

"Disputed Election"

from *Rutherford B. Hayes: Warrior & President*

by Ari Hoogenboom

The affair was not over. While Hayes and Zach Chandler, convinced of defeat and without plans to contest it, slept soundly, Gen. Daniel E. Sickles, on his way home from an after-theater supper, stopped at the nearly deserted Republican National Committee headquarters in New York and made the initial moves that would plunge the nation into a unique crisis. Sickles - whose checkered past mixed politics and diplomacy with seduction and murder-personified for reformers what was wrong with the Grant administration and was an unlikely ally of Rutherford B. Hayes. He scanned the returns, which gave Tilden New York, New Jersey, Connecticut, Indiana, and apparently the entire South, with a plurality of about 250,000 votes and, it seemed, 203 electoral votes (with only 185 needed for victory).

But in these tallies, Sickles found a glimmer of hope. Hayes could win if the Pacific slope, whose returns were not in, went for him and if Republicans retained control of South Carolina, Florida, and Louisiana. Over Chandler's signature, he telegraphed the following audacious message to leading Republicans in South Carolina, Louisiana, Florida, and Oregon: "With your state sure for Hayes, he is elected. Hold your state." By about 6 A.M., he had received encouraging answers from South Carolina and Oregon. Before going home to bed, Sickles again telegraphed "all four states, informing them that the enemy claimed each of them and enjoining vigilance and diligence."

The New York Times also refused to believe that Hayes had lost. Encouraging reports from Oregon, South Carolina, Louisiana, and Florida (probably inspired by Sickles's telegrams) and a hint of Democratic uncertainty reinforced the hopes of John C. Reid, the paper's rabid Republican managing editor. In its first edition, the

Times proclaimed the election "doubtful"; in its second, it claimed victory for Hayes if he carried Florida.

Shortly after 6 A.M., Reid rushed to Republican headquarters to tell Zach Chandler that Associated Press dispatches gave both Florida and Oregon to Hayes and that the Times believed he was victorious. There, Reid found only one member of the national committee, William E. Chandler, who had just arrived after voting in New Hampshire. Together, they read the dispatches on Zach Chandler's desk and roused him from a whiskey-induced stupor. He knew nothing of the dispatches and could hardly comprehend their import. "I immediately telegraphed to Florida, Louisiana, South Carolina, Nevada & Oregon," William Chandler reported to Hayes, "that all depended on them and that with them we were safe, to look out for Democratic frauds & to telegraph us when sure." Chandler got off his dispatches at 6:30, "ahead of similar democratic dispatches," he and Reid believed. With responses arriving that morning before other Republicans "came around. . . it seemed as if the dead had been raised."

Unaware that Sickles, Reid, and Chandler had been calculating and telegraphing, Hayes awoke Wednesday morning to find that he was "master" of himself and "contented and cheerful." He went to his office as usual and wrote to Rud, who had transferred to Cornell, to let him know how the folks at home were taking the defeat. "Scott Russell is rejoiced because now we can remain in Columbus where the cousins and friends live, and will not have to go away off to Washington, which he evidently thinks is a very bad place. Fanny shares in this feeling, but has a suspicion that something desirable has been lost. Birch and Webb don't altogether like it, but are cheerful and philosophical about it." Hayes rationalized that he and Lucy had escaped labors and anxieties but regretted that he would not be able "to establish Civil Service reform, and to do a good work for the South."

Soon after writing that letter, however, Hayes learned that his proverbial good luck had not entirely deserted him. During the day, the news indicated that he had carried the Pacific states and, "with a few Republican States in the South," could be victorious. The whole

country was "full of excitement and anxiety." Rumors were rife, including a false claim on Wednesday evening that New York was for Hayes, which resulted in "a shouting multitude" rushing to his house. Telling the crowd that he did not believe the rumor, Hayes calmed it by saying that the outcome was still in doubt "owing to the incomplete telegraph communications through some of the Southern and Western States."

Hayes did not claim victory, but on Wednesday evening Zach Chandler claimed it "beyond a doubt." Several days would elapse before unofficial tallies were available in South Carolina, Florida, and Louisiana, and they were subject to review by Republican-controlled returning boards, which were empowered to throw out votes where fraud or intimidation had been practiced. With the sudden power to pick the next president, these boards would be pressed by Democrats to count the actual ballots and by Republicans to throw out votes. Convinced on Wednesday night that the Democrats "were desperate" and that Republicans had to "prepare for any & every possible emergency," William E. Chandler departed posthaste for South Carolina, Florida, and "Louisiana if necessary," he reported to Hayes, "to aid. . .in preventing our being defrauded out of what we have fairly won."

If the decision to contest the election had been left to Hayes, Tilden would have been president. Hayes doubted that the returning boards could or even should overcome the ill-gotten Democratic majorities. He noted that Republican claims to have carried the country by one electoral vote were creating "great uneasiness" and implied that the hasty departure of prominent Republicans and Democrats for points south added to the suspense. After checking the tallies in the Sunday morning papers, he concluded that the Democrats had carried Florida by "fraud and violence" and braced "to accept the inevitable." Hayes believed that by "improper interference with the rights of the colored people," Democrats had deprived him of the presidency. "A fair election in the South," he insisted, "would undoubtedly have given" him a majority of the electoral vote and "a decided preponderance of the popular vote." Hayes never deviated from this belief; his doubts about contesting

the election were rooted not in fairness but in questions of practicality and expediency.

Hayes did not make the decision to contest the election; he continued to play a presidential role (as did Tilden). It was able and tenacious Republican leaders who challenged and outclassed Democrats in a sordid struggle for electoral votes. Having decided on Sunday morning that he had lost the presidency, Hayes received a dispatch on Sunday afternoon that opened "it all up again." Former Gov. William Dennison, "a prudent and cautious gentleman" as well as a friend, wired him: "You are undoubtedly elected next President of the U.S. Desperate attempts are being made to defeat you in Louisiana South Carolina & Florida but they will not succeed." Hayes stopped talking about conceding defeat or accepting the inevitable. Believing that a proper canvass of the votes in South Carolina, Louisiana, and Florida would make him the next president, he now wanted that proper canvass.

