

SUPREME COURT HISTORICAL SOCIETY

The Supreme Court & the 1876 Presidential Election

Full Script

Introduction —

In 1876, the unclear outcome of a close presidential race fractured America along party lines.

Four Supreme Court justices played a key role in resolving the dispute.

They were charged with naming a fifth justice to complete an electoral commission made up of themselves and ten congressmen. The justices faced a difficult task.

The commission was evenly split between Republicans and Democrats, so whomever they picked would have the casting vote.

Was there a man on the Court impartial enough to trust with the power to decide a presidential election?

Chapter 1: ELECTION DAY —

On Tuesday November 7, 1876, less than twelve years after the end of the Civil War, the newly re-United States went to the polls.

But the presidential race between Democrat Samuel J. Tilden and Republican Rutherford B. Hayes did not end on election day.

Instead, it developed into a national crisis.

Late return showed Tilden winning the overall popular vote.

Hayes accepted the cause as lost and retired to bed.

But campaign leaders saw a chance to eek out a victory.

They dashed off telegrams to Republican leaders in Louisiana, Florida, and South Carolina urging them to hold their official results.

They asserted that the popular vote counts in these southern states were tainted by allegations of ballot stuffing, ballot stealing, and intimidation of black voters.

The governors agreed and organized canvassing boards within their states to investigate for misconduct.

These bodies had the authority to discount any disputed ballots and thus dramatically shift the balance of the election.

Democrats attacked the credibility of these boards claiming they were Republican controlled and would favor Hayes.

Each party eyed the other with mountain suspicion.

Chapter 2: THE PARTY DIVIDE —

Much of the tension between Republicans and Democrats resulted from the enforcement of Reconstruction measures.

When the states that had seceded from the Union were being readmitted, Republicans pushed for strong federal supervision.

They passed legislation giving rights to freed blacks, including the right to vote and hold office.

Racially integrated state and local governments soon sprouted in former slave states.

But Democrats saw the federal authority imposed in 1868 by the ratification of the fourteenth amendment as an overreach of power.

Their states' rights platform maintained that the returning states were sovereign and once readmitted to the Union could manage their own civic affairs.

By the time of the 1876 election, white conservative Democrats had recaptured control in all southern states but Florida, South Carolina, and Louisiana.

They embraced violence and intimidation to restore white supremacy.

Largely symbolically, President Ulysses Grant stationed federal troops in former Confederate states to protect Republican voters and to guard the three statehouses where Republicans still reigned.

Chapter 3: THE U.S. SUPREME COURT —

Another bone of partisan contention was greenbacks.

During the Civil War a Republican-led Congress passed the legal tender acts, which allows the U.S. government to print currency not backed in gold or silver reserves.

Hard money Democrats contended that the Constitution conferred no power to make government paper legal tender and that Congress was trespassing on the sanctity of privately-held contracts.

When the issue came before the Supreme Court in 1870, Chief Justice Salmon P. Chase held the legal tender acts unconstitutional.

Justice Nathan Clifford of Maine and Stephen J. Field of California, also Democrats, agreed with Chase that the acts had been an improper way for Congress to exercise its war powers.

Justices David Davis of Illinois, an Independent, and Samuel F. Miller of Iowa, a Republican, both dissented.

But President Grant soon had the opportunity to appoint two more Republicans to the bench.

When a second legal tender case was heard in 1871, the Court's original ruling was overturned in favor of the federal government.

Grant's two new justices, William Strong of Pennsylvania and Joseph P. Bradley of New Jersey had tipped the balance.

Five years later, some of these same justices would be working together to resolve the disputed 1876 presidential election.

Chapter 4: RUTHERFORD B. HAYES —

Rutherford B. Hayes was a three-term governor of Ohio when he accepted the presidential nomination of the Republican Party.

He was a compromise candidate, only selected by his party on the seventh ballot.

He depended on party leaders to manage his campaign, so that he could remain at home in Columbus.

A quiet family man, Hayes was devoted to his wife Lucy and their children.

His domestic values played well to his supporters, as did his patriotism.

Hayes had volunteered for duty in the Union army at the outbreak of the Civil War.

He served all four years, going back in after injury and rising to the rank of brigadier general.

After the war, he strongly supported political equality for blacks. Hayes campaigned on a promise to reform the civil service, which Grant had let sink into corruption.

