THE HAYES–TILDEN ELECTORAL COMMISSION.

THE Forty-fourth Congress assembled in its second session on the 4th of December, 1876, under circumstances which caused unusual solicitude. A presidential election had been held in November, and the result was contested. There were 369 electoral votes, of which 185 were necessary to a choice. Of the 369 votes, Samuel J. Tilden confessedly had 184, lacking but one of the required majority. Rutherford B. Hayes had only 163 undisputed votes, but his friends claimed, in addition, the votes of Florida, Louisiana, Oregon, and South Carolina, with an aggregate of 22 electors, which would make his total vote 185, precisely the number needed to secure his inauguration. It was thus necessary that the votes of all these disputed States should be counted for General Hayes to make him President, whereas, should Mr. Tilden gain but one of these, or but one vote from one of them, the victory would be his.

From the States just named there were two sets of returns, one favorable to General Hayes, the other to Mr. Tilden. The Hayes or Republican returns had, in general, the character or quality that we call regular, that is, they were made up and forwarded by officials regularly appointed for that purpose by political organizations recognized by national authority as state governments, and actually holding power as such. The Republicans contended that, in counting the electoral vote, we could not go behind these regular returns; that to do so would be an invasion of the constitutional sphere of the States; that the Constitution expressly declares that each State shall appoint its electors "in such manner as the legislature thereof may direct;" that thus the State had a right to determine how its electors should be chosen, who they were when chosen, and how the report of this fact should be made. To this the Democrats responded that these returns were a product of fraud and dishonesty; that, in preparing them, the vote of whole precincts, parishes, and counties had been thrown out in order to secure Hayes electors; that fraud vitiates everything; that no pretended states rights should serve as a shelter to fraud; furthermore, that the state governments, so called, were not really such; that they did not represent the people of those States, but were themselves the product of fraud and corruption, and were kept in place only by what was called the "moral influence" of Federal bayonets. The Republicans retorted that the character of state governments could be denied to these organizations only by robbing the freedmen of the ballot guaranteed to them by the Constitution, and that when the votes of precincts, parishes, and counties had been thrown out, it was done in obedience to law, which commanded that this course should be pursued in communities where terrorism had been exercised to such an extent as seriously to affect the result.

Thus the issue was made up. Members of Congress came together feeling strongly themselves and reflecting the strong feeling which prevailed in the country. The eight millions of voters who had taken part in the election had been about equally divided. Those of each party were convinced that they had gained an honest victory, and were indignant with those of the other party for denying or even doubting it. The feeling of mutual hostility had been greatly intensified by party leaders, orators, and presses. In some of our cities it took all the terrors of a police court to keep Dem-

ocrats and Republicans from breaking the peace. Members of Congress who had begun by being angry on their own account, and who felt under some obligation to represent the anger of their constituents, exploded when they began to discuss the subject with their opponents, at the hotels and in the club-rooms of the city of Washington. It took quiet and sensible men some time to learn that they could gain nothing by arguing the question with those of opposite political views, and men of a different stamp never did learn it.

Under these unfavorable conditions, — conditions such as had never before followed a presidential election in this country, — Congress and the nation approached the counting of the electoral vote. The practical question in all men's minds, and on nearly all men's tongues, was, by whom shall it be decided who has been elected President of the United States? Who shall determine what are the proper electoral votes, distinguishing between those that are genuine and those that are spurious? Who shall count the votes and declare the result? Where is the tribunal to which this issue can be submitted, whose authority will not be questioned, and whose decision will be accepted as final?

There were many theories upon this subject of the count, but none of them seemed to be practicable. The only light which the Constitution sheds upon it is in these words: "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the vote shall then be counted." By whom? We are nowhere expressly told, and hence, wide scope is given for the partisan imagination. It is indeed added that the person having a majority of all the electoral votes shall be the President; but no further aid is furnished us in our effort to ascertain what authority is to decide who has, or has not, this majority.

The theory prevalent among Republicans was that the counting should be done by the President of the Senate. For this theory it was urged that precedent was in its favor, the President of the Senate having generally counted and declared the vote since the formation of the government; and further, it was asked, who would so naturally count the vote as he who opens the certificates containing the statement of it in the presence of the two Houses? Many names, great in the history of the Republic, were quoted as authorities on the side of this theory, but, to say nothing of other objections, there was one practical difficulty which was fatal to it. The President of the Senate was a Republican, whose opinions were presumably known, and there probably was not a Democrat in the United States who would willingly have submitted to his decision.

Another theory which was advocated by a portion of the Democratic party was that the House of Representatives should do the counting, the Senate being present merely as spectators. It was argued that inasmuch as the Constitution lays upon the House the duty of choosing a President, in case there has been a failure to elect by the people, it is necessary that the House, by previously counting the vote, should ascertain whether such failure exists. But the House of Representatives was Democratic by a large majority, and it would have been as unsatisfactory to Republicans to have the vote declared by the House as it would have been to Democrats to have it declared by the President of the Senate.

A third theory, deservedly received with more favor than either of the preceding, was that the counting should be done by both Houses, each having equal authority and responsibility with the other. The practical difficulty here was that the two Houses were of opposite politics; that each would negative the action of the other, and that

hence no result could be reached. A colleague of mine in the House, Mr. Charles Foster, afterward Governor of Ohio, and recently Secretary of the Treasury, proposed another solution of the problem which I thought a good one. He introduced a bill providing that Congress should submit the case to the Supreme Court, and that its decision should be held to be conclusive. But this plan was unacceptable to the whole body of Democrats, and, I suppose, could not have received a single Democratic vote, for the philosophical reason that, of the nine judges at that time on the Supreme Bench, there were but two of Democratic antecedents.

I will mention but one more theory.