Although worried about unscrupulous Democrats, Hayes told Schurz that he was also "anxious. . .that in the canvassing of results there should be no taint of dishonesty" among Republicans. Hayes knew that visiting statesmen, including William E. Chandler and Charles B. Farwell (a wealthy Chicago merchant and "the ablest politician and wisest coolest head in Illinois"), were not fastidious in their methods, and he did not want to be -or appear to be-the recipient of stolen goods. He had not participated "in sending leading men South"; to balance the zealous partisans who had been sent, he urged Schurz, whose honesty was above question, to observe the count in Louisiana. But Schurz could not go, and Hayes did little to orchestrate Republican efforts to save the doubtful states. Most of the Republican politicians who observed the count in South Carolina, Florida, and Louisiana were there by invitation from President Grant, who ordered the army to protect the returning boards "in the performance of their duty." But Grant's involvement did not necessarily change the tally. Like Hayes, he was convinced that "the country cannot afford to have the result tainted by the suspicion of illegal or false returns."

Although Hayes's faith that he would have won a fair election was probably justified, Republicans had to prove that he had won an unfair election in three states. Proving that he deserved the electoral votes of South Carolina, which he appeared to carry by 600 to 1,000 votes, was hardly necessary, but winning Florida, which he unofficially lost by ninety-four votes, was a problem; gaining Louisiana, which Tilden unofficially carried by 6,300 votes, was a major difficulty. Unofficial tallies also gave the Democrats the governorship and the legislature in all three states. With Hayes ahead in South Carolina and a Republican returning board determining the outcome there, visiting statesmen concentrated on Florida and Louisiana. In all three states, Republicans had used fraud to counter Democratic fraud, violence, and intimidation. Most of the "bulldozing" had occurred during the campaign, but much of the fraud was practiced on and after a relatively calm election day.

In Florida, it was impossible to determine who would have won a fair election. Repeaters, stuffed ballot boxes, and Democratic ballots printed with the Republican symbol to trick illiterate voters had all been used. In addition, returns from remote areas had been delayed, to be altered as needed. William E. Chandler supervised the struggle to save Florida for Hayes and was aided by agents from the justice, Treasury, and Post Office Departments, as well as by Hayes's lieutenant Edward F. Noyes. Most visiting statesmen justified their partisans' unlawful acts and zeroed in on those of the opposition. The few who were truly reform-minded were both troubled and ignored. Gen. Lew Wallace-whose *Ben Hur* would be published in 1880 - visited Florida at Hayes's behest. Once there, Wallace complained to his wife that both sides were unconscionable. "Nothing is so common as the resort to perjury, unless it is violence -in short, I do not know whom to believe. . . . If we win, our methods are subject to impeachment for possible fraud. If the enemy win, it is the same thing exactly. "

To overcome the substantial Democratic lead in Louisiana, Republican visiting statesmen, led by John Sherman, James Garfield, and Charles Farwell, assumed that since blacks constituted a majority of the state's registered voters, the Democrats had

intimidated enough of them to carry the state. They ignored the fact that Republican factionalism had alienated some black voters. Telling Hayes of the "atrocious means" used to prevent black Republicans from voting, Sherman assured him that he would have the vote of Louisiana, according to the letter and spirit of its laws. "But," an uneasy Hayes responded, "we are not to allow our friends to defeat one outrage and fraud by another. There must be nothing crooked on our part."

Hayes's unease reflected a realization that his wishes affected neither the returning boards, which quickly got to work, nor the visiting statesmen who hovered over them. Although Tilden also occupied a high moral position, his corrupt nephew Col. William T. Pelton, operating out of Tilden's home, was negotiating to buy off returning board members. Tilden reprimanded his nephew, but he remained in his uncle's household and continued his efforts to buy the election. On 22 November, the all-Republican five-member South Carolina board invalidated the votes in both Edgefield and Laurens Counties and ensured that Republicans would carry the state for Hayes as well as win the legislature and the governorship. When the legislature met on 26 November and Republicans in the lower chamber refused to seat Democrats claiming to be elected from Edgefield and Laurens Counties, the Democrats withdrew and organized a rival state government under Wade Hampton, which the federal troops in the state did not disturb.

Although John Sherman assured Hayes that J. Madison Wells, chair of the all-Republican Louisiana returning board, was "thoroughly honest and conscientious," Wells was auctioning off the presidency. Despite-or perhaps because of-Pelton's interest, the enterprising Wells most likely realized a tidy sum by negotiating with his own party. On 22 November, Farwell assured Hayes's friend William Henry Smith that he was "in constant communication with those who know, and they assure me that all will be well." Farwell's confidence most likely resulted from expenditures he made out of his own well-lined pocket. One year later, Smith reminded Hayes that Farwell "in all delicate and important matters last year. . .was our right hand man" and that "his wealth. . .supplied the means when no

other could be reached." The result, announced on 5 December, was as Farwell had predicted. Specifically, the board threw out 15,000 votes, 13,000 of which were Democratic. Instead of losing Louisiana, Hayes carried it by more than 3,000 votes, and the Republican state ticket also triumphed. The Democrats, however, set up a rival government, just as they had in South Carolina. Hearing from Sherman, Garfield, and other visiting statesmen that "murder, and hellish cruelties. . .at many polls drove the colored people away, or forced them to vote the Democratic ticket" in Louisiana, Hayes believed that the board had made a brave as well as a correct decision.

Florida's returning board, which had the novelty of a Democratic member, threw out enough votes to declare, on 6 December, Hayes the victor by 900 votes and the state Republican ticket victorious by a narrower margin. In Columbus, Hayes was "overwhelmed with callers, congratulating" him "on the results declared in Florida and Louisiana. I have no doubt," he told a somewhat dubious Schurz, "that we are justly and legally entitled to the Presidency."

