

Season 2 Episode 3: The Election That Wasn't Stolen

HUNT: It's early fall in Columbus, Ohio, and the year is 1876. The governor of Ohio, Rutherford B Hayes, is writing in his diary.

HAYES DIARY: September 24th. I am looking anxiously forward to the end of this contest. It is now almost 100 days since the nomination and only about 45 days to the election.

HUNT: The contest Hayes is looking forward to is the presidential election of 1876. Governor Hayes has recently been chosen as the Republican nominee for president.

HAYES DIARY: October 22nd. Only two Sundays more until the presidential election. I am prepared for either event to go into. The great office will be a sore trial. Health, comfort, happiness all imperiled if not sacrificed. But if elected, the firmest adherence to principle against all opposition and temptations is my purpose. I will show a grit that will astonish those who predict weakness.

HUNT: Hayes's background was one of staunch abolitionism and military bravery on the Union side during the Civil War and as the governor of Ohio. Hayes had staked his reputation on political reform, a reputation that American voters were hungry for. After a rather scandalous Ulysses S Grant presidential administration, which had featured indicted personal secretaries, embezzlement of millions in liquor taxes and bribes paid to multiple cabinet officials.

MEDIA CLIP: He is a loyal Republican, but he is also seen as a cleaner, more reform oriented person than anyone else. That would be acceptable to the grant side of the political spectrum.

HAYES DIARY: I do not fear my pluck or constancy a particle, but to be deceived by the rogues, to find many a trusted reformer no better than he should be. Here will be humiliations and troubles without end.

HUNT: Hayes was confident in his own abilities and in his reform mindedness, but he was not at all fearless about the upcoming election and what it could mean if he lost.

HAYES DIARY: It would be a calamity, I'm sure, to give Democrats the government. But public opinion, the press, the march of events will compel them to do better than their character and principles indicate.

HUNT: These concerns about the Democrats extended to the lengths they may go to ensure that their candidate, Samuel Tilden of New York, prevailed in the election.

HAYES DIARY: October 29th. I return, feeling that with the probabilities of fraud and violence, fraud in the North, violence in the South, the chances are that we shall lose the election. But I have made a good fight. Let me keep it so for ten days longer.

HUNT: And as the election drew nearer, Hayes was worried not just about the nation falling into the wrong hands if he lost, but about it falling into chaos. If the election's outcome was left in doubt.

HAYES DIARY: Another danger is imminent, a contested result, and we have no such means for its decision as ought to be provided by law. We should not allow another presidential election to occur before a means for settling a contest is provided. If a contest comes now, it may lead to a conflict of arms. I can only try to do my duty to my countrymen. In that case. I shall let no personal ambition turn me from the path of duty. Bloodshed and civil war must be averted if possible. If forced to fight. I have no fears of failure from lack of courage or firmness.

HUNT: A contested presidential election, accusations of rampant voter fraud, and the looming prospect of bloodshed over politics that could cascade into a second American civil War. From Boise State Public Radio. This is Scandalized. I'm Charlie Hunt.

KETTLER: And I'm Jaci Kettler. Today we're hopping back into the Scandalized time machine to the disputed election of 1876 and the so-called corrupt bargain. That settled it. Or did it?

HUNT: We'll get the lowdown from historians and, yes, from a president's personal diary about exactly what happened in the election of 1876. The widespread fraud and intimidation in the wake of the Civil War, and whether the backroom compromise of 1877 that landed Rutherford B Hayes in the presidency is nothing more than a scandalous ghost story.

KETTLER: Charlie, I'm really excited for this episode because I find this historical time period really fascinating. You know, there's interesting politics. We have shifting political parties and really big questions that need to be tackled in the aftermath of the Civil War. But it turns out there is a difference between political scientists and historians. So we

got some bona fide experts on the post-Civil war period to help us tell the story of this election.

HUNT: That's right. We spoke with two historians to help us understand, first of all, what exactly was going on in the country in the run up to this pivotal election. Doctor Eric Alexander, a professor of history at Southern Illinois University, told us that there's no understanding this election without looking back to the Civil War of the previous decade.

ALEXANDER: So we're 11 years removed, conflict that had ended in 1865. And it's still, I think, really very fresh in the minds of most Americans.

HUNT: This proximity to the Civil War and the scars of that conflict left huge questions on the minds of Americans going into that 1876 election. Here's another expert. We spoke with, Doctor Greg Downs, a professor of history at UC Davis.

DOWNS: What power does the federal government have over the state, and what is going to be the place of the 4 million enslaved people in a region increasingly dominated by the people who had formerly enslaved them, continued to hang over politics throughout the 1870s.

HUNT: And as if there wasn't enough to worry about the nation's economy, which is still trying to recover after the calamity of the civil war is not doing so hot.

ALEXANDER: The nation's in the midst of a really severe depression. Arguably, I think the worst economic depression of the 19th century and arguably the worst depression in American history outside of the Great Depression of the 1930s.

KETTLER: On the whole, it sounds like this is an election year with very, very high stakes. You know, things don't seem to be going so great in the country. Everyone seems on edge and perhaps looking for something different. You know, we often talk about change elections and candidates can really matter in these kinds of races. So who did the two major parties nominate to try to deal with these big issues?

HUNT: Both parties, it turns out, were also pretty eager to turn the page on the current situation. And so they both nominated reformers who promised to do just that.