A few Democrats of an ancient and harmless school were delighted with a discovery which they had made in the writings of Jefferson. It appeared that that great man had suggested that the electoral vote should be counted by the two Houses, not as separate organizations, but as merged in one convention, in which the vote of a Senator should count for precisely as much as the vote of a Representative. These amiable theorists would have had us agree upon this plan as a happy method of settling all our difficulties. Now, in the Forty-fourth Congress there were 74 Senators and 292 Representatives, the latter being almost four times as numerous as the former. Hence, in all questions requiring the action of both Houses, the vote of one Senator was about equal to that of four Representatives. The Jeffersonian idea might have proved to be a great success, could our friends have made it appear agreeable to 74 Senators, representing, many of them, half the population and resources of great and proud States, to submit to the immense diminution of power implied in their being placed, in the proposed convention, individually on a level with members of the other House. But as there was a great deal of human nature in the country that year, especially in the Halls of Congress, this theory of the past soon proved to be impracticable, and was heard of no more. It was evident that although Jefferson might have been responsible for the original suggestion, he was not responsible for the time and method of its application.

Such were the theories that were under discussion, and such were the obstacles which they encountered. It is now evident that the counting of the electoral vote could not have been safely committed to any of the agencies which were ordinarily recognized by different parties as the constitutional and proper tribunals for the performance of that duty. The responsibility could not have been laid upon any of these agencies without giving a positive advantage to one of the two parties, and thus encountering stubborn resistance from the other. As each party had control of one House of Congress, no plan could be successful in which both parties did not concur. But that Congress should promptly adopt some method of adjusting differences was demanded by the peace of the country. The situation was serious. Some thoughtful men felt that perhaps the greatest peril that the Republic had encountered was not that of the Civil War. It was repeatedly stated on the floor of the House of Representatives, and apparently believed by the majority, that if the Republican party should proceed, through the President of the Senate, to count the votes of the disputed States, and declare them for General Hayes, the House would then proceed to elect Mr. Tilden, or to count the vote and declare him elected by the nation. There would then have been a dual presidency, a divided army and navy, a divided people, and probably civil war. What plan could be devised to save the country from the evils that threatened it?

The answer was not easy. Everywhere about the Capitol were seen

thoughtful and troubled faces. The short winter days seemed gloomy, and the hours of wakefulness in the night were prolonged by anxious thought. Things were constantly occurring which revealed the extent of both the difficulty and the danger. One day a leading Democrat went across the House to General Garfield's seat, and, repeating a prediction which he had previously made, said that, within a hundred days, people would be cutting each other's throats. Republicans who happened to overhear the conversation did not, perhaps, regard the statement as improbable. My colleague from Ohio, Mr. Banning, a man kindly disposed, declared in a speech, that, if the Republicans should attempt to carry out their theory of the election, and if a part of the army with eighty rounds of ammunition, and the navy, should be ordered to support them, the people would put them all down. Mr. Goode, of Virginia, one of the ablest and best of the Southern members, said, upon the floor of the House, that, if the two parties went on in their respective courses, they would soon reach a point where one or the other must make an ignominious surrender, or they must fight. "Are gentlemen prepared for the latter alternative?" he exclaimed. A shout of "Yes" went up from the Republican side of the House.

In view of such a state of feeling as this, it was a satisfaction to know that, early in the session, broad-minded and patriotic men were beginning to study the difficult problem. It was thought well, in the first place, that the House should be better informed as to the extent of its own rights and duties. To this end, a committee was appointed to inquire and report upon the subject. The Speaker was pleased to name the writer of this article as a member of the committee. My first feeling was one of gratification at the compliment. But, upon reflection, it seemed so plain to me that the committee should be composed of great constitutional lawyers, that, as soon as the House adjourned, I hastened to the Speaker and tendered my declination, which was accepted. A few days later, he filled the vacancy by appointing Judge McDill, of Iowa, who creditably performed the duties of the place. Some good work was done. Mr. Seeley, afterwards President of Amherst College, belonged to the committee, as did also Mr. Burchard, of Illinois, a man of much varied kowledge, and since Director of the Mint. Both majority and minority reports were made, which served, in a measure, as guides to the respective parties in the House in their subsequent labors.

On the 7th of December, Mr. McCrary, of Iowa, introduced a resolution that a committee should be appointed by the Speaker, to act in conjunction with any similar committee appointed by the Senate in preparing and reporting some legislative measure for counting the electoral vote. This resolution was referred to the committee on the Judiciary, and on the 14th of December was reported back to the House and passed. Notice of this action was at once sent to the Senate. On the 15th of December, a resolution of like character was offered in that body by Mr. Edmunds, of Vermont, providing for the appointment of a committee of the Senate to act with that of the House. On the 18th this resolution was passed by the Senate, and the same day the House was notified of the fact. These committees of the Senate and House were appointed December the 21st and 22d respectively, Mr. Edmunds being chairman of the Senate committee, and Mr. Payne, of Ohio, since Senator Payne, chairman of that of the House. Each committee consisted of seven members. Frequent sessions of these committees, at first separate and afterward joint sessions, with much laborious investigation and much discussion of the merits of

different plans, were held from this time until January 18, 1877, when a carefully matured bill, with an accompanying report, was submitted by Mr. Edmunds to the Senate. The report was signed by all the fourteen members of the two committees with the exception of Senator Morton, of Indiana. The bill was soon launched upon the stormy sea of Congressional debate, to take its chances in the hurricane conflict of prejudice and opinion.

The gentlemen of this joint committee, — a joint committee we may henceforth call it, although it was not strictly such, the jealousy of the Houses having forbidden the use of that designation, — the gentlemen of this committee spoke with some reserve, as the proprieties demanded, of their month's work in the committee room. Some of them, however, did divulge to personal friends that they had found their task to be delicate, difficult, laborious, trying to the patience, provoking, and often very discouraging. Many plans had been, of course, rejected. One of these would sometimes break upon their minds like an inspiration and fill them with hope, only to encounter, after a morning's debate, some insuperable objection and be abandoned. Communications which they received from the outside showed with what jealousy they were watched by the two parties, both in Congress and throughout the country. They soon discovered that nothing but defeat could be expected for any measure they should adopt which did not exhibit absolute impartiality toward the two parties. To quote from a speech of Mr. Thurman in the Senate, "It was perfectly clear that any bill that gave the least advantage, ay, the weight of the dust in the balance, to either party, could not become the law of the land." To make the plan acceptable, it must be such that no one could give even a sensible guess beforehand as to what result it would produce.

