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The Election of 1876: Part I

Earlier this year, in the spring, we issued a five-part series on the election. At the time, we considered adding a section about a disputed outcome but decided that the odds of such a result were too low to consider. Since issuing that report, the likelihood of an uncertain and disputed election has risen. The combination of the president's comments surrounding the insecurity of mail-in voting and the death of Justice Ginsburg has increased tensions dramatically.

Every election has at least some possibility for a disputed outcome. However, despite the fact that we don't have a national system for voting (beyond setting dates, individual states determine voting procedures), disputed elections are surprisingly rare. There are two that offer historical parallels. The Bush/Gore race in 2000 is probably familiar to most readers; the recount was ended by a Supreme Court decision which was reluctantly accepted by VP Gore. The one that most readers probably aren't as familiar with is the election of 1876, between Rutherford B. Hayes and Samuel J. Tilden.¹ In many respects, the election of 1876 is perhaps a better historical analog to our current situation.

¹ The primary historical source for the election of 1876 is: Rehnquist, William. (2004). *Centennial Crisis: The Disputed Election of 1876*. New York, NY: Vintage Books, Random House Inc. (Kindle Edition).

In this two-part report, we will begin by framing the 1876 election, focusing on the two issues that were dividing the country—reconstruction and the economy. The personalities and positions of each candidate will be examined. The election campaign and the election itself will follow. We will conclude this section with a discussion of the elements of the dispute, the method of resolution, and the outcome.

Next week in Part II, using this background, we will employ the historian's primary tool, compare and contrast. There are similarities between the 1876 election and our current one, but there are important differences, too. One of the critical differences is that in 1876 the U.S. "punched below its weight" in world affairs. The government was preoccupied with the westward expansion and was more than happy to let the British run the world. And so, being distracted by a disputed election didn't mean all that much for world affairs. That isn't the case now, so we will discuss how various nations may use a period of uncertainty to further their geopolitical goals. As always, we will close the report with potential market ramifications.

The Key Issues of the Election of 1876

There were two major issues that were dividing the country during this election. The first issue was the ramifications of the Civil War and the second was the issue of debt and money.

Although the Civil War ended in 1865, the nation was still not reconciled. A minority of Republicans, dubbed the "radicals," were aggressive abolitionists. They wanted to

treat the South as occupied territory and enforce racial equality on the region. The majority of white Southerners opposed this policy vehemently. President Johnson, who replaced Lincoln after the assassination, had mostly sided with white Southerners on this issue. Johnson was a pure populist; he opposed slavery not on moral grounds but because he opposed the planter class in the South. He wanted to end slavery to deny the planter class enslaved labor. But, personally, he was opposed to racial equality. The Republicans opposed his administration, coming close to impeaching him (he avoided impeachment by a single vote). President Grant, who followed Johnson, mostly sided with the radicals, but a growing part of the GOP, called the “doughfaces” by the radicals, were less interested in racial equality and wanted to end the costly policy of Reconstruction. This wing of the GOP supported hard money and business interests.

The Democrats were divided by geography. Most Northern Democrats were mildly opposed or indifferent to slavery but tended to downplay the issue, fearing the civil conflict that eventually occurred. Southern Democrats mostly supported rolling back the 15th Amendment. Since it would be difficult to craft another amendment to overturn it, they intended to deploy states’ rights to achieve their ends. Thus, ending Reconstruction was paramount.

Although Grant maintained Reconstruction, the policy was losing favor in Congress. Democrats generally opposed it, especially Southern Democrats. Complicating matters was a deep recession that started in 1873. Known as the “Panic of 1873,” it was one of the deepest and longest recessions in U.S. history; it also had an adverse impact on Europe. It was caused by an asset bubble in railroad stocks. Railroads, flush with

investment capital, over-expanded and were unable to service their debt. The U.S. had no central bank and countercyclical fiscal policy was unheard of, meaning the economy had to work through the downturn without government support.

