

his contributions to the newspapers. Copies of old newspapers also exist which furnish decisive evidence in the case of articles which otherwise could not be safely attributed to him. With these helps the work of the editor is materially lightened.

In his notes Dr. Cushing has in all cases cited the sources whence his material has been derived, and where divergent opinions respecting authorship have been expressed he has directed the reader to those also. In the case of a few pieces there will probably always be room for a difference of opinion. Occasionally others may have shared in the act of composition. But there can be no reasonable doubt that we have in these volumes a substantially accurate collection of the writings of Samuel Adams during the first ten years of his public career. Manuscript evidence, tradition and style agree in support of this opinion. By thus carefully collecting and editing these writings, Dr. Cushing has rendered a distinct and meritorious service to American history. The appearance of his two concluding volumes will be awaited with interest.

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*The Electoral System in the United States.* By J. HAMPDEN DOUGHERTY. New York, G. P. Putnam's Sons, 1906.—vi, 425 pp.

Mr. Dougherty's book gives an historical résumé of the workings of the system of electing presidents and vice-presidents in the United States, an exposition of its defects, an account of the bills and amendments proposed and of the laws enacted to remedy these defects, and a remedy suggested by the author. The greater part of the book is, not unnaturally, devoted to the election of 1876 and to a discussion of the questions accentuated, if not first raised, by that event. Seventy-five pages are devoted to a criticism of the electoral system and the law of presidential succession, and forty-five to the author's proposed remedy.

The *Federalist* pointed to the electoral system as the most nearly perfect part of the constitution. Merely to enumerate the perplexing questions that have been raised by it, many of which are still unsettled, and the defects, as laid bare by Mr. Dougherty, would weary the loquacious Fabius of Horace, but it is worth while to mention the most important.

(1) The legal right of the elector to exercise his own judgment in casting his ballot is undoubted; to exercise it would be revolutionary, but there is still the possibility that it may be done.—(2) The

elector himself is an anomaly. He is not a federal officer ; is he an officer of the state? Judge Campbell was not sure that, in Evart's conception, the elector was even a human being.—(3) When electors fail to observe due forms of law, what is the effect of such failure on their votes? In 1801 Jefferson counted for himself votes which had not been signed by the electors ; without these votes he might possibly have failed of election (p. 35). A more serious defect is the failure to vote on the day prescribed. In 1809 Kentucky lost one vote for this reason. In 1857 a storm was raised over the question of counting the vote of Wisconsin, though the failure of its electors to ballot on the day appointed was due to a storm of a different kind. The result would not have been changed and the question was allowed to pass unsettled (p. 52).—(4) The general question of eligibility presents itself under several different phases. (a) What is the effect of the appointment of an elector ineligible under the constitution? Does he become an elector *de facto*? After his vote has been cast, can it be declared illegal and void? (b) When is the ineligibility operative, on the day of his appointment or on the day he votes, or on both? (c) In case the question of eligibility arises, who shall decide it? The mandate of the constitution is explicit ; shall the states be judges of their own obedience? (d) If an ineligible candidate receives a majority of the votes, does this create a vacancy in the electoral college to be filled according to law, or does the state lose that vote?

Another group of questions relates to the rights of the states themselves.—(5) When does a state become entitled to vote? Indiana was formally admitted (1816) after the election but before the meeting of the electors, and its vote was counted. Missouri (1821) and Michigan (1837) were not admitted until after the electors had voted, and in both of these cases the alternative count was resorted to, their votes not changing the result.—(6) What is the consequence of an irregularity in the appointment of electors? In 1796 the legislature of Vermont chose electors without first passing a law prescribing the manner of their appointment.—(7) What is irregularity of appointment? The federal constitution allows the legislature to determine the method. Does this render a legislature superior to the mandate of the state constitution—the very constitution to which it owes its existence? In 1876 the legislature of South Carolina had failed to provide a registration law, as commanded by the constitution, but the Electoral Commission held that this did not invalidate the election (p. 205).—(8) What is the effect of irregularity in certification? In 1873 the vote of Arkansas was rejected when signed only by the secretary of state, but

one vote of Mississippi and all the votes of Texas were counted under like circumstances.—(9) By an act of 1845 Congress allows the states to authorize their electors to fill vacancies in the college. Has Congress power to grant such authority to the states? In 1905 the governor of Arkansas appointed a man to fill a vacancy. Whether he was authorized by law to do so the writer cannot say.