ALEXANDER: Both were sitting governors. Hayes, the governor of Ohio. Tilden, the governor of New York. And both known as reform candidates. Hayes had done this

mostly in Ohio. Tilden was very famous. He had sort of overthrown the famous political machine in New York City, run by Boss Tweed of Tammany Hall. And so, because both men had this reputation as reformers and because both parties were trying actually stay away from economic issues, because they couldn't agree on how to solve the depression, they both turned to these guys as reformers. And that became one of the major issues of the campaign.

HUNT: The sun rises in Columbus, Ohio, on Election Day, and the Republican nominee is not feeling optimistic.

HAYES DIARY: Columbus, November 7th. Cold but dry day. Good enough here for election work. I still think Democratic chances are the best, but it is not possible to form a confident opinion. If we lose, the South will be the greatest sufferer. Their misfortune will be far greater than ours.

HUNT: As the votes are cast and then counted. It's clear that this presidential race is, in fact, going to be very close. But as the night wears on, it appears that Hayes wasn't too off the mark in his diary entry.

DOWNS: It is clear, unlike, say, in 2000, that Samuel Tilden wins a plurality of the popular vote. No one contests that. The question comes down to whether. Who has won a majority of the electoral vote. And at first it appears that Tilden has won this as well.

ALEXANDER: And so it was clear by like election night, and especially in the next few days, most people thought Tilden was going to win this thing.

HUNT: Hayes Election Day prediction that Democrats would prevail seemed to be coming true. And even four days after the vote takes place, Hayes states pretty definitively in his diary that the news wasn't good.

HAYES DIARY: November 11th. The election has resulted in the defeat of the Republicans after a very close contest.

HUNT: But Hayes, it turns out, spoke a little too soon. Although initial election night reports brought the news that Tilden was the very likely winner, the deal wasn't quite sealed just yet.

ALEXANDER: The winning candidate would need 185 electoral votes. Election night. In a few days afterwards, it was pretty clear that Tilden had 184. There was no doubt about that.

HUNT: Three states South Carolina, Florida and Louisiana have some major problems with their vote counts.

KETTLER: It's always Florida.

HUNT: It's always Florida.

DOWNS: There's no question there's massive amounts of both fraud and violence by the Democrats. And yet Republicans also themselves prompt concerns of illegitimacy, including having state election boards throw out the results.

ALEXANDER: You know, a canvassing board, maybe a Republican canvassing board was accepting bribes to say, oh, these votes are legitimate and these Democratic votes are not.

HUNT: Credible allegations of fraud are flying around at multiple levels of government and across both political parties. But the most concerning issues, and the ones most emblematic of this moment in American history, aren't with votes that are being thrown out, but votes that aren't permitted to be cast in the first place.

ALEXANDER: At the same time, you also had widespread campaigns of voter intimidation. This was effectively racial terrorism, and it was very one sided. It was largely southern Democrats, former Confederates, white voters terrorizing black voters who overwhelmingly voted Republican. The Republican Party at this time is the party of Lincoln, the party of emancipation.

HUNT: The upshot is that there is so much fraud, like actual fraud, not made up fraud, that it's really difficult to know who actually won the election in these states.

DOWNS: The use of murder and intimidation would point to the question of whether the numbers recounted honestly or not told you anything about the will of the people, or whether they simply reflected the use of bullets to prevent people from casting ballots.

KETTLER: This sounds very similar to how things are done in really close states today. You know, particularly in 2000 and Florida, where all this attention goes to the one decisive state.

HUNT: Yeah, we have all these states that have already been decided. And so, of course, it comes down to a couple of swing states. Turns out there were swing states then just as now. And it turns out Florida was one then as well. And it's funny you mention Florida, Jaci.

ALEXANDER: You have effectively two sets of votes sent to Congress in Florida. There is an outgoing Republican governor who certifies the Republican electors for Hayes and an incoming Democratic governor who certifies the electoral votes for Tilden.

HUNT: These competing slates of electors in Florida, as well as Louisiana and South Carolina, are going to an already divided Congress. And most confusing of all. We're running into exactly the problem Hayes predicted in his diary in the weeks leading up to the election. An uncertain, untested procedure for how to deal with this kind of chaos and the very real possibility of the country breaking apart again just 11 years after the end of the war.

ALEXANDER: There's a real fear that there are another civil war is possible threats, for example, from white Southerners, that if Tilden does not win, that they will form militias and march on Washington to make sure that he's installed in the government. And so you get this real sense of this outcome is do or die. What's at risk here is, is really the future of the country, the future of black rights in the South.

HUNT: So, Jaci, before we keep going and see how this all shakes out, we love a good cliffhanger. It's probably a good idea to sort through a little bit what's familiar and consistent, maybe about what happened in 1876 compared to how we still do our elections today, and then maybe go through what's really unique about these circumstances. So I thought we'd start with a topic. Actually, you and I are both pretty familiar with and teach about on a regular basis, which are the basics of how elections actually happen in the US, how they're administered, because both back in 1876 and today we have what we often refer to as a decentralized system of elections. Jaci, what do we mean by this and why is it important?

KETTLER: Right. It means that we have a lot of different election systems operating within the United States, because states have a lot of power and control in running elections in our country. So state legislatures and governors make election laws and

regulations in their state registration rules, early voting practices, whether or not there's absentee voting. These are all decisions made at the state level. They have to follow national laws in the Constitution, of course, but the states have a lot of power in designing what elections will look like within their state. And then local governments, usually county clerks and election boards, are then responsible for administering elections, meaning they recruit poll workers. They make sure the precinct sites are open and running, that elections are actually happening on Election Day.