While the Republican returning boards in South Carolina, Louisiana, and Florida were counting their partisans into office, a bizarre development in Oregon played into Democratic hands. Everyone agreed that Hayes had carried that state by more than 1,000 votes, but John W. Watts was both a postmaster and a Republican elector on the ballot, and the Constitution states that a federal officeholder cannot be an elector. Watts assumed that there would be no problem, and upon his election he resigned from the post office, as did a Vermont elector who was also a postmaster. But at the behest of Democratic National Committee Chairman Abram S. Hewitt, Oregon's Democratic governor disqualified Watts and certified a Tilden elector in his place. Hewitt hoped that this maneuver would force the Republicans "to go behind" and reject Oregon's official certified electoral vote. Such a move ought to enable the Democrats to do the same thing with the certificates from the governors of South Carolina, Florida, and Louisiana.

Congress required electors to cast their ballots in the state capitals on 6 December. In thirty-four state capitals, the procedure was

routine, but not in Salem, Columbia, Tallahassee, and New Orleans. In those four capitals, both the Republican and the Democratic electors met, voted, and forwarded their conflicting votes to Washington. After the balloting, Tilden had 184 votes and Hayes 165, with both candidates claiming the remaining 20 votes.

On the evening of 6 December, surrounded by family and friends, Hayes and Lucy awaited dispatches confirming the electoral vote. They "had a lively happy little gathering," believing that the decisions of the Republican returning boards were final. But fears about Oregon were confirmed the next day. The governor of Oregon certified one Tilden vote, and Hayes worried that it would be "treated as the true one" and give the election to Tilden. Not anticipating a dispute over the votes of Louisiana, Florida, and South Carolina, Hayes magnified the Oregon problem into a potential crisis, "perhaps fatal to free government," and "would gladly give up all claim to the place, if this would avert the evil." But he soon thought that "the Oregon fraud," as he called it, was "so transparent palpable and disgraceful" that, at worst, it would only complicate matters and at best "be thrown aside without dissent." Convinced that he was "fairly, honestly and lawfully elected," Hayes expected "a general acquiescence in the result among judicious men of all parties."

The Constitution provided that the votes of the electoral college be "directed to the President of the Senate," who "shall, in the presence of the Senate and House of Representatives, open all the Certificates and the votes shall then be counted." The Constitution, however, did not specify whether the presiding officer of the Senate or the combined House and Senate would decide which votes to count when conflicting votes were forwarded to Washington. Since Vice President Henry Wilson had died in 1875, the president of the Senate in 1876 was Thomas W. Ferry, a Michigan Republican who Postmaster General James N. Tyner wished were a "more resolute man." Arguing that Ferry should decide which votes to count, Hayes stated, "My judgment is that neither House of Congress, nor both combined, have any right to interfere in the count. It is for the V.P. to do it all. His action is final. There should be no compromise of our constitutional rights."

Apart from his Ohio circle, few people in Washington agreed with Hayes's hard-line position. Many Republicans and all Democrats objected to such a narrow congressional role. Nor were the Democrats powerless. Although Tilden—who had no stomach for the struggle—provided little leadership, the Democrats controlled the House of Representatives. Citing Republican precedents, they insisted that the combined House and Senate, with its Democratic majority, should decide which votes to count. All but the blindest of partisans realized that concessions and compromise were necessary if the count were to proceed.

Given the decentralized and contentious character of American political parties, disaffected Republicans and Democrats were bound to surface. A few senators and representatives on either side would be ready to sacrifice a national victory for regional, local, or factional advantages. The most conspicuous disaffected Republican was Roscoe Conkling, the boss of New York, who had liked neither Hayes's nomination nor his letter of acceptance and had been virtually silent during the campaign. A Democratic victory would discredit the reform wing of the Republican party and enhance Conkling's power to choose the 1880 Republican nominee. With Hayes tilting toward Conkling's New York enemies, Conkling's chances of patronage might be better with Tilden, especially if Tilden were aware of Conkling's good wishes. On 19 November, Conkling asked a Democrat (who promptly relayed the query to Tilden) whether they were going "to act upon the goodboy principle of submission, or whether" they meant "to have it understood that Tilden has been elected and by the Eternal, he shall be inaugurated?" Allied to Conkling were southern Republican senators who were afraid that they would be abandoned if Hayes conciliated the South with home rule in exchange for obedience to the Reconstruction amendments, as promised in his acceptance letter.

Hayes was aware of Conkling's "lack of hearty support" and of his view that Congress, rather than Ferry, should decide which votes to count. From a Conkling emissary, Hayes learned in mid-December that Conkling would support him on how the count should proceed if Hayes would repudiate reformers—such as Carl Schurz

and George William Curtis—and not disturb Conkling's New York customhouse lieutenants. Hayes also learned that southern Republican senators would remain loyal if he would continue to back them. Despite these threats and feelers, Hayes made no commitments. He repeated his pledge to "deal fairly and justly by all elements of the party" and reiterated the views he had expressed in his acceptance letter—that to achieve peace and prosperity, "the Southern people must obey the new amendments, and give the colored men all of their rights." His noncommittal attitude did not placate Conkling, whose man tried over the next two weeks to get Hayes to be more specific.

Disaffected Democrats also surfaced. The decisions of the returning boards and Tilden's caution made many members of his party anticipate and accept defeat. Having lost elections for sixteen years, they were habitual losers. Although all Democrats preferred a Tilden victory, some Southerners explored what they might gain from capitulation. These southerners wondered whether Hayes would concede the South to the Democrats (home rule) if they acquiesced to his election. In an effort to reach an understanding, Col. William H. Roberts of the New Orleans Times met with Hayes on 1 December. Other southern Democratic newspapermen and politicians met counterparts who were close to Hayes. The editor of the Memphis Avalanche, Col. Andrew J. Kellar, conferred with both William Henry Smith and Richard Smith of the Cincinnati Gazette. Kellar was an independent Democrat who wished to involve "the better class of white southerners" in building a conservative Republican party in the South that would "destroy the color line & save the poor colored people." After meeting with the Smiths, Kellar left for Washington on 14 December to "enter zealously on the great work."

