. The Commission started its hearing on February 21. <sup>52/</sup> There were two sets of returns, one signed by the Governor for the Democratic electors, and one not signed, for the Republicans. <sup>53/</sup>

The Republican certificate did contain the official canvass and was signed by the Secretary of State. <sup>54/</sup> The Democrats objected and held that the Secretary of State did not have the authority to grant this electoral certificate. <sup>55/</sup>

Watts, one of the Republican electors, held a post office position at the time of the election and, therefore, the Republican electors were not legal, so argued the Democrats. <sup>56/</sup>

<sup>49/</sup> Congressional Record, op. cit., p. 1686.

<sup>50/</sup> Ibid., p. 1684.

<sup>51/</sup> United States Statutes at Large, V. XIX, p. 227.

<sup>52/</sup> Electoral Commission, p. 119.

<sup>53/</sup> Ibid., p. 295-297.

<sup>54/</sup> Ibid., p. 296.

<sup>55/</sup> Ibid., p. 297.

<sup>56/</sup> Ibid., p. 297-298.

The Commission accepted the Republican certificate and explained to Congress in the following manner:

And we are of the opinion that by the laws of the State of Oregon the duty of canvassing the returns of all the votes given at an election for electors of President and Vice-President was imposed upon the secretary of state and upon no one else.

That the act of the governor of Oregon in giving to E. A. Cronin a certificate of his election, though he received a thousand votes less than Watts, on the ground that the latter was ineligible was without authority of law and is therefore void.

That although the evidence shows that Watts was a postmaster at the time of his election, that fact is rendered immaterial by his resignation both as postmaster and elector, and his subsequent appointment to fill the vacancy so made by the electoral college.<sup>57/</sup>

In the Senate the decision was sustained by the vote of 40 to <sup>58/</sup>24.

The debate in the House was hot and interspersed with wit and sarcasm. Having denounced Bradley, Representative Clymer (Democrat of Pennsylvania) said:

We in this House assisted in developing one whose lachets of whose shoes even Wells, in all his moral deformity, is unworthy to unloose. Their precious names will go to posterity linked together, as those between whom, here in this Capitol, in the very temple of justice, the rights of the people were betrayed and crucified.<sup>59/</sup>

Representative Woodsworth (Republican from Ohio) defended the Electoral Commission and severely criticized the Democrats for their tactics. He wound up his speech by saying:

<sup>57/</sup> Electoral Commission, p. 297.

<sup>58/</sup> Congressional Record, op. cit., p. 1897.

<sup>59/</sup> Ibid., p. 1908.

Filibuster has been called in to aid those who cannot accept defeat. I am not surprised at this, nor at the chagrin and natural wrath of our Democratic friends; for with everything to gain and nothing to lose, they cunningly set a trap and were themselves caught -- caught by the act of God, who disposes of all human events, and by the act of the Illinois legislature, which disposed of Judge Davis.

They digged a pit, they digged it deep,  
 They digged it for their brother;  
 But through their sin they did fall in  
 The pit they digged for t'other.<sup>60/</sup>

The House rejected the decision of the Commission, but since both Houses did not reject the electoral vote of Oregon, three votes went to Hayes and Wheeler.<sup>61/</sup>

On February 26 the two Houses meeting in joint session, opened the certificates from South Carolina.<sup>62/</sup> The objections were heard and all papers turned over to the Electoral Commission.<sup>63/</sup>

The Commission began its hearing on February 26.<sup>64/</sup> There were two certificates. The first, that from the Hayes electors, was certified by Governor Chamberlain and Secretary of State Hayne; the second, from the Tilden electors, was not certified by anyone, but in it the electors claimed to have received a majority of the votes cast.<sup>65/</sup>

The Democrats objected and argued that the election was illegal due to the fact that the legislature had not provided for the

<sup>60/</sup> Congressional Record, op. cit., p. 1911.

<sup>61/</sup> Ibid., p. 1916.

<sup>62/</sup> Ibid., p. 1945.