HUNT: And they also are responsible for another thing that's pretty important, which is counting the votes, right?

KETTLER: That's right. So they count and then they report these to the state, usually the Secretary of state to ratify the results. It's important that we break up these responsibilities for a few reasons, one of which is many experts argue that it actually helps protect the security of our elections to have responsibility spread across multiple entities.

HUNT: It seems kind of like the electoral equivalent of like not putting all our eggs in one basket. Like if we put all our counted votes in one space, it might make it easier, for example, for like a foreign country or an adversary to hack our election systems. But as it stands, it's like really hard to do that because you can't hack 4000 counties at once. At least I can.

KETTLER: Right, right. Yeah, I think that's exactly right. And, you know, there are complications. It means elections are run very differently in different states. And so voting looks very different. And it can also be slow. So some states just take a lot longer to count votes. And so then we get some inconsistencies in timing and when we see votes being reported.

HUNT: Yeah. I mean we've seen this in recent elections here. And certainly it was a problem back in 1876 as well. Like this is important because, you know, our system of elections then was just as if not more decentralized than as it is today. But this introduced, I think, so many different actors into the process, that it opened the doors for a ton of sort of electoral skullduggery within the states, maybe rather than from outside the country. That made things a little bit crazy on the state level.

KETTLER: We also want to remember that a lot of these offices and officials are actually partisan positions. So that also is a component in running our elections.

HUNT: And we learned from the historians we spoke to that partisanship in these offices was definitely playing a huge role and introduced the possibility of some, shall we say, creative electoral math coming out of South Carolina in particular. Here's Doctor Alexander.

ALEXANDER: In South Carolina, for example. The total turnout across the state was a mathematically impossible 101%. In one particular South Carolina county, there were 2000 more votes than there were registered adult males. Obvious implication being that people are voting more than once or usually what was going on is you'd have voters going from county to county and voting in more than one county.

HUNT: Jaci, all of this would be kind of funny if it weren't totally subverting democracy. Uh, safe to say nothing of quite. This scale happens today, I hope.

KETTLER: Thankfully, no. I mean, there's a lot of attention that has been paid to voter fraud in the country over the last few election cycles, and voter fraud cases are rare. It's not that they never happen. They do. But they are so few and far in between that it doesn't happen at the scale. It would be necessary to change the outcome of an election. Obviously, we saw these kinds of amped up examples in 2020 where there was very, very little evidence of any kind of widespread fraud. But the president's campaign and key allies either exaggerated or just totally made up allegations of fraud to throw the outcome into doubt.

HUNT: And in this case, Jaci, in 1876, it sounds like there actually was plenty of evidence of fraud and that both sides were getting in on it at the same time. But the research on this time period, and especially this election, really seems to indicate that the most impactful form of election tampering that was happening was this really troubling race based discrimination and intimidation that was happening at polling places throughout the South. All evidence indicates that tens of thousands of black voters were just completely shut out of the election, even though they had won the legal right to vote with the 13th and 14th and 15th amendments to the Constitution. These were passed during and just following the Civil War.

KETTLER: Thankfully, again, these kind of voter intimidation tactics don't happen all that much today. It was far, far easier back then to put this kind of undemocratic pressure on voters. For example, Partisan newspapers would print ballots that were already filled out.

HUNT: How convenient.

KETTLER: Yeah, I mean, that's great. Then the party workers would distribute them on Election day so voters could just drop them directly into the boxes.

HUNT: It's like a one stop shop. It's great.

KETTLER: I mean, there's probably some voters that wouldn't mind that today.

HUNT: I'm sure that's true. But thankfully, Jaci, you know, today we have pretty robust laws around campaigning or electioneering too close to polling places in ways that would pressure voters in this way. Right. And we also have, I think, something pretty important that we often forget about in the historical context, which is the secret ballot, right? This was not always a thing in these days. Party organizers would, you know, basically harass voters until they voted publicly the way they wanted to. And they couldn't then just go into the voting booth and hide their vote. It was very, very public. And it sounds like all of this very real fraud and intimidation really did throw the actual outcome of the 1876 election into doubt. So it's an important comparison, I think with an election again, like 2020, which was heavily contested by the losing side, but which was never in sort of serious good faith dispute. You know, we know, for example, that Joe Biden won pretty much for sure. Just a few days after the election, after all these mail in ballots were counted. In case you forgot, this was the COVID election. Uh, so even though there are, I think, really reasonable complaints today about how our elections are run or certain rules that might be unfair or for that matter, how long it takes to count votes. That's a pet peeve of mine as well. It is nice to know that we actually have come quite a long way in the democratic process. Jaci, another related anecdote that Doctor Alexander gave us during our interview highlights I think another similarity between how elections happened then and how they happen today.

ALEXANDER: And the way this worked in the 19th century, was not dissimilar to how election nights work today, where, uh, because you had the Telegraph voters would go to vote in their precincts, the precincts would count up the votes when they had a tally on election night. People who were interested enough in mainly in cities could gather these tallies as they're coming in over the telegraph. So political junkies who were really interested in the outcome would stay up late. There would be election parties, right. And you'd have large crowds, and then the telegraph office would be getting all the results coming in. People would come out and announce to the crowd. So it's really not that dissimilar from how we watch elections today.