Informed of Kellar's activities by William Henry Smith, Hayes was "hopeful that much good will come from friendly relations with good men" in the South. But he did not move beyond his promise in his letter of acceptance that, if the rights of all were recognized by all, the federal government would promote southern efforts to obtain "honest and capable local government." Confident that Ferry would

count him into the presidency, Hayes remained "perfectly free from committals as to persons and policies. "

Even before Kellar arrived in Washington, Garfield told Hayes that Democratic businessmen were "more anxious for quiet than for Tilden" and that "leading southern Democrats in Congress, especially those who were old Whigs," might be separated from their northern associates if they knew that Hayes would treat the South "with kind consideration." For several southern men, kind consideration meant-in addition to home rule and patronage-a federal subsidy for the expansion of the Texas & Pacific Railroad. Although many southern congressmen backed a subsidy bill, which the railroad's president, Thomas A. Scott (also president of the Pennsylvania Railroad), had lobbied for, the Democrats were even more hostile to subsidies than the Republicans were. Estimates of southern Democrats who might be enticed to accept Hayes ran as high as fifty; Garfield was skeptical but thought that the overtures were worth exploring. He told Hayes that if a third of that number would acquiesce in his election, "it would do much to prevent immediate trouble, & to make your future work easier." These southerners wanted Garfield to outline Hayes's southern policy in a speech, but they were "a little vague" about what they wanted, and Garfield was uncertain about Hayes's attitude toward the South, which, apart from his letter of acceptance, had not been friendly.

Republican Congressman John A. Kasson of Iowa, who had been a visiting statesman in Louisiana and Florida, also reported that southerners could be split off from the Democratic majority in the House. Making no mention of the Texas & Pacific Railroad, Kasson said that southerners wished to avoid a "national disorder" and "to recover intelligent white rule in the South," which, he assured Hayes, "need not. . .sacrifice. . .the constitutional rights of the negro, nor should it. Nor will they demand it." Kasson urged Hayes to encourage this group through a Washington spokesman.s

Hayes did not elaborate his views beyond his acceptance letter, refused to go to Washington to confer on important points, and did not designate a Washington spokesman. "There are too many cooks at Washington," he told Billy Rogers. "The true thing is, a firm

adherence to the Constitution. The V. P. ought to be able to finish the work at one sitting." Hayes continued to rely on Ohio Republicans in Washington-men such as Samuel Shellabarger, Dennison, and John Sherman -to represent him unofficially. "I wish you to feel authorized," he told Sherman, "to speak in pretty decided terms for me whenever it seems advisable -to do this, not by reason of specific authority. . .but from your knowledge of my general methods of action.." Hayes avoided pledges but left his lieutenants free to give assurances. He feared that an authorized friend might become the focal point of negotiations and fuel charges of "intrigue -bargain and sale. At any rate," he shrewdly concluded, "I see the true position to be 'hands off.'"

With the drift of events in his favor, Hayes was wise to distance himself from Washington intrigues, but William Henry Smith kept him informed. He knew, for example, that Kellar had joined with Henry Van Ness Boynton, the Cincinnati Gazette's correspondent, in exploring Democratic fissures and learned that Kellar, who had left by the morning of 20 December, claimed to have "given a decided impetus" to securing thirty to thirty-six southern Democrats who, in return for home rule, would oppose any "revolutionary" proposition to prevent Ferry from counting the vote. They wanted Hayes to "publicly avow his views," but Boynton explained "that it would be nothing more than a repetition of his letter of acceptance."

Later that same day, Boynton outlined for William Henry Smith a new scheme to attract the thirty to thirty-six votes wanted "for practical success"; it involved Tom Scott and the Texas & Pacific Railroad. Elaborating on what Garfield had alluded to earlier, Boynton noted that large areas of the South wanted help for that railroad and that the Republican party no longer favored such subsidies. But if Hayes would support aid for the Texas & Pacific Railroad and if, Boynton continued, "Tom Scott and the prominent representatives of the States I have named could know this, Scott with his whole force would come here, and get those votes in spite of all human power, and all the howlings which blusterers North and South could put up." Despite Boynton's exaggeration of the power of Scott's lobby, Smith relayed his letters to Hayes, adding that Joseph

Medill of the Chicago Tribune and Richard Smith, Boynton's boss at the Cincinnati Gazette, were willing to back the scheme. James M. Comly, who was visiting Washington, told Hayes that Garfield as well as Hayes's congressman, Charles Foster, thought that advocating a Texas & Pacific land grant would help their party's cause and might even make Texas a Republican state.

Hayes initially encouraged these negotiations but then pulled back. While maintaining, on 24 December, that he did "not wish to be committed to details," he told Smith that he desired "to restore peace and prosperity to the South" and "would be exceptionally liberal about . . . education and internal improvements of a national character." But, although Boynton desired it, Hayes would not unleash Scott and his lobby by approving, even privately, a land grant to the Texas & Pacific Railroad. With the tide carrying him toward the presidency, he felt uneasy about the Scott lobby and negotiations with southern Democrats, which might cost him the support of "more valuable" southern Republicans. "We are floating still," he wrote to Rogers, "sailing the Vesuvian bay"--calmly quietly. The Dems are afraid of their Southern men in the House, and the Reps are equally doubtful of their Southern men in the Senate. What is gained on one margin is lost on the other." On 3 January, Hayes told Smith, "I am not a believer in the trustworthiness of the forces you hope to rally," but he still planned to support education and internal improvements for the South, hoping to "divide the whites" and help "obliterate the color line." Although taken aback by Hayes's rebuff, Smith continued to pursue "the Southern matter" on his own responsibility. "I look for nothing of value growing out of Southern conservative tendencies in this Congress," Hayes perceptively told Schurz. "Whatever the caucus decides to do will be done, and the influence referred to is too small to control the large House majority."