This leads us to the second element. Debt service was constrained by adherence to the gold standard. The South and West tended to support “greenbacks,” which was essentially a fiat currency that could be expanded. The creditor class, mostly centered in the East and Midwest, tended to favor redemption in specie. The GOP was mostly a hard money party while the Democrats were split on this issue along regional lines. Still, a truism of politics is that weak economies tend to be blamed on the party in power. In 1874, for the first time since the Civil War, the Democrats won the House of Representatives.

The Candidates

Samuel Tilden was born in 1814 to a poor family in upstate New York. He had an interest in Democratic politics as a young man. Democratic politics in New York was dominated by political machines and he worked for his first one before the age of 20. He attended several colleges and was a rather indifferent student but was admitted to the bar in 1841.² Despite his lack of academic focus, he proved to be an able corporate lawyer and a shrewd investor. He continued to work for various Democratic campaigns.

His official political career began in 1845, when he was elected to the New York State legislature³ and served one term before returning to private practice. His law

² Op. cit., Rehnquist, Chapter 3, loc. 819

³ Ibid., loc. 926

practice flourished, improving his financial situation greatly.⁴

In the runup to the 1860 election, the Democrats ran three candidates. Tilden argued at the convention that defeating Lincoln was necessary to maintain the union.⁵ The Democratic Party was divided on the slavery issue, but, in general, the Northern Democrats didn't oppose slavery with the same level of intensity that Southern Democrats supported it. Despite the fact that Lincoln wasn't on the ballots of most Southern states, he won a majority in the Electoral College. Tilden did support the Union cause after secession but didn't join the military. After the war and Lincoln's assassination, he supported Johnson's presidency and managed the Democratic Party of New York in 1868. In 1874, he was elected governor of New York. In the convention for the 1876 election, he was nominated on a hard money platform, consistent with his geography; his views on Reconstruction were less of a factor.

Rutherford Hayes was born in central Ohio in 1822. He graduated from Kenyon College in 1842.⁶ After reading in a law firm (sort of an apprenticeship that was common during this period) for about a year, Hayes went to Harvard Law School and completed his studies in 1845.⁷ After passing the bar, he began his law practice in Fremont, Ohio. He moved to Cincinnati in 1850, got married, and built a successful law practice.⁸ He also became active in politics, helping the new Republican Party in Ohio. In 1858, the city solicitor for Cincinnati died in a railroad accident. Although he was not considered the leading candidate for the job,

⁴ Ibid., loc. 949

⁵ Ibid., loc. 973

⁶ Ibid., loc. 456

⁷ Ibid., loc. 483

⁸ Ibid., loc. 518

he was awarded it on the 13th ballot.⁹ Ari Hoogenboom, who wrote a biography of Hayes, described him as follows:

In time, Hayes's luck became an axiom for Ohio political pundits, but it was neither blind nor dumb. Hayes never appeared to be seeking office, but by instinctively and deliberately enhancing his availability, he created conditions conducive to good luck. Eschewing extreme positions, he made himself acceptable to a wide spectrum of voters. Genuinely decent and kind, he was careful not to take his friends for granted nor to offend his rivals...His reputation for fairness and integrity made Hayes acceptable to many with whom he was not in agreement.¹⁰

In other words, he developed a skill in becoming everyone's compromise candidate.

Hayes supported Lincoln's presidential campaign and, when the war broke out, joined the 23rd Regiment of the Ohio Volunteers.¹¹ Hayes became an officer, was wounded in 1862, was regularly promoted, and eventually mustered out as a brigadier general in 1865.¹²

Although he was still an officer, Hayes was elected to Congress as a representative in 1864. After his service ended, he served as a representative until 1868, holding office for two terms. In 1868, he was elected governor of Ohio and served consecutive two-year terms. He left office but ran again for governor in 1876, winning the office, but with an eye as a long-shot presidential candidate.