KETTLER: Honestly, it sounds a lot like you and I staying up watching the news, refreshing our favorite website for results, whatever that might be, to see who won. I mean, I'm kind of impressed they were able to get results so quickly. I wouldn't have guessed.

HUNT: I don't know how to work a telegraph that quickly myself. And it actually gets to a, you know, a pretty important point that is consistent across these time periods, which is that definitive results actually tend to come in more slowly when the race is closer, right? So these news networks that we watch on election night, they have to count more of the votes, or they have to report the counts of the votes that are being done by the government in order to make more confident projections about who's actually going to win in some particular states, you need to actually get more of the votes under your belt. Whereas, you know, if you're in Idaho and you've only counted 50% of the votes, probably you can be pretty sure a Republican has won statewide, right?

KETTLER: But if you only have 5% of the vote in Pennsylvania, right?

HUNT: You don't know anything, right?

KETTLER: We don't there's a lot we don't know yet. So slow counting can be frustrating. Definitely understand that. And it can lead to the kinds of false allegations of fraud that we talked about from 2020. But, you know, in this case, it's nice to know that there were rabid political junkies in the 1870s, too.

HUNT: Yeah, but no Steve Kornacki zooming in on counties on his giant iPad. So it's a lose lose. So, Jaci, after a sluggish 1980s and 1990s, our last couple of presidential elections, especially 2020 and 2024, actually had comparatively pretty high levels of voter turnout, meaning the percentage of people who are eligible to vote who actually do vote. In 2024, that was about 63% of eligible voters. And in 2020 it was more than 65%. But according to Doctor Alexander, 1876 puts basically all of our modern presidential elections to shame.

ALEXANDER: The number of former Confederates, white Southerners had not been able to vote through the early 1870s, had not voted in 1872. They are now returning to the polls. They're voting in 1876. Black men in the South, who had increasingly been able to vote because of the 15th amendment in 1870. So for the first time, really, you have a fully mobilized American electorate of men, which is reflected in the turnout. That's the turnout is 81% in this election. It's the highest turnout in American history for any presidential election.

KETTLER: It is super important to emphasize the historical situation here. We're only talking about men, right? You know, progress was made during the 19th century. So in the decades leading up to the Civil War, most states had removed land ownership requirements, religious restrictions, requirements that voters had to pay taxes. So women at this time had been fighting for the right to participate in elections for quite a while. We have the big women's rights convention in Seneca Falls in 1848. From there comes a focus on the right to vote as one of the priorities for the women's movement.

HUNT: And it's happening in some states at the state level, right?

KETTLER: It's true. And so some states were starting to allow women to vote in local elections or other types of elections, but the movement experienced a major conflict around the 15th Amendment. The 15th amendment guarantees a right to vote regardless of race, color, or previous condition of servitude. You might notice no mention of gender. So even with the caveat that we don't really have an even playing field here, 81% turnout is really, really impressive. What was behind this?

HUNT: Well, there are some things that we know can tend to drive voter turnout more so than other years that we see reflected here. The main one for me is that this was a really competitive election, right? It was we can see that it was very close. And in competitive elections, you tend to see more attention being paid to them by the press. There's lots more campaigning, right, as opposed to a more sleepy race where one party is clearly going to win. You get a sense that your vote may actually really matter. That certainly seems to be the case here. Uh, and what you also get with competitive elections are really high stakes, right? It's kind of on a knife's edge. It could go either way. And in this case, you know, we're familiar today with our age of polarization. This period of time was also pretty rife with polarization. You had big differences between the parties coming out of the Civil War. This, you know, was a period where both sides were still really dug in.

KETTLER: These are very much viewed as life or death issues, right?

HUNT: Very literally, I would say, especially for these black Americans in the South who are being intimidated and threatened and murdered just for trying to exercise the right to vote. You know, on top of all of that, on a nationwide level, you have these big salient issues around reconstruction after the Civil War, as we talked about before, you've got massive amounts of corruption in the government. You've got this really bad economic

situation. All of these big salient issues can be a recipe for voters turning out en masse to really try to make a change.

KETTLER: Charlie, I'm dying to know how this all ends, but I think we should probably go over one more element of this, which is where you left off in the story with these competing slates of electors being sent by the parties from each of the contested states to vote in the Electoral College. It all sounds a little tricky to deal with. Does this happen often? Or is this similar to what happened after the 2020 election?

HUNT: It's similar in some ways, different in others. So in 2020, you had similar types of efforts to send these kinds of alternate slates of electors to the Electoral College that would have voted for Donald Trump in states like Georgia or Wisconsin, which are states he lost not by a lot, but he did lose them. But, you know, in looking at the reporting from the time, I mean, it's serious that he tried to do this, but the efforts themselves were not very well organized. Right. So, for example, most Republican state and local officials in these states didn't really go along with the scheme here. So Congress was never really forced to seriously consider these slates of electors in 2020. And so Congress was clearly not going to entertain these, you know, frankly, half assed attempts by the Trump campaign and its affiliates to get alternate electors on the ballot. Listeners may remember the name Brad Raffensperger, the secretary of state in Georgia, who basically stood up to Trump and said, no, I'm not going to go find these extra 11,000 votes. I'm not going to send an alternate slate of electors. I'm sorry, Mr. President, but Joe Biden won this state. And believe it or not, as crazy as 2020 was, as Doctor Downs told us, the situation in 1876 actually has an added layer of chaos.