By January, Hayes's thoughts were more on Republican solidarity than on dissatisfaction among southern Democrats. "We are in some danger . . . from treachery" and "more from mere 'cussedness,'" he wrote to Rogers on 31 December, "but most of all from lack of back bone." To encourage Ferry and to lead congressional Republicans

before the count began, Hayes thought of resigning his governorship and boldly claiming the role of president-elect. He consulted Morton, who was enthusiastic, but Sherman convinced him to continue waiting in dignified silence. Bold leadership would not work; too many Republicans rejected the notion that Ferry could decide which electoral votes were valid. Sen. George F Edmunds of Vermont thought that the Supreme Court should decide; Schurz, despite his friendship with Hayes, agreed. Conkling continued to insist that "the House has an equal voice in the Count." In addition, southern Republican senators who tended to follow Conkling's lead and owed their seats to Grant's support--feared that if Hayes deferred to reformers such as Benjamin H. Bristow and abandoned them, they would come out ahead by cutting a deal with the Democrats. Even more ominous was Grant's admission to his cabinet, and even to Tilden's lieutenant Hewitt, that he was uncertain who had carried Louisiana and that some Republicans favored a new election in Louisiana.

Realizing that he would not become president if Grant were opposed or even indifferent, Hayes wrote a friendly, well-received letter to Grant just before Christmas. Although Hayes declined Grant's invitation to meet with him, Comly journeyed to Washington and assured Grant that Hayes would not appoint Bristow to a cabinet position. "At this point in the conversation," Comly reported, Grant "drew the friendly cigars from his pocket," and a confidential talk ensued.

Hayes could conciliate Grant, but his lieutenants could not convince Congress to silently observe while Ferry decided the election. George W. McCrary, an Iowa Republican, introduced a resolution calling for a special committee to settle the crisis. The resolution passed the House in mid-December, and a Senate resolution introduced by Edmunds set up a cooperating committee. Ardent Hayes supporters were outraged when Democratic Speaker Samuel J. Randall appointed moderate Republicans to the House committee and were dismayed when Perry, who did not want to decide the election by himself, appointed Conkling to the Senate committee. Having heard that Conkling believed that the Louisiana

returning board had "greatly abused" its discretion, Hayes feared that with his power and hostility, Conkling would inspire a compromise measure that would change the result of the election. His fears were exaggerated. The committees agreed that a commission of five senators, five representatives, and five Supreme Court justices should resolve the dispute. Members of the commission were to be evenly divided between the parties except for the fifth judge-presumably David Davis, a political independent-who would be chosen by the other four justices. In effect, Davis rather than Ferry would decide the election. Both sides agreed that the commission would decide whether to investigate official returns and that its decisions would be final unless they were overturned by both houses, which was highly unlikely.

An expedient measure designed to avoid a conflict, the electoral commission bill was both widely disliked and widely supported. Originating with moderate Republicans, it proved palatable to most Democrats; businessmen, whether Democratic or Republican, were "clamorously in favor of it." Uncompromising Democrats - largely from the South - opposed it, but Tilden accepted it, even though he did not like it; most Democrats thought that it was their best chance for victory. Republican supporters ranged from reformer Carl Schurz to his archenemy President Grant, who lobbied effectively for the measure.

It was in the Hayes camp that support for the measure was lacking. He called it a "surrender, at least in part, of our case" and insisted that Ferry should decide which votes to count. Hayes believed that, by creating the commission, Congress had unconstitutionally usurped the president's power of appointment. But, realizing that the bill was bound to pass and that his opposition might hurt his cause, Hayes complained privately. Garfield called the bill an unconstitutional "surrender of a certainty for an uncertainty." Newspapermen, who had been wooing southern Democratic congressmen, were disappointed by the electoral commission bill, which renewed hopes for a Tilden victory. "The truth is we have had blunder upon blunder at Washington," William Henry Smith wailed.

Spawned by the crisis, their negotiations languished in the more relaxed atmosphere that followed publication of the proposed bill.

Actually, it was absurd for Hayes and his supporters to speak of surrendering a certainty. They had forgotten how up-in-the-air they had been; Hayes had been worried about lack of backbone, and Garfield had feared that some senators might be "treacherous." Charles Foster, however, told Hayes to face up to their untenable position. "Have we a case to surrender?" he asked; reminding Hayes of southern Republicans, he said, "We have a half dozen men in the Senate who I know are disposed to make merchandise" of their power and, "with Conkling, Edmunds and others to hide behind, may play the d[evi]l with us before we get through." Even if Ferry could and would count Hayes in, such a high-handed act would undermine the legitimacy of a Hayes presidency. "The overwhelming reason controlling men," Foster told Hayes, "is that whoever is elected should go in with the best possible title as can be given him." Foster's forcefulness helped Hayes accept the bill gracefully, and when it passed, he declared, "It is a great relief to me." Although he trusted that "the measure will turn out well," he reasoned that "defeat in this way after a full and public hearing before this Commission is not mortifying in any degree, and success will be in all respects more satisfactory." Hayes's equanimity and his capacity to adjust were assets that helped make his luck. George William Curtis found his admiration for Hayes "greatly increased by his tranquil attitude during all the late commotion."

"The Commission," Hayes wrote, "seems to be a good one." Contrary to expectations, the politically independent David Davis was not on the electoral commission. While the bill was being considered, he was the Greenback candidate for senator from Illinois and had no chance of winning until the Democrats -inspired by Tilden's nephew Colonel Pelton-threw their support to him. Pelton and his cohorts believed that by electing Davis they had purchased his support, but they had made a monumental miscalculation. Because he was beholden to the Democrats, Davis refused to serve on the commission. His place was filled by Justice Joseph P. Bradley, a Republican from New Jersey, giving that party an eight-

to-seven majority and making the odds in Washington five to one that the next president would be Hayes. Several members of the joint committee creating the commission served on it, but the Hayes camp was thankful that Conkling, who thought its duties "inconvenient if not distasteful," had refused to serve. Morton and Garfield, two of Hayes's staunchest friends, took seats on it. The selection of Garfield, who had helped disqualify Democratic votes in Louisiana, emphasized the political character of the commission.