<sup>63/</sup> Ibid., p. 1946.

<sup>64/</sup> Electoral Commission, p. 130.

<sup>65/</sup> Ibid., p. 130.

registration of persons entitled to vote; that there was no republican form of government in that state on the first day of January, 1877; that at the polling places there were stationed over one thousand deputy marshals who interfered with the election in such manner that a fair election was impossible. <sup>66/</sup>

The Republicans spent their time in defending their own certificate and did not spend much time on that. Time at this stage of the game was getting short. <sup>67/</sup>

Mr. Black, a Democrat, tried to abuse the Commission and did so but could not melt the hearts of the eight Republicans enough to keep them from voting Hayes and Wheeler in, 8 to 7. <sup>68/</sup>

The Commission explained its decision to Congress as follows:

And the Commission, as further grounds for their decision, are of the opinion that the failure of the Legislature to provide a system for the registration of persons entitled to vote, does not render nugatory all elections held under laws otherwise sufficient, though it may be the duty of the Legislature to enact such a law. If it were otherwise all government in that State is a usurpation, its officers without authority, and the social compact in that State is at an end.

That this Commission must take notice that there is a government in South Carolina republican in form since its constitution provided for such a government, and it is, and was on the day of appointing electors so recognized by the executive and by both branches of the legislative departments of the Government of the United States.

That so far as this Commission can take notice of the presence of the soldiers of the United States in the State of South Carolina during the election it appears that they

<sup>66/</sup> Electoral Commission, p. 299.

<sup>67/</sup> Ibid., p. 181.

<sup>68/</sup> Ibid., p. 190.



were placed there by the President of the United States to suppress insurrection at the request of the proper authorities of the State.<sup>69/</sup>

On the 28th the decision of the Commission was read and objections made to it. The Houses separated to decide on the objections. The Senate sustained, 39 to 22, after a short debate.<sup>70/</sup>

The House, after debating the question,<sup>71/</sup> voted to reject, 190 to 73.<sup>72/</sup> The two Houses meeting together gave the seven votes of South Carolina to Hayes and Wheeler.<sup>73/</sup>

The two Houses were in joint meeting when the question of Vermont came up. Mr. Hewitt, of New York, made a statement:

I hold in my hand a package which purports to contain electoral votes from the State of Vermont. This package was delivered to me by express about the middle of December last, 1876, and with it came a letter stating that a similar package had been forwarded by mail to the Presiding Officer of the Senate. I called upon him and inquired whether any other than one certificate from the State of Vermont had been received by him by mail, and he informed me that there had been no other received by him than the one which was already in his possession. I then tendered to him this package, as it came into my possession. He declined to receive it, upon ground that he had no authority in law so to do. Under the circumstances I now tender this package to the Presiding Officer of the Senate as purporting to contain electoral votes from the State of Vermont.<sup>74/</sup>

Mr. Ferry, the Presiding Officer, pointed out:

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<sup>69/</sup> Electoral Commission, p. 192.

<sup>70/</sup> Congressional Record, 44th Congress, 2nd Session, V. I, Part III, p. 1992.

<sup>71/</sup> *Ibid.*, p. 2005.

<sup>72/</sup> *Ibid.*, p. 2020.

<sup>73/</sup> *Ibid.*, p. 2021.

<sup>74/</sup> *Ibid.*, p. 2021.

The chair has stated that he has received but one set of certificates from the State of Vermont. He also states that the law prohibits him from receiving any after the first Thursday in February.<sup>75/</sup>

The opponents of the count were determined to make the most of this opportunity. Springer tried to start a debate, but the Presiding Officer would not allow him to do so.<sup>76/</sup>

The objections were stated and the Senate returned to its own chamber.<sup>77/</sup> The Senate soon made their decision, 47 to 0, to count the vote of Vermont.<sup>78/</sup> The House adjourned until ten o'clock the following day, March 1, 1877, before a vote could be taken.<sup>79/</sup>

This was one of the stormiest sessions ever seen in the House of Representatives. Some of the members were determined to force the Presiding Officer to receive the certificate sent to Mr. Hewitt. A resolution to this effect was made by Mr. Poppleton, but he accepted a substitute made by Knott of Kentucky.<sup>80/</sup>

After wild disorder and debates on both sides the vote was taken on Mr. Knott's resolution, and it was voted down 116 to 148.<sup>81/</sup>

The two Houses met once more and counted the five votes of Vermont for Hayes and Wheeler.<sup>82/</sup>

<sup>75/</sup> Congressional Record, op. cit., p. 2021.