DOWNS: It's very clear in the Constitution what happens if there is no majority winner of the Electoral College that it goes to the House? The House votes by states you have to win a majority. This had happened in 1800 and 1824, but what wasn't clear was what happened. If you couldn't determine whether there was a majority winner or not.

HUNT: And so in this case, both Tilden and Hayes could still get a majority of electoral votes by winning these three states that were in doubt. But at this point, it's still completely unclear who actually won them and how they're going to be decided, given the massive uncertainty around the outcomes in those states. This is the question Congress is about to weigh in on. We'll see what their decision was and the wild process they use to make it right after this break. The voting is done in the election of 1876, and so is all the voter fraud. But the conclusion feels farther away than ever after heavily disputed results in three states and no candidates having secured enough Electoral College votes to win, Congress will weigh in on their outcomes. They're being forced to

make a determination about election results in a way that they never really had to before, and frankly, haven't since. And they're doing so without much or really any protocol about how to address it.

ALEXANDER: So the question became, well, how does Congress decide if we have contested votes? By what standards by what evidence. And there's nothing in the Constitution and there's no Electoral Count Act of 1887, which is what governed the process. In 2020, you effectively have a Democratic House putting forward a bunch of their own proposals. You have a Republican Senate putting forward their own proposal about how to solve this problem.

HUNT: Congress is basically building this plane while trying to fly it. And also one of the engines is on fire, and the pilots of the plane are in total disagreement about which engine it is. And by the way, they're on a pretty tight timeline for deciding how to land the plane before it crashes and burns.

ALEXANDER: The election happens early November. The electors meet in early December. Inauguration happens in the 19th century, in early March. And so all of this has to be sorted out by these sort of constitutionally mandated deadlines. If we get to early March and there's no president, then we're even in a worse position, a worse constitutional crisis. We have no president.

HUNT: No pressure guys.

KETTLER: Well, Charlie, we tend to do our best work when we're on a tight deadline. So hopefully Congress managed to do the same.

HUNT: What they opted to do here is, rather than have this rollicking debate across the entire Senate and House, they formed a commission of 15 members who would ultimately decide the fate of these 20 disputed electoral votes.

ALEXANDER: Five members from the House that's controlled by Democrats. So what you get on that out of the House, you get three Democrats, two Republicans, five members from the Senate controlled by Republicans. So there you'll get three Republicans and two Democrats, and then five Supreme Court justices. Four of the Supreme Court justices are chosen by Congress. And so we got two Republicans, two Democrats, and the fifth Supreme Court justice. And the 15th member of the commission would be chosen by the other four justices. Most people assumed I was going to be a man named David Davis.

HUNT: Now, any listener who's a true Abraham Lincoln nerd, and maybe worryingly, I count myself among them, will remember that name. David Davis was a Supreme Court justice from the state of Illinois, where Lincoln was from. He had been appointed by Lincoln and was. When Lincoln was alive, one of his closest friends and political confidants. But he wasn't a dyed in the wool Republican.

ALEXANDER: Davis was truly an independent, not tethered to either party, and people respected his views as an independent. So it looked as if the 15th and final vote, assuming all everyone else voted in a Partisan way, the 15th vote would come down to Davis. Well, the last moment as this bill was being adopted, the state of Illinois selected Davis as one of its new senators.

KETTLER: And when Doctor Alexander says the state of Illinois selected him, I assume he means the state legislature, since they were actually the ones who selected members of the Senate at that time. Regular voters didn't start weighing in on these races until after the 17th amendment was ratified in 1913.

HUNT: That's exactly right. And it's actually pretty important here because Democrats control the legislature and tried to use it in this case to their advantage.

ALEXANDER: And this was all done actually by Democrats in Illinois who were trying to effectively bribe Davis. They thought if we choose Davis to be a senator, he'll vote for Tilden. Everybody wins. And Davis, because he was to his credit and because he's an independent. He releases a letter and says, I'm going to go be in the Senate. I'm going to accept this nomination to the Senate. And because of that, I now have a conflict of interest. I can't serve on the commission. And so Democrats had sort of come up with this whole scheme in Illinois, and then it backfires. And so then the 15th member is a man named Joseph Bradley, who is a Republican. And so now, if you're counting, the commission is eight Republicans, seven Democrats.

HUNT: Now that the Commission is fully formed, it's time for them to weigh in on the electoral votes and end this mess for good. The Commission meets separately for each of the three states that are challenged and hear the arguments and evidence from each side. Then the commission, which again is eight Republicans and seven Democrats, votes on which slate of electors to certify. Right now, you might be thinking, hey, this isn't 2026 where everybody always votes on party lines in Congress. Maybe some of these commissioners actually broke with their party. You would be wrong.

ALEXANDER: And the outcome was, in fact, as Partisan as you would expect, the commission was 8 to 7 in favor of Republicans. And in each state they voted 8 to 7, giving the votes to Hayes.

DOWNS: And so now Hayes seems to have enough if Congress will ratify it.

HUNT: This alone would have been enough to make this the most tightly contested presidential election in American history. And I say this having voted in a couple contested elections myself. But in case you hadn't noticed, we haven't even gotten to the real scandal yet. Because remember, Samuel Tilden won the popular vote and more Electoral College votes before this commission weighed in. So we might be able to imagine that Democrats in Congress were not all that pleased with this outcome.