The principal points of the bill, as finally reported to the two Houses, were the following: The Senate and House were to meet in the Hall of the House, as formerly, for counting the electoral vote. The President of the Senate was to be the presiding officer, and the vote was to be counted by him, or by the tellers under his direction, in accordance with precedent, until some State might be reached to whose vote objections should be offered. The objections should then be put in proper form, and, if there were but one return from the State which had occasioned the disagreement, the Houses should separate, and each House should render a decision upon the objections submitted to it. The Houses should then again meet, and the result of their action be announced. The vote of the State, which, it will be observed, had but a single return, should then be counted, unless it appeared that both Houses had concurred in rejecting it. But when, in the progress of the count, a State might be reached from which there was more than one return, the presiding officer should call for objections to any or all of the returns. The objections, when they had been prepared, together with all the returns and accompanying papers, should then be submitted to the judgment of a Commission which should be constituted as follows: The Commission was to consist of fifteen members, of whom five were to be Representatives, five Senators, and five Justices of the Supreme Court; the five Representatives upon the Commission to be chosen by the House, and the five Senators by the Senate. Of the five Justices, four were virtually designated by the bill, and these four were to elect the fifth. It was assumed by common consent, and was agreed by caucuses of the two parties in both House and Senate, that, of the five Representatives to be chosen, three would be Democrats and two Republicans; that of the five Sen-

ators, three would be Republicans and two Democrats. Of the four Justices that were indicated in the bill, two were of Democratic antecedents and two of Republican. The spirit of the bill required that the fifth man whom these Justices were to select should be neutral as regards the two parties, or, if possible, should be half Republican and half Democrat. Should this arrangement be perfectly carried out, there would, as the reader will see, be just seven and a half Republicans and seven and a half Democrats on the Commission. And yet, as the number of the Commissioners was an uneven number, a decision must be reached; for, however desirous the fifteenth member might be of rendering a decision on both sides, the absolute simplicity of the human will in its action would have prevented his doing so. He must decide wholly for or against each return from a State.

The bill provided that whatever powers were possessed by the two Houses of Congress, in counting the electoral vote, should also be possessed by the Commission. Should it be asked whether the Commission had power to go behind the returns made by the state officers, the answer was that it had not, unless the two Houses had such power. If it were asked whether the Commission was forbidden to exercise such power, the answer was, not unless the Houses were so forbidden. Indeed, the Senate, under the leadership of Mr. Edmunds, voted down, during the same hour of one day, two antagonistic propositions upon this subject; namely, the proposition that the Commission should have the right to go behind the returns from a State, and the proposition that it should not have such right. Beyond the proposition that the powers of the Commission were to be the same as those of the two Houses, there was no attempt in the bill to define what they were. With this limitation only, which was scarcely a limitation, the Commission was made the absolute judge of the extent of its own jurisdiction. It was to a Commission so constituted and with such powers that the returns from Florida, Louisiana, Oregon, and South Carolina, with all accompanying papers, were to be referred. It was made the duty of the Commission to find who were the legal electors and what was their vote in each of those States, and report it to Congress. When such report should be made, the Houses must meet without delay to hear it announced. If objections were offered, the Houses must again separate, each pronouncing judgment upon them in its own chamber. They were then to reassemble, to hear these judgments read. The decision of the Commission must then stand as valid, unless it should be rejected by the concurrent action of both Houses. As these Houses, however, were of opposite politics, such a result, whatever the decision might be, was one that never could be reached.

Such were the methods of procedure provided in this bill, — the method in case of States to whose vote there was no objection, in case of States sending but one return to which there was objection, and States forwarding double returns to which, of course, objections would be numerous. These methods were to be continued until the votes of all the States should be counted in alphabetical order and the grand result declared. Had any statement in detail of the powers to be exercised by the Commission been contained in the bill, it would have insured its instant defeat. It was essential to the success of the measure that neither the members of the Commission nor those of the two Houses should be able to foresee what powers the Commission would assume. The form in which the bill was finally left exhibited an impartiality in regard to the two great parties as nearly absolute as it was possible to attain.

Whatever faults the bill might have, it had the great merit that, should it become a law, and its execution not be prevented by revolutionary measures, it must make somebody President of the United States. This, no doubt, was the result that the common welfare demanded. It was more important that the presidential issue should be decided effectively than that it should be decided rightly. If the alternative were a decision wholly right which should be questioned by half the nation, or a decision wholly wrong which the whole country would accept, the latter, no doubt, was the result to be desired.

This bill of 1877, to provide for and regulate the counting of the electoral vote, was one of the great legislative measures of history. It exhibited ability, skill, knowledge of men, fertility in resources, fairness, patriotism, statesmanship. It was worthy of a great crisis in national affairs, and deserved to be passed.

But before we follow the fortunes of this bill in Congress, it will be necessary to say something further of its relations to the two parties. It was from the beginning a Democratic rather than a Republican measure. It was indeed inaugurated, as we have seen, in the Senate and House by two Republicans who remained its faithful and efficient friends. Many patriotic men, of both parties and in both Houses, advocated it from the first and continued to do so to the end. But the proportion of Democrats in both Houses, and especially in the House of Representatives, who supported the measure throughout, was much larger than the proportion of Republicans. When among Democrats, on their side of the House, you felt that the atmosphere was friendly to the bill; while upon the Republican side it was regarded with general suspicion. The explanation is not far to seek. As the regular returns from the disputed States were favorable to General Hayes, the Republicans had what was regarded as a *prima facie* case, and the burden of proof must rest upon their opponents. The presiding officer of the Senate and of the two Houses, when they should meet together, was a Republican, and, whatever theories might be held, his opinions would have some weight in counting the vote. Further, the Chief Magistrate was a Republican, and one not much inclined to surrender when he thought he was right. He would be pretty likely to see to it that the man he thought honestly elected should be duly inaugurated. Under these circumstances, the Democrats, or at least a majority of them, thought that they could lose nothing, and might gain much, by an impartial law which should bind all parties. Republicans, on the other hand, were naturally content to retain the advantages of their position. There was another consideration which affected the relative friendliness of the two parties to the bill. There was a sharp issue, as we know, between Democrats and Republicans in regard to the power of Congress to go behind the returns made by state officers. Republicans believed this to be unconstitutional, while Democrats declared that justice demanded it should be done. It was early understood that the bill which the committee were preparing would be neutral on this point. While it would not authorize the Commission to go behind the returns, it would not forbid their doing so. Many Republicans felt that they could not vote for a measure which would even permit such an invasion of the organic law. They contended that it was a compromise of principle like that of 1820, which condemned half the country to slavery; like that of 1850, which gave us the Fugitive Slave Law. It belonged to a class of weak concessions which had always injured the country and ruined every party that had touched them. They had a candidate, lawfully elected, and why should they sacrifice his

rights, and the rights of the people that voted for him, through the still worse sacrifice of constitutional principle? I shared in the views of my party and voted with the majority of my friends in the House against the bill. It was a mistake. We lost an opportunity. I did not give my vote, however, without much previous hesitation. I still have in my possession a rough outline of an argument in favor of the bill, which I made out late one night in my room, that I might see how it looked. In my present judgment, it is a better argument than one which I made afterwards in the House against the bill. It was an experiment which failed that I made upon my own mind. The feeling that I had no right to sacrifice a just cause upon grounds of doubtful constitutionality compelled me to vote in the negative.