To combat government graft, Hayes vows that if he was elected he would not seek a second term.

Chapter 5: SAMUEL J. TILDEN —

Although the Republicans called their opponents the party of secessionists, Samuel J. Tilden, the Democratic presidential candidate had not fought or the South and never support secession or slavery.

He preferred politics to the military and spent the war years as a legislator.

His work as a lawyer representing railroad corporations had brought him enormous personal wealth.

He was serving as governor of New York when he was nominated by his party.

Unlike Hayes, Tilden took a hands-on approach to his own campaign.

A life long bachelor, he was not concerned with making time for a family life.

Detractors criticized him for a lack of personal wealth.

Having been sickly in his youth, he came across as stiff and formal.

But Tilden had gained national renown for fighting corruption when he helped break up New York's corrupt Tweed ring.

From the start of the campaign, Tilden took aim at the many graft scandals riddling the Grant administration.

He also criticized the Republicans for exceeding federal authority in their Reconstruction measures and for permitting the circulation of soft money.

Chapter 6: DISPUTED VOTES —

In the weeks following the contentious 1876 election, canvassing boards in the Reconstruction states of Florida, Louisiana, and South Carolina, threw out whole precincts for polling misconduct.

Revised popular counts gave Hayes clear majorities.

Accordingly, Republican electors from all three states cast their votes in the electoral college on December 6.

Normally, it would have ended there.

Congress would simply count up the electoral college votes from all the states and declare a winner.

But Democrats knew Tilden had won the popular vote and did not give up.

Convinced that the returning boards had unfairly taken Tilden's majorities, state Democratic leaders also certified the votes of their own presidential electors.

Nineteen votes were at stake.

If they all went to the Republicans, then Hayes would tie Tilden 184 - 184 in the electoral college.

A total of 185 total electoral college votes were needed to win the presidency.

The last contested vote belonged to Oregon.

This state had gone to Hayes on the popular vote, but the eligibility of one of its Republican electors was in doubt.

Democrats contended the man was a government employee and should never have been admitted to the electoral college.

Oregon's Democratic governor agreed. He submitted a second state return, giving the vote to an elector from his own party.

This made twenty disputed electoral college votes.

Both parties claimed them sending what they insisted were certified state returns to Washington for counting.

Who would resolve this dilemma.

Chapter 7: THE ELECTORAL COMMISSION –

More than a month after election day Americans still did not know if Samuel J. Tilden or Rutherford B. Hayes would be their next president.

Congress had all of the states electoral college returns, but how would they decide which returns from Florida, Louisiana, South Carolina, and Oregon to officially count?

Democrats said the president of the Senate, a Republican did not have constitutional authority to make the call.

Republicans bristled at the suggestion of putting it to the House of Representatives as that body was controlled by Democrats.

A bipartisan committee had to be formed.

Five House members, five Senate members, and four Supreme Court justices were tapped to serve.

Seven were Democrats, even were Republicans.

This was the makeup of the committee as it stood on January 29, 1877, when President Grant signed the bill creating it into law.

Thirty-three days remained until he was to leave office.

Unless the newly-sanctioned body worked to decide his successor before Inauguration Day, March 5, the peaceful transfer of power could break down.

But first the electoral commission had to make another crucial decision.

A fifth justice was to be added bringing the number of members to fifteen and leaving no possibility of a deadlock.

Chapter 8: THE FIFTH JUSTICE —

The four justices serving were charged with selecting a fifth.

Democratic Justices Field and Clifford, and Republican Justices Miller and Strong knew that as the commission stood evenly split between the two parties this man would have the casting vote in any decision.

Everyone, including the justices themselves, assumed they would pick Justice David Davis, a declared Independent.

But at the very time the electoral commission bill was moving through Congress, the Illinois legislature met to elect a United States senator.

It decided on Justice Davis. Although his brethren on the Court petitioned him to stay, Davis gratefully accepted the senate seat.

With time running out, the four justices scrambled to weight their options among the remaining four associate justices.

A childhood friend of Hayes, Chief Justice Morrison Waite made it clear he would not serve on the commission.

Finally, on January 31, 1877, they chose Joseph Bradley to be the fifteenth commission member. Democrats cried foul.

They knew Bradley as one of the men President Grant had put on the bench to overturn the legal tender ruling.