"The great law suit," Hayes wrote to Birch on 1 February, "begins today. . . . Our chance seems fair." The count proceeded quickly before the joint session of Congress until it referred the disputed returns from Florida to the electoral commission and then recessed. The crucial question was whether the commission should accept or go behind the official returns certified by the governor and the secretary of state. The Democrats argued that testimony taken by both the Senate and the House proved that Tilden had carried Florida and that a partisan returning board and governor had defrauded him of his victory. That view had been upheld by the Florida Supreme Court on 14 December, when it reversed the returning board and allowed the Democrats to take over the state government on 1 January 1877. For the Republicans, William M. Evarts of New York argued against considering evidence that challenged the official returns, since reexamining the vote on the county and local levels would be an endless task and a decision had to be reached by 4 March. As the arguments unfolded, Shellabarger, who also represented the Republicans, wrote to Hayes that "we all 'feel in our bones' . . . the law and right is with us & we will get through." With each commission member arguing for his own party, it decided by an eight-to-seven vote not to investigate the official returns. On 9 February, by the same vote, it was determined that Hayes had won Florida.

So certain was Hayes of his just title to the presidency that he failed to see how lawyers could differ on the Florida question. Blinded by his own partisanship, he was amazed that the decision was by a strict party vote and mused about the strength of party ties. Confident of success, Hayes had already thought about a cabinet and

policies and had noted points to stress in his inaugural address: specie payments; civil-service reform; peace abroad and at home; and a South made prosperous by federal support of education and improvements, by appointments "to aid in good local government," and by its "cheerful acquiescence in the results of the war." In contrast, Tilden, realizing that the strict party vote prophesied his defeat, began planning a European trip.

Angry and stubborn, rudderless Democrats fought on. Possibly they could win Louisiana; if not, they might delay the count and extract concessions from Republicans. Above all, southern Democrats wanted home rule -in effect, white-controlled state governments. If Tilden, who would certainly accede to their wishes, were not elected, they wanted a commitment from Hayes. A minority of southern Democrats were also eager to secure federal support for railroad construction. The threat of a filibuster revived the Kellar and Boynton negotiations for the votes of thirty-five to forty southern Democrats, and when the Democrats were restrained in their delaying tactics, Kellar and Boynton claimed credit for their moderation. After losing Florida, the Democrats remained on the commission, and although they delayed the count by recessing the House until Monday, they did not prevent the count, as some hotheads wished to do. After their overwhelming support for the Electoral Commission Act, most Democrats felt constrained to abide by its results.

On the afternoon of 12 February, Louisiana's conflicting returns were referred to the commission. Because the unofficial returns in Louisiana gave the Democrats a large majority, because the Louisiana returning board was disreputable and lacked a Democratic member, and because Republican frauds were better documented in that state, it presented the Democrats' strongest case -if the commission would go behind the returns and hear evidence. From a technically legal standpoint, however, the Democratic case in Louisiana was identical with the one in Florida. Confident that Bradley and the other Republicans would refuse to go behind the returns, Shellabarger thought "it safe for Mrs. Hayes to begin to get the children ready." Although Lucy's "faith. . .in these 'mixed

commissions" was "weaker than a grain of mustard seed," Shellabarger had once again predicted accurately. A series of eight-to-seven votes on 16 February gave Hayes Louisiana.

After the Louisiana decision, neither Hayes nor the Democrats seriously doubted the ultimate result. On 17 February, he concentrated on his inaugural address and his cabinet. To gain "support from the . . . late rebels," he thought of appointing former Confederate Gen. Joseph E. Johnston to his cabinet. But on the same day, Hayes assured black leaders Frederick Douglass and James Poindexter that he would not sacrifice their rights for the support of white southerners, that he would uphold "the 13th 14th and 15th amendments."

Frustrated Democrats recessed to delay the count, but in their caucus on 17 February, they again decided not to obstruct the process. With only one southerner voting for a filibuster, Boynton and Kellar were particularly gratified. Boynton could not distinguish between the efforts of the "purely political" negotiations concerning home rule that Kellar conducted and the economic negotiations of the "Scott forces" commanded by Gen. Grenville M. Dodge (the builder of the Union Pacific Railroad) to secure a land grant for the Texas & Pacific Railroad. "Both worked earnestly" and both "contributed much" to the result. But with southern Democrats anxious to commit Hayes to home rule, Kellar begged him "to do or say something" to reassure them.

After the caucus vote, however, Hayes remarked that the "affair now looks extremely well" and remained noncommittal. "I prefer to make no new declarations" beyond my acceptance letter, he had told John Sherman a few days earlier. "But you may say, if you deem it advisable, that you know that I will stand by the friendly and encouraging words of that Letter, and by all that they imply. You can not express that too strongly." Aware that his "anxiety to do something to promote the pacification of the South" might lead him too far, Hayes kept his lips firmly sealed. But Stanley Matthews (who also argued Hayes's case before the commission) assured Edward A. Burke of Louisiana that Hayes did not like carpetbag rule. Burke was the personal representative of "Governor" Francis T.

Nicholls, head of the unrecognized Democratic government, similar to the Wade Hampton government in South Carolina. At a subsequent meeting on 18 February, Burke also pushed for assurances that strong Republican leaders such as Garfield, Sherman, Morton, and Blaine would not oppose home rule. When Matthews could not give these assurances, Burke threatened that Louisiana congressmen would ignore the caucus decision and lead a filibuster to prevent Hayes's inauguration.

If southern Democrats could convince Republicans that their assent was essential to elect Hayes, the Democrats could gain concessions, particularly in Louisiana and South Carolina. Mingled with their threats of filibuster were hints that political and economic concessions not only would cause southern Democrats to acquiesce in Hayes's election but also might win their allegiance to the Republican party. Charles Foster heard from Charles Nordhoff of the New York Herald, who again held out the prospect of forming "a real and honest Republican party in the South" based on old Whigs, "but only on condition that the carpet-bag leaders are dropped entirely." He suggested that if Hayes appointed two old Whig southerners to his cabinet, he would attract Democrats of that persuasion to the Republicans. But Nordhoff also warned that continued support of Governor Packard would cause an outbreak in Louisiana that would require an army of 100,000 to suppress. "I hardly believe all he says about L[ouisian]a," Foster wrote to Hayes the next day, but he added, "There is no mistaking the general feeling of kindness towards you in the South, -within the past ten days a number of men have assured me of their desire for your success."