<sup>76/</sup> Ibid., p. 2021.

<sup>77/</sup> Ibid., p. 2022.

<sup>78/</sup> Ibid., p. 2022.

<sup>79/</sup> Ibid., p. 2023.

<sup>80/</sup> Ibid., p. 2027.

<sup>81/</sup> Ibid., p. 2043.

<sup>82/</sup> Ibid., p. 2054.

The vote of Wisconsin was reached and objected to for the reason that Daniel L. Downs, an elector, held the office of pension surgeon and was therefore ineligible.<sup>83/</sup> The Senate, upon removal to its chamber, voted to count the vote of Downs.<sup>84/</sup> In the House the filibusters made a last stand. Mills of Texas made the resolution that the House elect Tilden to the Presidency of the United States.<sup>85/</sup> The resolution was not allowed to come to a vote,<sup>86/</sup> and the wrath of the filibusters against their Democratic brethren rose high. O'Brien called Wood "the high priest of the republican party."<sup>87/</sup>

After midnight on the morning of the 2nd, Blackburn delivered the end of the filibusters:

Mr. Speaker, the end has come. There is no longer a margin for argument, and manhood spurns the plea of mercy, and yet there is a fitness in the hour that should not pass unheeded. Today is Friday. Upon that day the Saviour of the world suffered crucifixion between two thieves. On this Friday constitutional government, justice, honesty, fair dealing, manhood, and decency suffer crucifixion amid a number of thieves. It was on that day that this presidential fraud received its nomination at the hands of the Republican party.<sup>88/</sup>

This could not go unanswered so Mr. Williams, of Wisconsin, replied:

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<sup>83/</sup> Congressional Record, op. cit., p. 2055.

<sup>84/</sup> Ibid., p. 2059.

<sup>85/</sup> Ibid., p. 2055.

<sup>86/</sup> Ibid., p. 2066.

<sup>87/</sup> Ibid., p. 2057.

<sup>88/</sup> Ibid., p. 2062.

I do not desire to retort in the spirit indulged in by the gentleman who has just taken his seat. But if I did I might remind him and this House that this is not only Friday but hangman's day; and that there could be no more fitting time than just past the hour of midnight

When churchyards yawn and Hell itself  
breathes out Contagion to this world,  
that this bogus, pretentious, bastard brat of political reform, which for the last twelve months has affronted the eyes of gods and men should be strangled to death, givveted higher than Haman.<sup>89/</sup>

A short time later the House voted to accept the vote of Downs.<sup>90/</sup>

At five minutes before four o'clock A.M. the Senate entered the House of Representatives and the meeting was called to order.<sup>91/</sup>

Before the results were read the presiding officer made a statement:

In announcing the final result of the electoral vote the chair trusts that all present, whether on the floor or in the galleries, will refrain from all demonstrations whatever; that nothing shall transpire on this occasion to mar the dignity and moderation which have characterized these proceedings in the main, so reputable to the American people and worthy of the respect of the world.<sup>92/</sup>

The results of the counting were read and declared that Hayes and Wheeler were elected President and Vice-President by the vote of 185 to 184 for Tilden and Hendricks.<sup>93/</sup> The Senate withdrew and the House adjourned.<sup>94/</sup>

The greatest contest for an elective office in the history of popular government had been peacefully concluded.

<sup>89/</sup> Congressional Record, op. cit., p. 2062.