Could he be trusted to form an impartial decision in this extremely volatile case?

Chapter 9: THE DILEMMA —

Only one day after Justice Bradley joined the commission, Congress met in joint session to tally the electoral votes.

Florida was the first contested state they reviewed: three separate certified ballots, one from the Republican electors, and two from the Democratic electors had been received.

Which set was valid?

How was this to be determined?

The first question the electoral commission had to answer was if it even had the authority to go behind the Florida returns and hear evidence about their legitimacy.

The Democrats argued for interviewing witnesses and examining ballots to further investigate ballot fraud.

The Republicans argued that neither Congress nor the electoral commission had the authority to examine voting irregularities because the votes had already been certified by state officials.

If the decisions of the Florida canvassing boards were not challenged then Hayes would win the state and take its electoral votes.

Partisan interests divided the commission 7 - 7.

Where would Justice Bradley stand?

Chapter 10: JUSTICE JOSEPH P. BRADLEY —

After Justice Davis, Bradley was considered the next least partisan member of the Supreme Court.

In 1873, he had notably joined with Democratic justice, Steven J. Field's dissent in the landmark *Slaughterhouse* decision.

Bradley insisted that his commission vote would be based not on partisan politics, but strictly on the Constitution.

Born to a poor upstate New York farming family, Bradley has taken it on himself to further his education.

He completed a distinguished college career in New Jersey and read laws in a Newark firm belonging to the uncle of his classmate, Frederick Frelinghuysen.

Frelinghuysen went on to become a New Jersey senator and a fellow member of the 1876 electoral commission.

Bradley became a prominent attorney who specialized in patent, commerce, and corporate law, and represented railroad companies.

One of the strongest intellects on the Supreme Court, Bradley not only had brilliant legal acumen, but broader knowledge of mathematics, philosophy, and natural science, as well.

Chapter 11: THE "CASTING VOTE" —

A conflicted Bradley wrote in his diary: "I wrote and rewrote the arguments on both sides as they occurred to me, sometimes being inclined to one view of the subject, and some times to the other."

When the time came to read his opinion, Bradley began by saying that the electoral commission had no more constitutional authority to inquire into a state's certified return than did the two houses of Congress.

The Constitution left wide room for inference on this subject, but Bradley insisted that the framers viewed the right of a state to have exclusive control of its presidential vote as paramount.

No federal power had the power to interfere with this right.

Each state had complete responsibility for its electoral process up to the day of the Electoral College vote.

In this election, that date was December 6.

Since the Florida canvassing board had done its work prior to that date its actions could not come under federal scrutiny.

With Bradley's Florida ruling, the commission came out 8-7 against investigating the decisions of the canvassing boards there and also in Louisiana and South Carolina.

As to the contested Oregon elector, Bradley said that the man's eligibility for the Electoral College should have been questioned before he voted, not after.

No federal body could disqualify an elector the state has sanctioned.

With this ruling all 20 disputed electoral votes would go to Hayes.

Debate raged in Congress throughout the month of February, but it would have taken a majority in both houses to overrule the commission's decisions.

Given that the Republicans held the Senate, this was not likely to occur.

Chapter 12: HAYES WINS —

On March 2, 1877, at 4:10 in the morning, it was finally agreed in Congress that the Republican ticket would be awarded all twenty of the disputed ballots.

The election was won by a single electoral vote: 185-184.

Fearing disruption, Rutherford B. Hayes—called "Ruther-fraud" by his detractors—secretly took the oath of office prior to the official ceremony.

He was sworn in just after midnight on Sunday, March 4, in the Red Room of the White House.

The public inauguration the following day went peacefully, although Democratic justices Field and Clifford refused to attend.

Indeed, Justice Clifford never stepped foot in the White House so long as Hayes was president.

Republicans may have retained the executive branch by a controversially close margin, but the system hastily created to decide the election has resulted in the peaceful transfer of power.

In the next elections, the Democrats would gain control of both Congress and the White House.

President Hayes withdrew the remaining Federal troops stationed in the South, thereby symbolically ending Reconstruction.

He also fulfilled his campaign promises of reforming the civil service and not seeking re-election.

Justice Bradley died in 1892, still the focus of political rancor over his electoral commission ruling.

But he was also praised for his patriotism in his accepting to serve on the commission and for fearlessly performing this unwanted duty.