Hayes and the Republicans were reluctant to abandon Gov. Stephen B. Packard of Louisiana and Gov. Daniel H. Chamberlain of South Carolina, who were risking their lives to keep their states Republican and to elect Hayes. Their claims to office and Hayes's claim to the presidency were all based on the actions of the returning boards. Even William Henry Smith, while orchestrating the Kellar and Boynton negotiations, exclaimed on 19 February, "You cannot dismiss those gentlemen with a waive of the hand" for "mere party expediency." Foster, who also wished to attract southern Democrats,

told Hayes on 16 February that he "did not see how you could throw Packard overboard." John Sherman, whose opinion Hayes valued, wrote on 18 February, "I see no way but the recognition of the Packard government followed by the utmost liberality to the South."

Indeed, Hayes needed the wavering southern Republican support on Monday, 19 February, if the Senate was to ratify the commission's Louisiana decision. Southern Republicans were so upset by negotiations with southern conservatives that they threatened to support Tilden unless Hayes promised them a cabinet position. For leadership, they looked to Conkling, who appeared willing to see Hayes defeated if it would enhance his own power. The Democrats' last hope was that Conkling and his southern allies would object to the commission's decision on Louisiana, but on 19 February he was conspicuously absent. Southern Republican senators were whipped into line; after all, if Tilden won, they would be certain of oblivion. While Democrats despaired of victory after the Senate approved the Louisiana decision, Hayes decided that his cabinet would contain no one from Grant's cabinet and no presidential candidates and that he would make "no appointment to 'take care' of any body."

With defeat certain, delay and the threat of chaos after 4 March were the Democrats' only bargaining chips. But they were dangerous chips to play; the American people, especially those connected with business, did not want chaos. After winning Louisiana with the help of southern Republican senators, Republicans would have to be badly frightened before abandoning those supporters. Having forced recesses on 17 and 19 February, House Democrats caucused anew. At that caucus, Speaker Samuel J. Randall accused southern Democrats of bargaining with Hayes; he predicted that Hayes would continue bayonet rule and ruin them. Randall proposed to delay the count and force the Senate to accept a bill naming Secretary of State Hamilton Fish acting president until a new election could be held. When the caucus did not accept this extreme scheme, its earlier noncooperative yet nonobstructive policy remained in place.

Using Randall's speech for leverage, Kellar and several southern Democrats called on Foster. "The Southern people who had agreed to stand by us in carrying out the Electoral law in good faith," Foster

reported to Hayes, "were seized with a fright, if not a panic." They referred to Randall's violent speech and asked for assurances that Hayes would end bayonet rule. After consulting with Matthews, Garfield, and Evarts, Foster planned to make a conciliatory and reassuring speech the next day. Kellar, Smith reported to Hayes, was disheartened and feared that northern Democrats -"Tammany Hall"- would whip into line the southern Whigs and Union Democrats who would give "cheerful support to Gov. Hayes." Kellar urged that Hayes say something and "settle the South" by appointing Kellar's friend Sen. David M. Key of Tennessee to the cabinet.

Apart from commending Foster for his speech-which promised southerners, "The flag shall float over States, not provinces, over freemen, and not subjects" - Hayes kept his peace, and Kellar's fears were not realized. The count reached Oregon on 21 February, and on Friday, 23 February, the commission voted eight to seven to award Oregon's three votes to Hayes. There had been so little suspense over the Oregon vote that by Thursday, Kellar believed that it was no longer necessary for Hayes to say anything. "Gen. Dodge has had the whole of Scott's force at work," Boynton exulted, and "with the purely political part will. . .defeat the desperate men. It is still difficult for me to judge which of these two forces has been the most potent element in the long fight."

Ironically, on the very Thursday that Boynton was so confident of victory over the filibusters, an editorial in the Ohio State Journal defended the Packard regime in Louisiana and urged Grant to uphold it with troops. Because Hayes's friend Comly edited the Journal, Hayes was thought to have inspired the article, which seemed to confirm Randall's prophecy that he would maintain bayonet rule. Neither Hayes nor Comly, who was ill, had anything to do with the article, but it led southerners to renew demands for assurances that Hayes would not restore bayonet rule. Shellabarger told Hayes of his fear that "they mean to kill us by 'filibustering.'" On Saturday, 24 February, after Oregon was counted for Hayes, the Democrats forced an adjournment until Monday.

Annoyed by the Ohio State Journal article, Hayes reiterated, "I stand on my letter," but he did compose a short speech elaborating

his plans for the South. He insisted, as he had recently told Frederick Douglass, "that for the protection and welfare of the colored people the 13th 14th, and 15th amendments shall be sacredly observed and faithfully enforced." Since the "tremendous revolution" had left the southern people "impoverished and prostrate," Hayes proposed to do what he could to make them "prosperous and happy. They need economy, honesty, and intelligence in their local governments," he continued. "They need to have such a policy adopted as will cause sectionalism to disappear, and that will tend to wipe out the color line" in politics. "They need to have encouraged immigration, education, and every description of legitimate business and industry" And then, paraphrasing Foster, Hayes wrote, "We do not want a united North, nor a united South. We want a united country." Hayes did not have to give the speech, but if he had, southerners would have found home rule and internal improvements implied conditionally rather than promised specifically. Refusing to be panicked by the "revolutionary conduct" of House Democrats, Hayes continued to plan for his presidency.