ALEXANDER: Democrats in Congress, particularly in the House, who had agreed to this bill And it's, you know, sort of ostensibly said, well, once the, you know, we will abide by the Commission's decision, decide they don't like the Commission's decision because it doesn't go for Tilden. So at this point, the Commission has decided. But then the count still has to happen. And Democrats in Congress filibuster.

HUNT: We think of the filibuster today as a term for a very specific kind of maneuver in the US Senate, in this case, the House, which again is controlled by Democrats and run by a Democratic speaker, is using every delay tactic they can think of. Basically, every kind of parliamentary trick is being used to prevent Hayes from being formally chosen and allowing him to take office.

ALEXANDER: This is all now happening in early February. And so now there's still this early March deadline. We need a president by the time Inauguration Day gets here at this point is when this sort of legendary meeting happens.

HUNT: We finally arrived at the part of this story that you might remember a meeting behind closed doors that supposedly put an end to this Democratic filibuster and closed the book on this wild chapter in American history.

ALEXANDER: It's February 26th, 1877, at the Wormley Hotel in Washington, D.C., where you have five Republicans from Ohio who are ostensibly sort of speaking for Hayes, meet with a bunch of Democrats, Southern Democrats from Congress. And out of that, you get this supposed agreement that if Southern Democrats stop the filibuster, they allow the count to go forward, allow Hayes to take office. The core of the legend is that

then Hayes would agree to remove the final troops from the South and basically end Reconstruction.

KETTLER: All right. So let's talk a little bit about what we mean when we say reconstruction. So the South was decimated after the Civil War. The region needed to rebuild its infrastructure but its society as well. After around 4 million formerly enslaved people were freed. The passage of the 13th, 14th and 15th amendments helped with that. It helped enshrine the rights of black men into law, including, as we talked about, their right to vote. But the South still needed convincing and needed convincing with military force. So the federal government divided the South into military districts, which resulted in the continued occupation of the South by federal troops even a decade after the war.

HUNT: Right. This military occupation was designed to ensure that these reconstruction amendments had teeth and were actually enforced. And it's these actions that are at the center of what's become known in folk history as the compromise of 1877, or perhaps a little spicier as the corrupt bargain that put Rutherford Hayes in the white House. If Southern Democrats take down their legislative roadblocks and allow the Electoral Commission's decisions to go forward and thus elect Hayes as president. The new Hayes administration will remove these remaining troops and put the final nail in the coffin of reconstruction. But that wasn't the only stipulation in this supposed bargain.

ALEXANDER: There was evidence that when Hayes took office, he would have cabinet appointments reserved for Southerners. There would be some economic concessions, largely through railroad subsidies.

HUNT: Apparently, these concessions were enough for congressional Democrats. Samuel J. Randall, the Democratic speaker of the House, finally ruled the filibusters out of order and forced the completion of the count in the early hours of March 2nd, 1877. Hayes was inaugurated as president just two days later.

ALEXANDER: And so the upshot is that by the end of the 19th century, in the early 20th century, there was a widely accepted popular narrative among Americans that this election had been decided by this bargain. Hayes agrees to remove the troops, and in return, Democrats had allowed him to take the white House.

HUNT: But the problem with this story, Jaci, is that it's at best historically questionable and at worst, just flat out wrong. There were plenty of scandalous elements of the election of 1876 the voter fraud, the disenfranchisement, the violence and intimidation,

the procedural games in Congress. But according to historians, this so-called corrupt bargain as the deciding factor that put Hayes into the white House was almost certainly not one of them. It turns out that the story many of us learned in high school about this election is much closer to historical fiction than actual history. Here's Greg Downs.

DOWNS: A story has developed that's wrong on both counts, one of which is that a deal is made to withdraw the troops from the South. I would say that this makes little sense in in both ways that the sentence could be read.

ALEXANDER: So, Ron, we know that these meetings happened. It's not the problem with this sort of scandal or the myth. It's not that they didn't happen. There were actual meetings. They're documented. You can go back and read newspapers. At the time, there were these these meetings were reported. There had already been meetings going back to early, uh, late December.

HUNT: For one thing, many of the folks who were actually at the meeting denied both then and in the years afterwards, not that this meeting happened, but that it was this linchpin that handed Hayes the presidency or that it was all that consequential at all.

ALEXANDER: Future President James Garfield was one of the people present at the famous Wormley Hotel meeting. He later said that no, like, there was no actual sort of quid pro quo. That was part of it. Hayes himself kind of disavowed any knowledge that these that these people were speaking for him.

HUNT: On top of these contemporaneous accounts, the first way we know that this bargain isn't all it's cracked up to be is that Hayes didn't even hold up his end of it once he became president.

DOWNS: Hayes, in fact, does, over the course of his administration seek ways to protect military's power to do other things in the South, including especially to serve processes from federal judges. It was never about the troops leaving the South, because, of course, the troops don't leave the South. If anyone took a moment to think about it, it would be self-evident that not only is that not true, it's absurd and ridiculous to believe it's true.

HUNT: In fact, the few actions Hayes did take in this area once he was elected didn't seem to be all that impactful by themselves, or indicative of some wide reaching deal on removal of federal troops.