<sup>90/</sup> Ibid., p. 2067.

<sup>91/</sup> Ibid., p. 2068.

<sup>92/</sup> Ibid., p. 2068.

<sup>93/</sup> Ibid., p. 2068.

<sup>94/</sup> Ibid., p. 2068.

The Commission adjourned at six o'clock and fifty-four minutes P.M. until eleven o'clock A.M., Friday, March 2, unless called together sooner by the President.<sup>95/</sup> On March 2 the Commission adjourned at eleven o'clock and thirty minutes sine die.<sup>96/</sup>

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<sup>95/</sup> Electoral Commission, p. 193.

<sup>96/</sup> Ibid., p. 193.

## CHAPTER V

## THE POTTER INVESTIGATING COMMITTEE

In 1824 John Quincy Adams was chosen President of the United States by the House of Representatives. Adams was chosen despite the fact that Andrew Jackson, the Democratic candidate, had received a plurality of the popular vote. The Democrats during the next four years waged a successful campaign for the election of Jackson in 1828. While they had not claimed that Adams choice was a fraud, they did believe that Jackson had been done a grave injustice. The tariff was the primary method used to discredit Adams during the four years he served.

The Democrats of 1876 were no more prone to quietly accept the Congressional choice of a president than were their early forefathers. A campaign for the election of Tilden in 1880 immediately got under way. The Democratic party members individually and collectively felt that the 1876 election had been stolen from them. They did not allow the charges of fraud and corruption to be forgot.

While the daily papers were continuing to use the words "Steal", "Usurper", "Boss Thief", and "Radical Ruffians", the Democrats needed concrete evidence to substantiate their charges.

In the hope of securing further evidence for political use, Clarkson N. Potter, Democrat of New York, introduced in the House of Representatives on May 13, 1878, a resolution calling for a committee "to inquire into the alleged fraudulent canvass and return of votes at the last Presidential election in the states of Louisiana and Florida."<sup>1/</sup>

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<sup>1/</sup> Congressional Record, 45th Congress, 2nd Session, p. 3429.

After lengthy debate, the resolution carried and the committee was appointed.<sup>2/</sup>

Conditions appeared favorable for accomplishing the purpose for which the committee was created. Several of the Florida Republicans felt that they had not been properly "rewarded." Chief among these was Samuel McLin, ex-member of the returning board. Having failed to secure the expected appointment, he had decided that duty demanded that he should tell the truth about the election of the president.

In an affidavit he admitted his decision and judgment had been influenced and prevailed upon by political pressure and partisan zeal.<sup>3/</sup> In his testimony before the sub-committee, he stated that W. E. Chandler and Lew Wallace had assured him that if Hayes were elected he (McLin) would be well "taken care of". He stated also that at precinct No. 9 in Leon County the box had been stuffed with 74 "little jokers". In similar manner 219 votes for Hayes were added to the returns in Alacua County and another 100 to the returns in Jefferson County. McLin believed Tilden rightfully elected.<sup>4/</sup>

Under cross examination he stated that his decision had not been swayed by offers of position. He further declared that before the case was before the returning board he had been assured by Mr. Manton Marble that if Tilden were elected there would be no danger of McLin's dying poor.<sup>5/</sup>

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<sup>2/</sup> Congressional Record, op. cit., p. 2438.

<sup>3/</sup> House Reports, Miscellaneous Documents, No. 31, 45th Congress, 3rd Session, V. II, p. 98.

<sup>4/</sup> Ibid. pp. 116, 137, 150.

<sup>5/</sup> Ibid., p. 101.