I must not fail to present, as pertinent in this connection, a much more important piece of personal history, which was never fully understood by the public, and now seems, though quite undeservedly, to be almost forgotten. We have seen how important it was that the fifth place among the Justices of the Supreme Court who were to serve upon the Commission should be filled, if possible, by a man just half Democrat and half Republican. This, the reader will remember, was demanded by our arithmetic. In no other way was it possible so to divide the Commission that each party should have exactly half of it. The man needed for this purpose seemed to have been supplied in Mr. Justice Davis, of Illinois. This gentleman was an able judge and a worthy man with a strong taste for active politics. Originally a Republican and an intimate friend of Mr. Lincoln, he had been nominated for the presidency in 1872 by the Labor Reform Party, had received nearly a hundred votes, the same year, in the National Convention of the Liberal Republicans, and had been talked of as a Democratic candidate in 1876. These events, on some principle which I do not fully understand, were thought to have set him down about midway between the two leading parties. He belonged to a highly respectable class of politicians known as Independents. To anticipate a little, the impartiality of his attitude towards the two parties was strikingly illustrated, at a later period, in the United States Senate. It was said of him there, no doubt with some jocose exaggeration, that he seemed to be trying to divide his influence, his voice, and his vote, as equally as possible between Democrats and Republicans; that if he voted twice in succession with the same party, he appeared to be alarmed lest he should take on the character of a partisan, and made haste to restore the healthful balance of his mind and of his political action, by voting next time with the other side. In justice to him, it should be remembered that the position of independency in politics was at that time less understood, had been less practiced, and hence was more difficult of graceful maintenance than it now is. A man as richly endowed as we have seen Judge Davis to have been, with the grace of impartiality, with a talent for being on both sides, would seem to have been the very man that was needed for the fifth judge upon the Commission. If the ideal were half Democrat and half Republican, how could it have been more perfectly realized? Accordingly, it had been early understood that the other judges would agree upon him for the place, and that he would accept it, though doubtless feeling that there were nearly equal reasons both for and against his doing so. Assuming that Judge Davis would be the fifteenth Commissioner, the Democrats, with good grounds, counted upon his giving them the victory. It will be remembered that in order to elect Hayes it was necessary that the

Republicans should gain all of the four disputed States. If any State or any portion of a State went adversely, Hayes was defeated. It was necessary that at least four successive decisions relating to these four States should all be given in favor of the Republicans. Now it was morally certain — it was as certain as the future action of a free agent can ever be — that Judge Davis would never give four decisions in succession, upon difficult and delicate questions, in favor of the same party. It was inevitable that he would not decide all these issues for the Republicans, and if he failed them but once their case was hopeless. Hence, from the time when the main features of the forthcoming bill had come to be understood, until some time after the middle of January, there was a general expectation of victory among Democrats, and of defeat among Republicans. When you met a Democrat, his face wore an expression of evident, though restrained satisfaction, while Republicans looked troubled and depressed. This was largely due to the general impression that Judge Davis would be placed upon the Commission. Here was another of those causes which predisposed Democrats to commit themselves for the bill, and Republicans to commit themselves against it.

But now occurred one of those remarkable things which in reading fiction you stop to criticise as improbable, though they occasion no surprise to the thoughtful student of history. About the middle of January, the legislature of Illinois began balloting for United States Senator. The vote was so close between Democrats and Republicans that five Independents held the balance of power. Several unsuccessful ballots were taken, and there seemed no prospect of a result until negotiations were commenced for a union between Democrats and Independents, with a view to the election of Judge Davis. Late one evening, I heard that our prospective Commissioner had decided to permit the use of his name as a candidate. The next morning, entering the Hall of the House some time before the hour for opening, I observed that the Democratic side was already well filled, and that its occupants were collected in groups which appeared to be engaged in animated discussion. I did not intrude, but learned from Republican friends, whose opportunities for hearing had been better than mine, that our neighbors were all talking about Judge Davis. Republicans also showed a deep interest in the news. It seemed to be generally admitted that the use of Judge Davis's name in an active political canvass, whatever the result of it might be, would disqualify him for a place on the Commission. We soon learned that this view of the case was also taken by himself. The effect of the withdrawal of his name as a candidate for the Commission undoubtedly was to make Democrats less and Republicans more hopeful as to the result. It no doubt made some votes for the bill on the Republican side, and deprived it of some on the Democratic. But this change occurred quietly among the more obscure members. Those on both sides who had openly committed themselves commonly adhered to the positions they had taken. It was creditable to the patriotism and consistency of both Democrats and Republicans, as a body, that they did not permit what had occurred to change their purpose in regard to the bill.

The name of Mr. Justice Bradley was now thought of as a substitute for that of Justice Davis. Of the occupants of the Supreme Bench whose names had not yet been considered, he was the most conservative. He had commended himself to Democrats by holding strong opinions, when on the bench, against the constitutionality of the Enforcement Act. He had held court in Louisiana, where he was popu-

lar, and had given a conservative opinion in the decision of the Supreme Court upon what were known as the "Grant Parish" cases. He had never been in sympathy with the original abolitionists, and would probably have found it difficult to attach the same importance to the interests of a black man that he did to those of a white man. Upon a comparison of views in regard to his antecedents, the faces of Democrats began to wear a look of returning cheerfulness. They felt that, if he should be placed upon the Commission, they could still look forward hopefully to the result.