Although Sherman and Garfield thought that the count would be completed on time, other Republicans, including Foster, felt "great anxiety" about the filibuster threat. Grant also took it seriously and moved to resolve the crisis and relieve Hayes of a monumental problem. On Monday morning, 26 February, Grant told Burke that the Nicholls government "should stand in Louisiana" and that public opinion opposed the use of troops to uphold a state government; but, he said, he would not act because he did not want to embarrass Hayes. Later that morning, Burke told Sherman (who was now concerned), Matthews, and Dennison that if they wanted him to call off the filibuster, they should tell Grant that the immediate withdrawal of troops upholding the Republican government in Louisiana would not embarrass Hayes. When Sherman claimed that Grant would not agree, Burke showed them a dispatch to Nicholls that Grant had approved. Sherman, Matthews, and Dennison agreed to see Grant and assured Burke that Hayes would follow Grant's policy. But, knowing Hayes, Sherman wanted assurances that the Nicholls government would protect the rights of blacks and

Republicans; knowing the Senate, he wanted assurances that it would not challenge the election of William Pitt Kellogg by the Republican legislature, which would help Republicans retain control of the Senate. That evening, the same men and a few additional colleagues met in Matthews's rooms at Wormley's Hotel and agreed to the bargain outlined that morning.

Had Hayes, who was not the bargaining type, been consulted, he probably would not have authorized the bargain. One did not seem necessary, since Sherman had recently assured him that "the acquiescents" among the Democrats were in the ascendancy and that the count would be completed on time. He did not object, however, to assurances being inferred from his letter of acceptance. Actually, the significance of the Wormley's Hotel meeting and the importance of the Kellar and Boynton negotiations and the lobbying of Scott and Dodge have been exaggerated. Had there been no conference at Wormley's and no Texas & Pacific lobby, the count would have been completed on time. Hayes's calm, noncommittal approach in Columbus was the best possible response to the crisis. Democratic support of the filibuster was apparently impervious to negotiators and lobbyists since it had little to do with being southern or northern or being for or against internal improvements. Most Democrats would not delay the count beyond 4 March lest public opinion turn on them and provoke a new wave of Reconstruction legislation, but they were not averse to prolonging the crisis to extract concessions.

Democratic bluffs were moderately successful. Hayes had consistently called for honest and capable local governments in the South, coupled with recognition of the rights of all blacks and whites. Keeping his options open, he had not advocated the abandonment of Republican regimes in Louisiana and South Carolina. Without specific authorization, both Sherman and Foster—who a week earlier would not abandon Packard-joined Matthews and Dennison in committing Hayes to sustaining the Democratic Nicholls government in Louisiana, as long as the civil rights of blacks were respected. Grant regarded this position as inevitable and, with the approval of Hayes's friends, had already taken steps to implement it.

On Tuesday, 27 February, it appeared that the count would proceed smoothly. The electoral commission met at ten that morning and adjourned at seven that night, with the South Carolina case being settled for Hayes by the usual eight-to-seven vote. Congressman Henry Watterson of Kentucky read into the Congressional Record Grant's views supporting the Nicholls government in Louisiana and opposing the use of troops to maintain Republican Governor Packard. Burke worked to get the Democratic caucus in New Orleans to agree to respect the constitutional rights of blacks and Republicans and to accept Kellogg's election as senator. Matthews saw Grant, who agreed to rescind his orders to the troops in Louisiana to preserve the status quo -as soon as the count was completed. Matthews also joined with Foster to sign a statement saying that Hayes would allow the people of "South Carolina and Louisiana the right to conduct their own affairs in their own way, subject only to the Constitution of the United States and the laws made in pursuance thereof." Hayes later said that "Foster and Matthews took upon themselves the responsibility of giving assurances without consulting me but always inferentially from their knowledge of my views and temperament," and he acknowledged that they were generally correct. The Wormley's Hotel conference pieces were falling into place, and Boynton, Kellar, and Dodge claimed that their "force" was "strong and solid."

Despite the bargain and the lobby, the count did not go smoothly. On Wednesday, 28 February, according to Garfield, "the Democrats filibustered with all their might" and forced the House to adjourn. The House session that opened at 10 A.M. on Thursday, 1 March, was one of the longest and stormiest in history. Filibusterers made dilatory motions to recess, to reconsider, and to call the roll, but Speaker of the House Randall-in what Hayes understandably considered his finest hour-refused to entertain their motions, adding to the pandemonium. While the uproar was on, Louisiana's Democratic congressmen urged Grant to withdraw the troops immediately, and he approved the draft of a telegram. Signed by his secretary C. C. Sniffen, it alerted Governor Packard that public opinion no longer supported the use of troops to maintain his

government. Although he would not send the telegram while the filibuster continued, Grant assured Burke that if the count were finished that evening, Nicholls "would be in peaceful possession tomorrow."

Having extracted all that he could from the filibuster, Burke called it aimless. Congressman William M. Levy returned to the House to announce, "The people of Louisiana have solemn, earnest, and, I believe, truthful assurances from prominent members of the Republican party, high in the confidence of Mr. Hayes, . . . that he will not use the federal authority or the Army to force upon those States governments not of their choice. . . . This, too, is the opinion of President Grant." Perhaps because it was Grant's move or because winning the presidency was so important, erstwhile supporters of radical Reconstruction did not object to abandoning the Republican regimes.

Relying on these commitments to Louisiana and, by extension, to South Carolina, Levy called for the completion of the count, but fifty-seven bitter and disorderly filibusterers paid him no heed and prolonged the struggle until 3:38 A.M. The Senate then assembled in the House chamber, where Wisconsin was counted for Hayes. At 4:10 A.M. on 2 March 1877, Ferry announced that Hayes and Wheeler had 185 votes to 184 for Tilden and Hendricks. "Wherefore, I do declare that Rutherford B. Hayes of Ohio, having received a majority of the whole number of votes is duly elected President of the United States for four years commencing on the 4th day of March, 1877."

taken from <http://www.rbhayes.org/dispute.htm>

Hoogenboom, Ari. *Rutherford B. Hayes: Warrior & President* (University Press of Kansas, 1995.) Available from the publisher at www.kansaspress.ku.edu and through the Hayes Presidential Center Museum store (1-800-998-7737).