⁹ Ibid., loc. 530

¹⁰ Hoogenboom, Ari. (1995). *Rutherford B. Hayes*. Lawrence, KS: University of Kansas Press. (p. 106)

¹¹ Op. cit., Rehnquist, loc. 554

¹² Ibid., 578

Although Hayes was not the leading candidate for the GOP president, he was, as noted above, the one with the fewest enemies. A series of events led to him winning the nomination. The leading candidate, James Blaine, fainted while going to church just before the convention.

Although Blaine did lead after the first ballot (Hayes came in fifth out of six), the delegates struggled to settle on a candidate. After seven ballots (and lots of backroom negotiations), Hayes won the nomination.¹³

The Election

In 1876 there were 38 states in the union. The differences between the candidates were narrow. Both Tilden and Hayes ran on hard money platforms, although Tilden's VP was an ardent greenbacker.¹⁴ Tilden seemed indifferent to the Reconstruction issue; Hayes was as well¹⁵ but concluded that he could use the issue to differentiate himself from Tilden. Hayes was not opposed to "waving the bloody shirt"¹⁶ to highlight his military service and to frame Tilden as a tool of the Southern rebels. For the most part, the campaigns proceeded as usual.

On election day, there were widespread reports of voter intimidation in the South.¹⁷ There were no established time zones, so polls opened and closed at different times even within the same state. The results were reported by telegraph and tended to come in small batches, but it was becoming clear that Tilden was almost certainly going to win the popular vote.¹⁸ However, American voters don't directly elect presidents; they elect electors that determine the president through the Electoral College.

¹³ Ibid., loc. 768

¹⁴ Ibid., loc. 1093

¹⁵ Ibid., loc. 1081

¹⁶ Ibid., loc. 1117

¹⁷ Ibid., loc. 1177

¹⁸ Ibid., loc. 1262

Eventually, four states—South Carolina, Louisiana, Florida, and Oregon—had very close and disputed results. At this point, it was clear that the outcome of the election was going to be decided through an untested Constitutional process.

Determining the Outcome

Article II, Section 1 of the Constitution indicates that the votes of the electors will go to the president of the Senate (in most cases, the sitting vice president) who shall open the certificates of the official votes in the presence of the Senate and the House of Representatives "*...and the votes shall be counted.*" Unfortunately, the authors of the Constitution didn't specify who should count the vote. This is important because if there are multiple certificates it isn't clear if the counter gets to choose. In 1865, Congress adopted the Joint Rule 22 which said that both houses had to approve a disputed vote.¹⁹ But that rule had been rescinded by the Senate in 1876.

The White House ordered the military leaders of the Reconstruction forces to determine if the votes in Florida and Louisiana were fair. The House and Senate also sent competing fact-finding missions. The House's mission, controlled by the Democrats, found that the GOP had engaged in fraud and thus argued that Tilden had won. Unsurprisingly, the Senate mission, led by Republicans, concluded the opposite.

In Florida, the state canvassing board tossed out a number of votes, giving Hayes the victory by 45 votes instead of an 80-vote win for Tilden. The board consisted of two Republicans and one Democrat.²⁰ Needless to say, the Democrats didn't accept this decision and two sets of electors were sent to Washington.

¹⁹ Ibid., loc. 1298

²⁰ Ibid., loc. 1356

Louisiana’s initial count gave Hayes the state by eight to nine thousand. The vote was marred by violence and voter fraud. The canvassing board of five, three Republicans and one Democrat (the remaining Democrat resigned), allowed for opening meetings, but eventually gave the state to Hayes under widespread reports of vote selling.²¹ In response, the Democrats again sent their own electors.

In South Carolina, despite the fact that blacks outnumbered whites by 5-3, widespread voter fraud and intimidation led to a Democratic governor being elected but Hayes winning the presidential vote, and the canvassing board certified it.²²

Oregon did not have a disputed vote; Hayes won the state cleanly. However, one of the electors was a postmaster which violated the Constitution’s rule that electors can’t be government employees.²³ Tilden’s camp argued that the elector should be replaced by a Democrat in a bid to show Republican inconsistency (in that the GOP was willing to argue that votes were spoiled in the South but not in Oregon).