Thus much it has seemed necessary to say in regard to the attitude of the two parties towards this great measure. Let us do exact justice to both. That there were some mere trimmers and time-servers in both parties cannot be doubted; but it is equally certain that the general tone of feeling was earnest and manly. The debate had a serious character which commended it to the approval of thoughtful visitors. There was much party feeling on both sides, but a prevalent sincerity of purpose. The desire to learn what duty and the common welfare demanded was general. It was no doubt party feeling which increased the friendliness of the Democrats to the bill in the earlier period and diminished it in the later. A few of them were bitter opponents of the bill from the beginning, and became obstructionists towards the end. But after making all the deductions from the credit due them which these facts require, it must still be admitted that a powerful, perhaps a controlling influence was exerted among them by patriotism and true statesmanship. We cannot withhold our admiration from the work which they or a majority of them did. To both parties in this crisis we must accord general honesty of purpose. But as what the Democrats did was objectively right, as they had the principal share in the support of a bill which now appears to have been necessary to the public order, they will stand fairest, so far as this legislation is concerned, upon the page of that history which is less curious about hidden motives than about the utility of measures.

There were no Republican obstructionists. But it would be rash to say there would not have been any, had the election of Mr. Tilden seemed as probable as did that of General Hayes.

But it is time to inquire what progress was made by the electoral bill in the two Houses. It has been stated that this bill was submitted to the Senate, by Mr. Edmunds, on the 18th of January. The debate commenced on the 20th, and continued almost uninterruptedly to the 25th. The 25th and the 26th were mostly occupied with the discussion of the subject in the House. This debate must no doubt be classed in history with the great intellectual conflicts of Congress. Senator Edmunds, who reported the bill to the Senate, and who was understood to be the author both of the bill and of the report, made the opening speech. It was perhaps the best speech made in favor of the measure, not only because it was learned, logical, and persuasive, but still more because it was wise. It contained just enough to put the bill in an acceptable light. It was great for what it omitted. It was not delivered in order to make a great speech, but to secure the passage of the bill. It explained difficulties, soothed prejudice, conciliated opposition, and made the need of the country for amicable adjustment stand out in a clear light. He was the presiding spirit of the debate in the Senate. He was constantly in his place, and much of the time on his feet. By courteous interruptions, he supplemented the speeches of his friends with needed arguments, and helped his opponents to some ignored or forgotten fact which made a half-hour's talk irrelevant or innocuous.

He exhibited a rapier-like swiftness and point which considerably diminished the desire of the opposition to prolong the debate. It may fairly be said that he did more than any other man for the success of the bill. It was one of the occasions which led to the considering of the Vermont judge as the first man in the Senate. He was ably supported by Senators Bayard, Thurman, Frelinghuysen, and Conkling, and was warmly opposed by Morton, Sherman, Cameron, and Eaton. Mr. Blaine, then a new member of the Senate, spoke briefly but exceedingly well, expressing his regret at not being able to support the bill. In the House, Hoar, Foster, and McCrary, among Republicans, and Payne, Lamar, Springer, Hill, Abram S. Hewitt, and Tucker, among Democrats, delivered noticeable speeches in favor of the measure. Strong efforts were made against it by Garfield, Hale, Lawrence, and others on the Republican side, and by Proctor Knott and Blackburn on the Democratic. The debate included constitutional arguments, historical discussion, and patriotic appeal, enlivened occasionally, by humor and witty retort. There was also some downright raving. It would require a separate paper were I to indulge in quotation and appropriate comment. Many of the speeches in both House and Senate were elaborately prepared. Some of them were remarkable for beautiful and impressive perorations. I commend them to the attention of those of my readers who are fond of literary studies.

As the debate advanced in the Senate, and the bill was examined and privately discussed by members of both Houses, it was more and more evident that it would become a law. The tide of feeling in its favor rose higher every day, and the response from most parts of the country greatly aided it. On the morning of January 25, the bill passed the Senate, and it passed the House on the 26th. It might have received the signature of the Chief Magistrate on the following day, but President Grant was absent in Maryland, attending, I believe, some exposition of mechanical industry. But, on the 29th, the bill was not only signed by the President, but was returned to the Senate with a message of cordial approval. On the 30th, the Commissioners were all elected. The Senate chose the following gentlemen: Edmunds, Morton, Frelinghuysen, Thurman, and Bayard. The House chose Representatives Payne, Hunton, Abbott, Garfield, and Hoar. The Justices who had already been designated by the bill were Clifford, Strong, Miller, and Field; and these gentlemen agreed upon Mr. Justice Bradley as the fifteenth member of the Commission. On the 1st of February, the Commission organized with Mr. Justice Clifford as president, and notified both House and Senate of the fact. On the same day, as was provided by the new law, the counting of the electoral vote commenced, and was the absorbing object of attention in both Houses, and I might almost say in the whole country, until it was completed on the 2d of March.

The members of both Houses and both parties came together with cheerful faces in the Hall of the House of Representatives to begin the count. Hope and good humor prevailed on all sides. The spectacle was one of unusual interest and had attracted visitors from remote parts of the country. At one o'clock P. M., the doorkeeper of the House announced that the Senate of the United States was at the door. The Senators, preceded by their proper officers, were immediately admitted and received by the Representatives standing. The ceremonial prescribed by the law was duly observed. The President of the Senate was seated in the Speaker's chair, as president of the joint meeting. At his left sat the Speaker, and in front and below sat the subor-