The above evidence is but a sample of that secured in Florida by the partisan Democratic investigating committee. They proved to the complete satisfaction of the Democratic party that the electoral votes of Florida rightfully belonged to Tilden. For the complete evidence gathered by the committee see the source below.<sup>6/</sup>

The Louisiana testimony bore on such subjects as fraudulent registration, manufacture of protests and affidavits, the forgery and subsequent manipulation of the second of the electoral certificates, and the alleged promises made by "visiting statesmen" to election officers.<sup>7/</sup> Much of the evidence given was contradictory. It did show that the Democrats were as guilty of bulldozing taxes on the negroes as the Republicans were in fraudulently throwing out whole precincts and counties in order to produce a Republican majority.<sup>8/</sup> Even more effective than the testimony were the lists drawn up by the committee of persons who had been connected with the canvass in Louisiana and Florida and who had later received Federal offices. Practically everyone who had been connected with the decision of the Florida and Louisiana Electoral College had received a job, some of which paid excellent salaries.<sup>9/</sup>

There was no denying these latter facts, and the Democrats made the most of it. The Republicans were exceedingly distressed and knew

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<sup>6/</sup> House Reports, Miscellaneous Documents, No. 31, 45th Congress, 3rd Session, V. I, Part II.

<sup>7/</sup> House Reports, No. 140, 45th Congress, 3rd Session, pp. 23-67.

<sup>8/</sup> House Reports, Miscellaneous Documents, No. 31, 45th Congress, 3rd Session, V. I, p. 294.

<sup>9/</sup> House Reports, No. 140, 45th Congress, 3rd Session, pp. 22, 48-49.



that something must be done and at once if they were to hold their own in 1880. An opportunity soon presented itself from an unexpected source.

In January, 1877, various Congressional committees had order the Western Union to turn over to them all telegrams sent during the campaign by the party leaders. At this time all the telegrams supposedly had been returned and burned.

As a matter of fact, Mr. George Bullock, messenger of the committee, had retained about 750 of them that were in cipher. These were in some unknown manner placed in the hands of the New York Tribune, a Republican newspaper. A few of them were printed by Mr. Reid, the editor, in editorials in the hope that someone would turn up who could decipher them. No one came forward so the Tribune attacked the problem themselves. At last Col. C. W. Grosvenor and Mr. John Hassard were able to discover the key to all but a few messages. Hints of their coming revelation were announced in a manner to arouse the utmost public interest.

On October 7, 1878, a detailed account of how the translations had been made was published.<sup>10/</sup> The next day the most important dispatches relating to Democratic negotiations in Florida appeared; eight days later came the more sensational ones relating to the negotiations in South Carolina. The substance of the telegrams relating to Florida show that the Democratic leaders made a definite attempt to buy<sup>11/</sup> the votes of both the canvass board and later the electors themselves.

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<sup>10/</sup> New York Tribune, October 7, 1878.

<sup>11/</sup> House Reports, Miscellaneous Documents, 45th Congress, 3rd Session, V. IV, p. 176.

In South Carolina, having failed in an attempt to bribe the canvassers and electors, an attempt was made to prevent the electors from meeting as an Electoral College. It was proposed, though not carried out, to have the electors placed in jail in separate cells on the day they were supposed to meet as an Electoral College.

The publication of these dispatches created a sensation throughout the country. The Democrats denied at first the truth of disclosures, claiming that the whole matter was a hoax. The party leaders displayed great indignation over the affair.

The Republicans demanded that the Potter Committee investigate the charges. This they did, even going so far as to have Mr. Tilden himself as a witness. While there was no proof available that Mr. Tilden was a party to the transactions, it was definitely shown that a large number of the Democratic party leaders were guilty.

These revelations did not remove from the Republican party the corruption that was their own, but it did show that the Democrats were no better. When the campaign of 1830 came, the cry of fraud by the Democrats had lost its effectiveness. The orators of the party were utterly unable to interest the people in the subject. <sup>12/</sup>

## CHAPTER VI

## THE LEGAL ASPECTS

Seldom do two wrongs make a right. The election of 1876 may be one of those rare exceptions. To fully appreciate the situation one must go back to the years 1861-1876. In the former year, the war between the states began, primarily over the theory of states rights. The South lost and as one of the penalties was forced to accept the Fifteenth Amendment to the Constitution as part of the price of reconstruction.