It was becoming apparent that there would not be a resolution to this problem under normal order. Accordingly, the White House and Congress decided to create a special committee. This body would have 15 members. The House would have five seats (three Democrats, two Republicans), the Senate would also have five seats (two Democrats, three Republicans) and five members from the Supreme Court. The justices were selected by their tenure—two were considered Democrats, two thought to be Republicans, and one, Justice David Davis, was considered to be an independent.

Essentially, Davis would represent the tiebreaker. But, in the interim, the Illinois State Senate appointed him to the legislature due to the death of the current senator. Justice Bradley, who was considered a Republican, replaced him.

After the establishment of the commission, the president of the Senate (in this case, Thomas Ferry, who was Senate pro tempore, filling in for VP Henry Wilson, who had died) would open the certificates from the states and, if there were no objections, would tally the electoral votes. If any member of the House or Senate objected, the certificate(s) would be sent to the special commission to decide. The vote would stop until a verdict from the commission was rendered.

The first state to be disputed was Florida, which sent three certificates.²⁴ The commission had to decide if it would simply accept the official decision of the state canvassers, which had given Hayes the majority, or “go behind the vote” and consider the other two certificates. The GOP argued for a narrow investigation which would effectively certify the state canvassers’ verdict.²⁵ To do otherwise would undermine states’ rights. The Democrats wanted to investigate deeply to reach the quality of the vote.²⁶ The commission sided along party lines for a narrow investigation, with the deciding vote coming from Justice Bradley.²⁷ Although time required to investigate the vote was offered as the reason to simply accept the tally, in reality, the commission had a narrow majority of Republicans so the decision was effectively partisan.

²¹ *Ibid.*, loc. 1391

²² *Ibid.*, loc. 1403

²³ *Ibid.*, loc. 1415

²⁴ *Ibid.*, loc. 2076

²⁵ *Ibid.*, loc. 2112

²⁶ *Ibid.*, loc. 2123

²⁷ *Ibid.*, loc. 2183

Once the ground rules were established, it became clear Hayes was going to win. Florida's electoral votes were given to Hayes.²⁸ Although a majority of both houses could have overturned the ruling, that was impossible because the House would disapprove but the Senate would not.

The next state that brought an objection was Louisiana. It followed the same template as Florida.²⁹ By now, the Democrats had realized their position was hopeless. Their only recourse was to filibuster past the date of inauguration and open that Constitutional question. House Speaker Randall rejected this idea as too radical, but Southern Democrats allowed the threat to be issued to give them negotiating leverage. The Hayes camp made overtures to the Southern Democrats and a deal was struck. There was a tacit agreement to remove federal troops from the South, ending Reconstruction.³⁰ With the Southern Democrats on board, the path for Hayes's presidency was assured.³¹

Epilogue

Although a casual reading of history suggests that Hayes's presidency exists under the taint of reversing the gains Black

Americans made due to the Civil War, the reality was that the majority of Northerners were ready to move on from the war. With the House controlled by Democrats, it was unlikely that Congress would have continued to fund Reconstruction. The deal with Hayes ensured that it would end.

The taint of the election didn't help Hayes. He was referred to as "Rutherfraud." Hayes did reform the Civil Service, but the economy was plagued by overcapacity and labor unrest. He was unable to hold the line on currency debasement as a bill to allow for limited silver coinage passed over his veto. He had indicated he would only run for one term and stuck to that promise, leaving office in 1880.

Tilden became implicated in scandals and, between this problem and poor health, he was never nominated for president again.

Part II

Next week, using the history of the election of 1876, we will compare and contrast to the current election.

Bill O'Grady
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²⁸ Ibid., loc. 2232

²⁹ Ibid., loc. 2244

³⁰ Ibid., loc. 2268

³¹ Ibid., loc. 2542

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