dinate officers of both Houses. The Senators occupied the body of the Hall upon the right of the presiding officer. Two tellers were appointed on the part of each House. The burdens of the presiding officer, Senator Ferry of Michigan, who had been made President of the Senate upon the death of Vice-President Wilson, were greatly lightened by the guidance and support afforded by the new law; but his duties were still delicate and arduous, and were performed with a dignity, watchfulness, impartiality, and painstaking correctness which secured general commendation. The counting went on briskly through the earlier States of the alphabetical list, Alabama, Arkansas, California, Colorado, Connecticut, and Delaware. It was immaterial who counted the votes of these States. They could count themselves. But when the State of Florida was reached, double certificates were opened, and objections were at once heard from different parts of the Hall. Both certificates, together with the various objections and all papers in the case, were then sent to the Commission. That tribunal was occupied until the 9th of February in reaching a result which was not achieved without much wearisome investigation and listening to many arguments from both sides. On the 10th this decision was laid before the joint meeting of Congress. It was found that the seven men upon the Commission who had been chosen avowedly as Democrats had voted for the Tilden electors; the seven men who had been chosen as Republicans had voted for the Hayes electors; and the conservative member had determined the result by voting with the Republicans. Objections were at once raised to the decision, and the two Houses separated, the Senate voting to sustain it, and the House voting the opposite, which, of course, left it binding under the law. It would have been singular had there not been a somewhat marked change in the feeling of the parties in regard to the operation of the law after this decision. It may be thought that, when the law was passed, there was no further peril; and this would indeed have been true except for disorderly and obstructive methods. The result of the vote must be announced before twelve o'clock on the 4th of March. The time was becoming short. Owing to delays, some of them unnecessary, the vote of Florida was not counted until the 12th. This left only sixteen full working days to complete the count. There were still three States with double returns, which of course would be sharply contested and must be referred to the Commission, which was a judicial body and could not be hurried. Minor difficulties were being raised for a purpose, it was thought, which increased the delay. But the majority of both Houses stood by the arrangement, and the great machine, though heavy and slow, still ground on. The vote of Louisiana was counted on the 20th, that of Oregon on the 24th, and both were counted for Hayes. On the last day of February, when there were but three more working days, the vote of South Carolina had not been counted, which was also true of Vermont and Wisconsin, in regard to both of which captious objectors were waiting their opportunity. It was at this point that there broke forth a bitter and persistent opposition by means of dilatory motions. This opposition, at one time, assumed such proportions as to fill patriotic minds with alarm lest the declaration of the final result should not be reached. This calamity to the country might not have been averted, had not the man of the occasion been found in Samuel J. Randall, the Democratic Speaker of the House. He was a warm partisan, but a man of firmness and conscience in regard to his obligations to the Constitution and the laws. His oath to support these was not to him

an unmeaning form. He had a clear conviction that it was his duty not to permit the object of the electoral law to be defeated by any factious policy of obstruction. He had a strength of will equal to the emergency, and he put it to good use. On the 24th of February, the Speaker, in declining to entertain a motion which, though parliamentary and suitable in itself, was dilatory in effect, made a ruling, involving a principle of the highest importance and of the greatest practical value for all legislative bodies. I give his words. The Chair "rules that when the Constitution of the United States directs anything to be done, or when the law under the Constitution of the United States, enacted in obedience thereto, directs any act by this House, it is not in order to make any motion to obstruct or impede the execution of that injunction of the Constitution and the laws." After that decision there was comparative good order for two or three days. On the 28th of February, the Speaker having refused to entertain a motion which was of a dilatory character, a member appealed from the decision of the Chair. The Speaker refused to entertain the appeal. Then followed a scene of great clamor and confusion, the obstructionists insisting upon it that the Chair should admit the appeal. But as that officer only gripped his gavel the tighter, and his always long under jaw seemed to be growing longer, they had to abandon the effort. We then had comparative quiet until the following day, when the disorder reached its height and was, at times, of almost a threatening character. From ten o'clock A. M. on the 1st of March until four o'clock A. M. on the 2d, we were constantly in our seats. Owing, perhaps, to an understanding reached among themselves, the previous night, the obstructionists made a united and desperate effort to waste the time of the House by dilatory motions. During much of this time, the Speaker stood in his place deciding questions of order in the midst of noisy and hostile demonstrations. He was subjected to a strain upon voice and nerve and physical strength such as few men could have endured. At times he was visited with a storm of questions and reproaches. Would he not entertain a privileged motion? He would not. Would he not put a motion for a recess? a motion for a call of the House? a motion to excuse some member from voting? a motion to reconsider? a motion to lay something on the table? He would not. Were not these motions in order under the rules? They were. Would he not then submit some one of them to the House? He would not. Was he not an oppressor, a tyrant, a despot? He was not. Would he not then put some dilatory motion? He would not. Would he not entertain an appeal to the House from his own decision? He would not. Why would he not? Because of his obligations to law. This is a condensed statement of a struggle which was going on for several hours. The scene was varied on one or two occasions by a proposal that the House proceed at once to the election of a President of the United States, which, of course, was ruled out of order.

A better idea of what this struggle was may be conveyed by a quotation from the Congressional Record. It is but just to add, as will be seen, that several of the persons introduced here were acting in good faith and not with the intention of increasing the disorder.

Mr. Eden. I call for the regular order.

Mr. Caulfield. I wish to make a parliamentary inquiry. Do I understand that the two hours' debate allowed by the law is to begin now, under the ruling of the Chair?

The Speaker. The gentleman is right in so understanding.

Mr. Caulfield. Well, sir, I appeal from that decision. I contend that there is no power in this House to proceed to the consideration of this question until we know what the question is. Under the present circumstances we do not know what the question is.

The Speaker. That is for the House to determine, not the Chair.

Mr. Caulfield. But until that certificate is opened, it is impossible for us to know what objections we are to consider.

Mr. O'Brien. We must have the certificate before we can discuss and vote upon this question.

Mr. Watterson. I rise to a parliamentary inquiry. I wish to know whether the progress of this debate is in order or not.

The Speaker. It is in order. The gentleman from Ohio (Mr. Poppleton) is recognized; and if he does not desire to speak, the Chair will recognize some other gentleman.

Mr. O'Brien. Does not the Chair entertain the appeal from his decision?

Mr. Caulfield. I insist on my appeal from the decision of the Chair.

The Speaker. The Chair declines to entertain the appeal.

(Cries of "That is right," and applause.)

Mr. Springer. I hope the Chair will not insist upon that position. This is one of the most important questions that ever came before this House. (Cries of "Regular order!") I insist that this appeal must be entertained, and that we must know whether this is a case that has gone to the Commission, or whether it is now to be considered by the separate Houses. This is not a dilatory motion, but one that arises upon a vital provision of the electoral law; and I ask the Chair to entertain the appeal.

The Speaker. The Chair considers that he is bound by the law —

Mr. Springer. I want the law enforced.

The Speaker. And the law is as plain as the day.