ALEXANDER: Hayes, while he did remove troops from in front of the courthouses in these specific states, he ordered them to barracks, which is basically like two blocks away, and that there were still not as widespread as it had been in the early 1870s. But you still have American troops stationed in the South for various reasons, well into the 1880s.

HUNT: On top of that, Doctor Downs told us that even these actions were not part of some backroom bargain, but were in fact a campaign promise that Hayes had made six months earlier.

DOWNS: First of all, Rutherford B Hayes had said, as a so-called moderate Republican, that southern government, we're going to have to rise and fall on their own, and that the military would not be utilized to come into legislative halls. He didn't say that the last weeks. He didn't say that in secret messages during the settlement of the Electoral College. It had been part of his platform. It was something very well known.

HUNT: Coming up next, it turns out the corrupt bargain, as we understand it, didn't really happen. But how on earth did this fiction become historical fact? And how could the election of 1876 ended even more chaotically than it actually did? So, Jaci, the historians we interviewed talked a lot about some of these common misconceptions around the so-called corrupt bargain, and whether the historical evidence actually supports this as a scandal at all. It sounds like maybe it doesn't, but folks may be wondering how we even got to a place where this became conventional wisdom that the election was essentially stolen. This brings up a term that our listeners may or may not have heard before, which is historiography. It's essentially the study not of history itself, but rather how history is written, studied, and interpreted. This, of course, includes trying to understand how it is that history can become misinterpreted or misunderstood over time. One of the most prominent examples of this in American history that's appropriate to talk about here, has come to be known as the Lost Cause version of the Civil War. What caused it and how it ended?

KETTLER: Right. The Lost Cause is essentially an interpretation or a story that was cultivated in the South that asserted certain ideas about the Civil War that don't really have basis in truth, for example, that the war was fought not over slavery itself, but rather over states rights. Along with that, the idea that slavery was a necessary or even benevolent part of southern culture rather than a system of oppression. This cultural interpretation of the war, and why it was fought spread widely in the South in the decades after the Civil War, and was a major contributor to the rise of the Jim Crow laws

and other methods of suppressing the rights of the formerly enslaved and their descendants.

HUNT: I mention it because Doctor Alexander actually told us that this other myth of the corrupt bargain fit pretty neatly within that Lost Cause version of history, which in turn made it easy to catch on in the South and beyond.

ALEXANDER: That loss caused narrative had always portrayed Republicans as effectively really corrupt. Uh. Republicans didn't actually care about black rights. All Republicans cared about was giving votes to a group of people who were supposedly not prepared for democracy, meaning Black Americans. Obviously, this is a very sort of racist idea, and it's an idea that's put forward by white Southerners as a way to kind of explain away what had happened during and after the war. And so the idea that Republicans, in this case, Hayes, would effectively give up on black rights and give up on reconstruction in return for the white House, fit very neatly with the sort of prevailing idea of the Lost Cause.

HUNT: But, Jaci, there's also an even more concrete reason that we have terms like corrupt bargain or the compromise of 1877 to begin with, as shorthand for these events. And it sounds like we have none other than our profession, academia, to blame for it.

ALEXANDER: It's in the mid 20th century, in 1951, that a very preeminent scholar named Vann Woodward comes along and publishes a book called Reunion and Reaction, which he referred to this as the compromise of 1877, which is where that term comes from. In real time at the moment, in 1877, nobody used the phrase compromise of 1877. And then Woodward publishes this, and it gets ingrained in every single textbook.

KETTLER: Must be nice to be that influential of an academic.

HUNT: Yeah, we're lucky if our students even read our syllabus before class begins. And, Jaci, I want to share a story that Doctor Downs told us about Samuel Tilden, the Democratic candidate. While the wrangling over this electoral commission is going on, that, I think, tells us a lot about the importance of leadership and character in very weird and confusing moments like these.

DOWNS: All kinds of schemes start to circulate. Some of those center around Tilden and the influence of one of his younger family members, who, from his mansion's run a

campaign of corruption to try to build support to install Tilden as president, whether he wins the Electoral College or not.

HUNT: This all seems really precarious and obviously could lead to an even bigger constitutional crisis.

DOWNS: While Tilden has a strong claim on the presidency, he's told by a visiting congressman that he will have to assert himself. And if the Congress tries to count him out, he'll need to go to Washington DC and say, I'm having my own inauguration. The congressman says they may put you in jail, but you'll go from that jail to the white House. Tilden, whose extraordinarily wealthy and loves luxury, essentially suggests that there's no way that he is going to take any form of indignity, and that life and his mansions, as the congressman complains, where Tilden's getting multiple massages, you know, before mid-afternoon with two luxurious for him to give up to risk going to jail for the white House. And that signals the Democrats in Congress that it's not worth fighting.

HUNT: And according to Downs, this was a real possibility that could have happened had Tilden not enjoyed his massages so much.

DOWNS: Up to this point. A series of state governors had, in fact mobilized their militias, with Democrats seeming to prepare to surround Washington, D.C., and President Grant has called troops back from the West in order to defend the bridges coming into the capital. So there have been real worry about a civil war. But Tilden doesn't have the stomach to to lead such a war.

KETTLER: I mean, a massage does sound much better to me than leading a second civil war against my own government.

HUNT: Yeah, same. Same here. It does get to a super important point, though, about why the behavior of our leaders actually does matter in terms of accepting election outcomes, even if they feel unfair. Here's Doctor Alexander.