The black man, who was formerly the slave, was elevated to a position of control. In the negro's own words "de bottom rail is on de top, an' we's gwine keep it dere".<sup>1/</sup> It resulted in such outrageous and corrupt government that the white man lost his property and feared for his life.

As soon as the Northern troops were withdrawn, the whites regained political control, and the government began to regain its shape. But in the three states of South Carolina, Florida and Louisiana, the whites were still cringing under the Republican, carpet bag, and negro rule. For their own protection they organized rifle clubs, the purpose of which was to accomplish by intimidation and force what they had been unable to do legally. The result had been a contest for power between the Democrats, who were trying to win by forcing the negro to vote Democratic or not at all, and the Republicans, who were holding their

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<sup>1/</sup> Scribner's Magazine, V. VIII, p. 151.

control by throwing out enough Democratic votes to leave themselves a majority.

In the very first place, the Democrats were legally in the wrong in their methods of getting votes into the ballot boxes. In the second place, the Republicans violated the letter of the law in throwing out a large portion of the Democratic votes.

The controversy now entered the halls of Congress. If the election had not hinged on every disputed point, it is at least probable that Congress would have thrown out the disputed votes. As it was the question arose as to who should count the electoral votes. Extreme Republicans said that the president of the Senate should do the counting; extreme Democrats said that the House must participate, and that no vote should be counted against its consent. The Constitution says:

The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the House shall in like manner choose the President.<sup>2/</sup>

Article XII of the Constitution amends the above to read "from the highest number not exceeding three"<sup>3/</sup>.

Since Congress did not have in effect any statutory act affecting a case of this kind, there was only one thing to do, that was compromise.

<sup>2/</sup> United States Constitution, Article II, Section I, Part 2.

<sup>3/</sup> Ibid., Article XII.

The result was the Electoral Commission. This act no doubt was one of the wisest pieces of statecraft ever drawn up by an American Congress. The question arises: Was it constitutional? The answer is yes. It was defended as constitutional by the best lawyers in both Houses of Congress; it was passed by Congress with a large majority; it was signed by the President; and the majority of the judges of the Supreme Court consented to be members of the Commission created by it. Does not the Supreme Court have final authority on the constitutionality of an act of Congress? These five Justices by sitting on the Commission automatically agreed that it was legal. The Commission itself may be criticized as behaving in a partisan manner; for refusing to go behind the canvass of the returning boards; and different members apparently reversed their own positions; but nevertheless it was legal.

It is charged that the Commission was in error in refusing to go back of the state returning boards. From a legal or a practical viewpoint they did not have this authority. Legally, the Constitution says that each state shall be the judge of its own election. From the practical viewpoint, as the Commission pointed out, it would take several months to gather and hear all the evidence in which case the United States would be without a President for a considerable length of time, a condition which would be unsatisfactory to both parties.

As to the last point, the eligibility of the disputed elector in Oregon, the Commission's ruling that it was competent to enter this question is not at all inconsistent with their previous rulings, because the ineligibility of an elector was one which lay within the sphere of Federal power. As has been pointed out, the elector, Mr. Watts,

had resigned his Federal position before the time of his appointment and therefore was eligible.

All things considered, the decisions of the Commission were both legal and proper. That a majority of the American people thought so is rather conclusively shown by the result of the next presidential election. In 1880 James A. Garfield, who was a member of the Electoral Commission, was chosen President.

## CHAPTER VII

## CONCLUSION

From the evidence as presented, both parties were guilty of corrupt bargaining. Neither was worse than the other.

In my opinion, when we think the election of 1876 was exceptional, we are mistaken. The searchlight was turned on full blast, and the American people had a chance to see what went on behind the scenes.

Other elections have been as corrupt. The election of 1844 was dishonest, and Clay might have been elected instead of Polk. In 1880 the Republicans raised a large campaign fund and purchased, as President Arthur admitted, the doubtful state of Indiana. Garfield's title to the Presidency may be considered little better than that of Hayes since it was bought and paid for.