Mr. Springer. If this case under the law has gone to the Commission, it is there now by the operation of the law and we have nothing before us.

The Speaker. This House has it within its power by a majority vote to call from the Senate that paper.

Mr. Caulfield, Mr. O'Brien, and others. When?

The Speaker. Surely, gentlemen will not say that the Chair has that power.

Mr. Walling. But we ask for a vote first on calling that paper from the Senate.

Mr. O'Brien. We want that question decided now, whether we have the right to send to the Senate for that certificate.

Mr. Beebe (who addressed the Chair amid cries of "Order!" and great confusion) was understood to say, Mr. Speaker, I have stood with the majority of this House against every proposition to delay obedience to this law. I acknowledge my obligations under that law. I recognize the further fact that we are here not only under that, but in the exercise of every prerogative and privilege guaranteed by the Constitution to this House. (Cries of "Order!" mingled with applause.) Will the Chair entertain the motion —

The Speaker. The Chair will entertain no motion.

Mr. Beebe. Then I charge the Speaker with doing what I have complained of the Electoral Commission for doing, violating the very law under which we are operating.

Mr. Rice. The Speaker is usurping power.

The Speaker. The Chair usurps no power.

Mr. Beebe. Ninety members of this House demand that appeal from the decision of the Chair, and it cannot be had.

Mr. Mills. I hope that usurpation

is not becoming so incapacitating as to cause usurpation of power over members of this House.

The Speaker. The Chair neither usurps, nor does he permit oppression upon the Chair. (Applause upon the floor and in the galleries.)

Mr. Beebe. Will the Chair state the reason for his ruling?

The Speaker. The Chair decides according to his conscience and the law.

Mr. Beebe. Will the Chair state the reason for his ruling?

Mr. Wells, of Mississippi. I ask whether —

(Here there was great confusion in the Hall, members rising and standing.)

Mr. Beebe (standing on top of one of the desks). I demand to know the reason why the Chair refuses to state his reasons for refusing to hear an appeal. (Applause.) With all respect to the Chair, I ask him to state the reason of his ruling.

Mr. Springer. I demand that the galleries be cleared.

Mr. Beebe. From my place in this House I now under the rules ask the Speaker of this House respectfully to state the reason for his refusal to entertain the motion which I make.

The Speaker. The Chair gave his reasons at length on a similar proposition yesterday.

Mr. Caulfield. We have no recollection of any such proposition having been made.

Several Members. It never has been.

Mr. Jones, of Kentucky. If the Chair ruled that way yesterday, he must have ruled wrongly.

Mr. Franklin. We demand that the appeal from the decision of the Chair be placed before the House.

Mr. Springer. Mr. Speaker, I move this House now take a recess until to-morrow at ten o'clock.

Mr. Beebe. I claim that I have some rights upon this floor. I claim that courtesy from the Chair that I always have cheerfully rendered to him.

The Speaker. The Chair will proceed with the public business.

Mr. Brown, of Kentucky. I ask, Mr. Speaker, that the officers of this House enforce order.

Mr. Money. Let them try it.

Mr. Brown, of Kentucky. They can do it.

Mr. Sparks. Let them try it.

Mr. Brown, of Kentucky. I demand that they enforce order upon you and all others who are out of order. If I were an officer of the House I would try it. (Applause.)

The Speaker. The Chair is determined that gentlemen shall take their seats. The Chair is not going to submit longer to this disorder. (Loud applause on the floor and in the galleries.) If gentlemen forget themselves, it is the duty of the Chair to remind them that they are members of the American Congress. (Renewed applause on the floor and in the galleries.)

Mr. Glover. I appeal to members of this House —

Mr. Sparks. The Chair is simply the Speaker of this House of Representatives. We are the representatives of the people. (Applause.)

Mr. Beebe. I respectfully ask —

Mr. Sparks. Look at these lobbies, Mr. Speaker. I have tried to get the Speaker's ear so that I could direct attention to them. We are mobbed by the lobby! Here is the rule (holding up the Manual), and we ask the Chair to enforce it. (Applause.)

Mr. Brown, of Kentucky. It is not the lobby, sir.

Several Members. It is.

Mr. Brown, of Kentucky. The lobby would be ashamed of it. (Applause.)

Mr. Sparks. So, too, the American people are ashamed of the action of members, some, too, claiming to be Democrats. (Applause.)

Mr. Glover. I appeal to every member of this House to try to contribute something to its order and its respectability. The time must come when

we must have order in this House, and it is the duty of every member now to give aid to restore order in this House.

The Speaker. The Chair desires every gentleman who is not a member of this Congress to retire.

Mr. Cox. I call for the reading of the one hundred and thirty-fourth rule, and its enforcement promptly.

Mr. Sheakley. I ask for the reading of the rule.

The Speaker. The Chair orders that the spaces behind members' desks on both sides of the House shall be cleared. That he has the right to do, and it is in the interest of good order.

Mr. Cox. I have the right to have read the one hundred and thirty-fourth rule. I desire to say, with all respect to the Chair, that the rule should be enforced in the cloak-room as well as on the floor.

Mr. Burchard, of Illinois. On that side of the House.

Mr. Cox. On both sides of the House.

Mr. Watterson. In the cloak-room as well as on the floor.

The Speaker. The Sergeant-at-Arms is discharging his duty in that connection, as the Chair understands.

To have an adequate conception of this scene of painful disorder, one must multiply this report by three or four. No system of reporting, no corps of reporters, was adequate to such an occasion. An account of it, which was published in the New York Tribune of the following day, does not seem to me to be greatly exaggerated. The writer says: "The whole" body of obstructionists "now rose to their feet and inaugurated such a scene of disorder as has probably never been witnessed in the stormiest scenes of Congress before. At least twenty were shouting and gesticulating together, and this number soon included the whole force of the revolutionists. . . . After about ten minutes of disorder, which cannot be described, the Speaker sent the Sergeant-at-Arms among the desks on the Democratic side and compelled the members to sit down. . . . His manner rose to the occasion. He reminded those on the floor that they were members of the American Congress, and declared that the Chair was resolute, and would tolerate no more disorder."