ALEXANDER: Even as Tilden very firmly believed he had rightfully won. And then there's all these. I mean, literally hundreds of Southerners writing Tilden saying, you say the word, we will march on Washington and prevent Hayes from being installed. And Tilden, to his credit, sort of said no. Tilden was very afraid of another civil war. And so even as he believed he had won, he stepped aside.

HUNT: Jaci, it is hard to hear them talk about this and not think about one of our most recent elections, the election of 2020, where there was all this, again, at least allegations of corruption and vote theft and things like that. But the person leading the charge on this, on these allegations was the president of the United States, Donald Trump. It's sort of the elephant in the room here. And, you know, he did not really concede. He did eventually step aside after Congress confirmed that Joe Biden won the election. But, you know, I mean, to this day, he pushes this myth that he won the election. And I think that's in pretty sharp contrast. You know, we were just talking about the 2000 election and Al Gore, who lost, frankly, a much closer election than 2020 and did eventually concede and say that Bush was the rightful winner. What does political science tell us about the role of leaders in sort of setting the tone during these really tense moments where the stakes are so high?

KETTLER: We know that many voters, especially loyal partisans, take cues from elites in their party who they trust on issues of the day and on big political controversies like these. We rely on leaders to help establish norms of behavior and political life as well, which might help explain why so much of our political culture and discourse has been so toxic recently. We see it coming from the top. In this case, accepting the outcome can be what prevents a contested election from becoming a second civil war, and not accepting it can turn into the sort of bad situation we saw in January 6th, 2021.

HUNT: And unfortunately, even though the immediate crisis of the 1876 election was thankfully averted, the historians we spoke with told us that the lingering resentments and Lost Cause narrative of the Civil War that we talked about earlier festered over time enough that the 19th century version of the Big Lie never really went away in the South.

ALEXANDER: Multiple times throughout Hayes's administration, you get Democrats in Congress passing resolutions that effectively say he's not a legitimate president. He's not my president. Right? Democrats never really accept the outcome. Even as Hayes was formally installed, you still had very heavily contested sectional elections, where Republicans dominate the North and Democrats dominate the South. So all of these problems that we saw in 1876 persisted well into the end of the century.

HUNT: So, Jaci, there's one more reason this corrupt bargain narrative seems to have caught on so widely. It's something that both the historians we interviewed for this episode emphasized repeatedly, which is the temptation to tell a simple, easy story about a really difficult and complicated period of our history.

ALEXANDER: I think part of the reason it's so misunderstood is because we want to look for simple answers to a really, like, overwhelmingly unprecedented constitutional crisis that has really not been repeated since.

DOWNS: The one thing that the compromise of 1877 says is there was a simple betrayal. And whenever people hear that, they should immediately think they're being lied to, because the one thing that is a truth of history is complexity. And the one thing that all historians emphasize is complexity.

KETTLER: Charlie, this strikes me as a related problem to one we've talked about before, which is many Americans willingness to believe all politicians are corrupt or that everybody's out for themselves, that so many scandals we cover really play into. But as we find almost every time we cover one of these scandals, the truth is always a little more complicated and a little more nuanced than it's made out to be.

HUNT: I totally agree, and I think it's especially true in situations like these where there's so much uncertainty and lack of historical confidence around what really happened with the election itself. This confusion, I think, can create a kind of truth vacuum, where this kind of fiction or cynicism can really sneak in and give people the certainty that they're looking for.

ALEXANDER: We like to believe that the proverbial smoke filled back room where these kinds of things happen, these kinds of conspiracy theories. We like to think that that's how politics happens.

DOWNS: I think that that's an alluring but ultimately very destructive way to think about politics or the past, because it doesn't equip us to deal with the reality that we live in, in any moment, which is that there are few quick fixes and few everlasting betrayals, but instead hard and boring work of trudging in service of causes people believe in. And so what bothers me most is not the historical errors, even though I'm perturbed that historians repeat them, but the ways it does not equip, you know, readers of history or, you know, people, you know, younger people for the process of how to live their life in the world that exists. And that is what I think our charge is as scholars and as historians.

HUNT: This episode was written by me, Charlie Hunt, and my co-host, Jaci Kettler. It was produced and edited by me with additional production and editing support from Sydney Snider. We owe special thanks to Boise State Public Radio's own George Prentice for gamely providing us with the authoritative and yet comforting voice of our 19th

president, Rutherford B Hayes. We especially want to thank the historians we interviewed for this episode, Doctor Eric Alexander and Doctor Greg Downs. Other key sources included the US Senate and House archives, the Rutherford Hayes Presidential Library, and the University of Virginia's Miller Center of Public Affairs. Our theme music is by Dear Room, with other incidental sound from Shutterstock music and blue Dot sessions. Finally, you've been listening to us talk for a while now. We think it's only fair that you get to ask the questions. This season, we're going to try something new with a mailbag episode where we answer your questions about political scandals, the podcast, or pretty much anything. You can send your questions as emails or voice notes to scandalized@boise.edu. And we'll answer as many as we can in our end of season mailbag episode. Next time on scandalized. The increasingly unhinged ways in which our political candidates beg us for money.

TEASER: Security and Intel language, secret messages, and like security protocols. And this message will self-destruct. I'm inviting you to the conspiracy. That is just really weird. Also like a massive insult to people's intelligence.