Blaine always thought he had been cheated in the election of 1884. McKinley was elected in 1896 only by bribery and intimidation. Who was elected by the people in 1916? Hughes?

The choice of a President was after all something that could be compromised. In the Civil War both sides were fighting for a principle, and a definite decision had to be made. Every state of the United States felt that in 1861 it was individually affected. Not so with the choice of a President. As individuals, perhaps a hundred thousand officeholders had their jobs at stake. So far as the rest of the country was concerned, I cannot see that it made any particular difference which man was chosen. Hayes as an individual was a sound money man, believed in reform and had a sense of fair play towards

the Southern states. His action in office proves the point. What if Mr. Tilden had been chosen? He was an honest man personally, and his record as governor of New York positively shows that he believed in an honest administration and carried it out. No doubt he would have replaced many of the Republican officeholders with his Democratic friends. The fact remains that they should have been replaced. While Grant meant well himself, he was under the control of the Congressional oligarchy resulting in offices being held by incompetent politicians.

It is charged that Mr. Hayes agreed to withdraw the Federal troops that were in the South in exchange for their electoral votes. Perhaps so, but the only proof is what he actually did. On the other hand, he believed that they should be withdrawn. It was only with white control that the South could hope to return to her place in the Union.

The negroes of the South mistakenly believed that political freedom meant economic freedom. While they had political control, they brought financial ruin in the form of taxation upon their former masters. It was only by allowing the Southern states to effectively repeal the Fifteenth Amendment within their own borders that law and order could return. Tilden would have probably allowed this to be done; Hayes actually did.

The work of the Potter Investigating Committee definitely disclosed fraud on each side. It opened the eyes of the Independent and made him see American politics of the seventies in its true light. The election had been one of mud-slinging and disclosed to the American eye the corruption of the existing government. That defeat resulted in a new era of reform and governmental administration.



A word should be said about the Electoral Commission. It has been criticized for its decision. As shown in the previous chapter, its action was legally correct, but what might have been the result had it or Congress thrown out the electoral returns of any of the disputed states? While, of course, it would have resulted in Tilden being chosen President, there are more far-reaching results. It would have set a precedent by which in later elections a losing candidate could gain the office by the simple expediency of having his friends in Congress throw out sufficient votes to give him a margin of victory.

A word of commendation must be said for the losing Democrats. In Congress they swallowed the bitter pill of defeat and like true Americans stood behind the decision of the majority.

In such a crisis as existed in 1876, it is doubtful if any nation in the world other than the United States, Great Britain and Canada, could have brought this controversy to a peaceful solution. We can thank our forefathers that we did not have guerrilla warfare as Mexico so often experiences. Perhaps there might have been serious bloodshed were it not that the Civil War was too fresh in the minds of the people.

Today we are one of the few nations that retains a Democratic form of government. Had the decision in 1876 been different, we might instead be living under the control of a dictator. The conditions in the United States in 1932 were most auspicious for such a change. The change might have been made had not the precedence of Democratic government dictated otherwise. The acceptance of the 1876 decision by the people of the United States is only another example of such a precedent.

Finally, a conclusion as to what actually took place in the campaign and election: first, that the Democratic agents in the contested states of Florida, South Carolina, and Oregon earnestly and persistently endeavored to change the result from Hayes to Tilden by the use of large sums of money as bribes to official persons to violate their duty; second, that the negotiations for that purpose do not show that any member of any canvassing board or any presidential elector ever contemplated betraying his trust for such inducement.

The interest throughout the investigation centered upon Mr. Tilden, and concerning him and his course there followed general discussion -- angry accusation and warm defense. There is nothing in the testimony to contradict the oath taken by Mr. Tilden, and there has been no desire to fasten a guilty responsibility upon him. But the simple fact remains that a presidential canvass which began with a ponderous manifesto in favor of "reform" in every department of the government, and which accused those who had been entrusted with power for sixteen years of every form of dishonesty and corruption, ended with a persistent and shameless effort to bribe the electors of four states.

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