Doubts respecting the powers and duties of Congress are numerous, most of them arising from that inscrutable clause, "and the votes shall then be counted."—(10) Who shall count—the president of the Senate or the two houses? or is this a *casus omissus*? In practice the two houses have counted.—(11) What does the term "count" mean? Does it mean mere enumeration, or does it clothe Congress with power to look into the regularity and legality of the votes given? In case the two houses disagree, what will be the result?—(12) Can a governor's certificate be impeached? The Electoral Commission decided that it could be impeached when not in harmony with the results found by the person or persons authorized to canvass the vote (pp. 156, 192).—(13) In 1877 it was decided that Congress could not go behind the certificates of the body clothed by the state with authority to declare the results of the election (p. 159).—(14) Can Congress inquire into the legality of such returning boards? The Commission refused to do so in 1877 (p. 181).—(15) In case of double returns, how shall it be determined which is legal? In 1877 the return coming from the government recognized by the political departments at Washington was accepted, though the president who was thus elected afterwards recognized the government whose return was rejected.

The list of doubtful questions is not yet exhausted.—(16) If no candidate has received a majority of the electoral votes, the election is thrown into the House. May the House, under the electoral law of 1887, produce this situation simply by rejecting votes?—(17) The dispute may be prolonged until March 4. We came perilously near this in 1877.—(18) It is conceivable, though not probable, that four candidates, highest in the list, may have an equal number of votes. As the House must choose between the three highest, how can it proceed when there are four?—The defects of the electoral law of 1887 have been discussed by other writers and need not detain us here.

Mr. Dougherty calls attention, further, to a number of defects in the constitutional and statutory provisions for presidential succession, both during the process of election and after election is complete. (1) The prospective president may die after the general election and before the electors meet. For whom shall they vote?—(2) He may die after

the electors vote and before the count. Shall Congress declare a dead man elected?—(3) He may die after the count and before the inauguration. Will the vice-president-elect take his place?—(4) Both the president-elect and vice-president-elect may die before the inauguration. Will the cabinet officers—possibly of the opposite party—succeed?—(5) What authority shall determine in what inability consists and when it begins and ends?

The foregoing questions, many of them puzzling, are discussed by Mr. Dougherty with penetrating criticism, though sometimes at too great length. Too much space is given to views expressed by statesmen. In the author's opinion the defects are grave enough to condemn the system, though not *in toto*.

After discussing the amendments hitherto proposed in Congress he rejects them and devotes a lengthy chapter to a plan of his own, which involves the amendment of the federal constitution. According to this plan the electoral college is to be abolished. Each state shall be entitled to as many votes for president and vice-president as it has senators and representatives. The presidential electors shall be those qualified to vote for the members of the most (*sic*) numerous branch of the state legislature. The presidential votes of each state shall be divided among the candidates in proportion to the number of popular votes received by them. If two or more receive an equal number of presidential votes, that one shall be president who receives the highest number of popular votes. If there is still a tie, then he who receives the highest number in the greatest number of states shall be president. All contests over the result of the popular election shall be determined by the tribunals of the several states. The defects in the law of presidential succession are provided for in part, and Congress is empowered to provide for the others.

This plan is based on the assumption that the states, as at present, shall decide upon the qualifications of their voters. The author acknowledges that, under the present system, the eligibility of electors is a matter of national concern. The reviewer is of the opinion that the franchise question is of still greater moment, though he is not quite ready to say that the national government shall have full and complete control of it. The determination of the result under the author's plan probably would present fewer difficulties than under the present system; but it is surprising to learn that there "has rarely if ever been a controversy in any commonwealth, except during the reconstruction era, over the election of any state official." No longer ago than 1894 there were such controversies in Alabama and Tennessee, and in 1899 there was such a controversy in Kentucky.