The House now discovered that it had a master. Business began to move in its proper channels. The Houses met once more in joint session. South Carolina was counted, Tennessee, Texas; Vermont, after a contest; Virginia, West Virginia; Wisconsin, after another, but brief contest; and thus the roll of the States was completed. Then, at four o'clock and ten minutes, on the morning of March 2, 1877, the President of the joint convention declared that Rutherford B. Hayes, having received a majority of all the electoral votes, was duly elected President of the United States. In announcing the result the presiding officer said, "The Chair trusts that all present, whether on the floor or in the galleries, will refrain from all demonstrations whatever; that nothing shall occur on this occasion to mar the dignity and moderation which have characterized these proceedings, in the main so reputable to the American people and worthy of the respect of the world." The announcement was received by all parties with respectful silence and apparent submission. The pent-up feeling of dissatisfaction found vent through inflammatory articles in the press and much private grumbling. There was even some wild talk of a forcible attempt to prevent the inauguration; but if there was ever any serious purpose of that kind, it was extinguished by the thought that a great soldier was sitting silent but watchful in the presidential chair.

Two or three things are suggested by this narrative which it may be well to notice.

In the first place, we can now understand why no reliable history of the electoral count of 1877 has been written. Who was there to write such a history? This nation is made up mostly of Democrats and Republicans. For certain good reasons, none of the writers of either of these parties have wished to give us a history of the count. They have instinctively felt that any history which should be written ought to be in accord with the general approval which now exists in the public mind of the great measure by which the count was conducted. Democrats are not ready to express such approval, because the count resulted in the defeat of their candidate; and Republicans have felt a natural diffidence about commending a measure against which a large majority of them voted. This is why no leading man of either party has attempted to give us a complete account of the event.

Again, we see how absurd has been the statement that there was fraud in the count, that somebody was cheated by the manner in which it was conducted. The simple narrative of facts which has now been given refutes such a charge. If anybody was cheated, who was it? Certainly not the Republicans; for their candidate was made President. Nor was it the Democrats; for the bill in accordance with which the electoral votes were ascertained and declared was specially their measure. A majority of the votes cast for it in both Houses were Democratic. In the Senate but one Democrat voted against it; and in the House but eighteen. The number of Democratic votes which it received in the House was so large that the bill would have passed, if every Republican had voted against it. It was opposed by more than two thirds of the Republicans in the House, and when it was under discussion, Democrats reproached us for our want of patriotism and broad statesmanship in not supporting it; and there was some truth in the charge. If it was wrong to leave questions to a commission, it was a Democratic wrong. If the mode of choosing the commissioners in the House and Senate was a blunder, it was a Democratic blunder. If it was a violation of a previous good understanding with the Democrats that Judge Davis should resign his place on the bench and be elected Senator from Illinois, it was a violation which was not committed by Republicans, but by Judge Davis himself, who resigned, and by the Democrats of Illinois who elected him, in spite of the Republicans of Illinois, who did their best to defeat him. If there was unfairness in the choice of Judge Bradley for the fifteenth commissioner, it was unfairness for which 180 Democrats in the two Houses had provided, and which two Democratic judges united with two Republican judges in consummating. In a word, if there was fraud anywhere in the measure, it was the work of an immense majority of the Democrats in both Houses of Congress.

Once more, the amicable adjustment of the serious difficulties of 1876 and 1877 by means of legislation, and the fidelity to principle shown in the peaceable submission to the result by both parties, — although it was so disappointing to one of them, — and by the whole country, afford new and solid grounds of confidence in the stability of our institutions. Such a happy issue out of our perils makes the foundations of government seem firmer under our feet. The capacity for self-control exhibited by the nation under the great excitement of the contest was a strong guarantee of a well-ordered and prosperous future. It showed the deep attachment of our people to law rather than revolution as a means of settling differences. It showed, as I trust, that an impassable gulf separates our methods and policies from those of the Spanish States of this continent; that Americans are indeed a branch of that

great Teutonic race who know how to make homes and build States, and how to defend and preserve them. It has enabled us to feel that we could approach another dangerous crisis in our affairs with less trepidation as to the result. It has increased our just pride in the common country. It is a noble precedent, and one which will be quoted in all time to furnish motives for self-restraint in heated party contests, to give added strength to the reasonings of statesmen, and new force to the appeals of patriots. It will forever remain a conspicuous example of that moderation and love of settled order which are essential to the perpetuity of the Republic.

James Monroe.

THE GOTHENBURG SYSTEM IN AMERICA.

THE fundamental idea of the Gothenburg system of liquor licenses is the conduct of the retail and bar traffic in spirits without financial reward other than ordinary interest upon the capital invested, and the regulation of the sale by public authority in such a manner that drinking is discouraged and the saloon purged of gambling and immorality. The profits are annually distributed to the community, since it has to bear the social burdens caused by immoderate alcoholic indulgence.

The principal agent for accomplishing this is a commercial company which is granted a monopoly of saloon and retail trade up to sixty-six gallons in one purchase. Shareholders in such corporations are usually individuals or institutions of high standing, while the management is given to persons intelligently appreciative of public interests. To cite an example, the parent company at Gothenburg, which made the first successful trial, was administered for eleven years by the son of the noted clergyman and apostle of temperance, Dean Peter Wieselgren. This gentleman has since been called to a seat in the upper chamber of the Swedish parliament and to the general directorship of prisons for the kingdom. Others, not equal perhaps in social distinction, but quite as eminent in public spirit, have rendered similar service. No inconsiderable portion of the success which has attended the plan must be accredited to the sense of civic duty, fortunately so widespread in the Scandinavian peninsula, which has led the better elements of society actively to participate in the regulation of the trade in alcohol.

Each community possesses the right of local option. In the country districts it has been very generally exercised in favor of practical prohibition, only one hundred and eighty-six licenses in Sweden and twenty-seven in Norway, most of them life privileges, being now in existence. Where popular sentiment favors a licensing régime, the magistracy and municipal representatives, with the right of final sanction vesting in the provincial governor, constitute the granting authority. The duties of the crown functionary are largely formal, since he cannot act in opposition to the will of the magistracy or council. Nevertheless, his position as *ex-officio* head of the police service makes him a valuable adjunct. Privileges usually hold good for three years, but the number of concessions may be reduced at the end of any period without creating a valid claim for compensation.

The relation between the licensing authority and the company is necessarily very intimate. The concession of a