Mr. Dougherty's plan is further based on the assumption that, in making the choice, the states are to retain the relative weight which they now have. Starting with Burke's maxim that politics have to be adjusted to human nature and not to human reason, he dismisses this feature with the remark that the spirit of compromise must animate twentieth-century deliberations as it did those of 1787 (p. 402). In another place the author praises his plan because it "operates to equalize the ballots of all voters," though the context shows that he means within any one state (p. 369). It may be human nature for John Doe to want more votes than Richard Roe; but is it human nature for Richard Roe to be satisfied with this arrangement, and will he tolerate it forever? Does human nature or human reason call any more loudly for the equalization of all votes within a state than for the equalization of all votes in the United States? Contrasting the votes based upon senatorial representation, it is found that twenty-three states, with a population of thirteen millions, have forty-six votes, while twenty-two states, with a population of sixty millions, have only forty-four. The classical example of extreme contrast is that of Nevada and New York. Under Mr. Dougherty's plan the vote of a citizen of Nevada would still weigh one hundred and seventy-two times as much as the vote of a citizen of New York in that part of the choice based upon senatorial representation. To take states closer together: Is there anything in human nature or human reason to justify giving a like preponderance to a citizen of Delaware over his next-door neighbor in Pennsylvania, from whom he is separated only by an imaginary line?

Under the present social organization there might be some justification for these differences, if the citizens of the small states were more wealthy than those of the large states, but this is notoriously not true. Even under a different social organization inequality of voting power might possibly be justified, if the preponderance of intelligence and political morality was on the side of the small states. At present 13.81 per cent of the potential voters of the twenty-three smaller states are illiterate, while only 10.8 per cent of those in the twenty-two larger states are in the same condition. As for political morality, size appears to have nothing to do with this, as Nevada and New York or Delaware and Pennsylvania can testify.

Mr. Dougherty confesses that his plan will still make minority presidents possible, but adds that so do all other amendments ever proposed. If the electoral college is to be abolished, why not abolish the system? Popular election would make impossible the choice of a man who received fewer votes than his opponent. If it be thought advisable for

the one chosen to have a clear majority, failures to elect might be avoided by giving the electors preferential votes.

A few words may be devoted to minor criticisms. Typographical errors occur on pages 234 and 282. The index is not altogether satisfactory. For example, neither "disputed," nor "double," nor "return" nor "election," nor "count" is to be found there. Out of 324 references in the index, 284 are names of persons or places. Sometimes the author fails to explain things apparently material to the subject; for example, why the vote of Arkansas was rejected in 1873 while that of Texas was not. A very serious defect is the lack of references to sources, of which there are comparatively few in the entire book.

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*The Election of Senators.* By GEORGE H. HAYNES. New York, Henry Holt & Company, 1906.—295 pp.

This book of Professor Haynes is a full and fair discussion of an important question. The manner in which senators should be elected, the evils of the present system, the greater evils that might result from any other system, have been actively debated for many years. The author shows how the provision in reference to the election of senators came originally to be adopted in the constitution, and what have been the practical results of its operation. They have been both good and bad. When one considers the influence that has been exercised by the United States Senate for more than a century and the high character of many of its members, it is impossible to say that the system by which they were chosen has altogether worked ill. When, on the other hand, we consider the delays and scandals that have often attended the choice of senators, and the inferior character of many who have succeeded in obtaining the suffrage of state legislators, we cannot say that the system has been entirely satisfactory.

Professor Haynes has discussed the favorable and unfavorable results in the past, and the advantages and disadvantages which might result from direct election by the people, with great fairness. On the whole it is his opinion that the advantages that might result from a change would exceed the evils that could reasonably be expected. Such, we are inclined to think, is the judgment of the intelligent portion of the community, outside of the Senate Chamber at Washington. Notwithstanding this consensus of opinion, it is, to say the least, unlikely that a constitutional amendment will be adopted changing the manner of