

“Enlightenment Democracy”: Tara Ross’ Reflections on the Origins and Functioning of the Electoral College of the United States of America

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INTRODUCTION

Tara Ross is an American jurist whose seminal works are dedicated to the original American institution of the Electoral College.¹ This paper focuses primarily on

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¹ It would probably be most expedient to quote from the author’s official website: “Tara Ross is nationally recognized for her expertise on the Electoral College. She is the author of *Why We Need the Electoral College* (2019), *The Indispensable Electoral College: How the Founders’ Plan Saves Our Country from Mob Rule* (2017), *We Elect A President: The Story of our Electoral College* (2016), and *Enlightened Democracy: The Case for the Electoral College* (2nd ed. 2012). She is also the author of *She Fought Too: Stories of Revolutionary War Heroines* (2019), and a co-author of *Under God: George Washington and the Question of Church and State* (2008) (with Joseph C. Smith, Jr.). Her Prager University video, *Do You Understand the Electoral College?* is Prager’s most-viewed video ever, with more than sixty million views. Tara often appears as a guest on a variety of talk shows nationwide, and she regularly addresses civic, university, and legal audiences. She’s contributed to many law reviews and newspapers, including the *National Law Journal*, *USA Today*, the *Washington Examiner*, *The Hill*, *The Washington Times*, and *FoxNews.com*. She’s addressed audiences at institutions such as the Cooper Union, Brown University, the Dole Institute of Politics, and Mount Vernon. She’s appeared on Fox News, CSPAN, NPR, and a variety of other national and local shows. Tara is a retired lawyer and a former Editor-in-Chief of the *Texas Review of Law & Politics*. She obtained her B.A. from Rice University and her J.D. from the University of Texas School of Law. She resides in Dallas with her husband and children.” More information about the Ross’ activities is available on her official website: <https://www.taraross.com/about> (accessed December 17, 2022).

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an analysis of selected reflections from Ross' *Enlightened Democracy: The Case for the Electoral College*.² The selected excerpts (*Part One: The Origins of the Electoral College* as well as *Part Two: An 18th-Century Solution for the 21st Century*) represent a compromise between the formula of the text and the richness of Ross' observations. The parts in question deliver the author's commentaries on the rationale behind the introduction of this institution and the contemporary aspects in the functioning of the Electoral College and, as already mentioned, this study focuses on those in the light of Ross' work. As regards the former, the principal themes examined here include the reluctance of the Founding Fathers towards democracy, the relations between different social strata, the understanding of the term "republic," the system of checks and balances, as well as the debates during the Constitutional Convention. Matters relating to the functioning of the institution are discussed in the context of federalism, contemporary attitudes to democracy, the current pace of information flow, as well as the advantages and drawbacks of the Electoral College. With respect to the eponymous "Enlightenment traditions," it is worth noting that the affirmation of various eighteenth-century solutions pervades all Ross' reflections. On the one hand, she draws on the notion of "Enlightenment democracy" to interpret categories such as "republic," "democracy," and, more broadly, the social and political relations in general. On the other hand, there is a deep conviction that the solutions dating back to that period do apply today.

In the first place, this paper will attempt to characterize a major part of Ross' thoughts on the Electoral College. There is no particular need to substantiate one's interest in a body that elects the leader of a state as politically significant as the United States of America. Ross' reflections constitute a contribution in the lively debate concerning this institution that is taking place in America. It is therefore worth examining the arguments formulated by one of the leading representatives among the "defenders" of the Electoral College. Discussed here, Ross' observations revolve around two issues relating to the institution, namely its origins and functioning, both of which the author assesses positively. Such an approach to the matter yields the essence of Ross' views.

Secondly, this study aims to popularize Ross as well as her views within scholarly discourse in Poland. Again, the need for research on the manner in which the American president is elected does not require special justification. It is anything but insignificant, in view of the social and political impact of that state (also on Poland), as well as given the extensive links between the election of the President by the Electoral College and research into political and legal doctrines or constitutionalism. It appears that issues surrounding the Electoral College receive little attention

² Tara Ross, *Enlightened Democracy: The Case for the Electoral College* (Dallas: Colonial Press, L.P., 2012).

from Polish scholars.³ For this reason, Ross’ deliberations have been quoted quite abundantly. The desire to familiarize the Polish reader with the matter at hand has also dictated, albeit to a limited extent, the choice of the excerpts to be cited.

THE ORIGINS OF THE ELECTORAL COLLEGE, ACCORDING TO TARA ROSS

Ross places a definite emphasis on the negative attitude of the Founding Fathers towards democracy, drawing attention to several problems in this respect. She analyzes the virtually organic aversion of most Founding Fathers to pure democracy and the apparent contradiction that such an approach may engender in contemporary America: “This fact may come as a surprise to many Americans, who mistakenly believe that the United States was established as a democracy. The founding generation, however, intentionally omitted the word “democracy” from their governing documents. The Founders, by and large, were opposed to pure democracy, which allowed bare majorities to tyrannize over minority groups. Instead, the founding generation intended to create a republic—or, arguably republican democracy—which would incorporate a spirit of compromise and deliberation into decision—making.”⁴

A position of this kind has been widely supported in pertinent literature by such scholars as Ryszard Małajny.⁵ Vernon Louis Parrington notes that prior to the French Revolution, the term “democracy” evoked distinctly negative emotions among Americans.⁶

³ Concerning presidential elections in the United States in general, one should mention, for example, the publication by Rett Ludwikowski and Anna Ludwikowska, see Rett Ludwikowski and Anna Ludwikowska, *Wybory prezydenckie w USA na tle porównawczym* (Warszawa: LexisNexis Polska, 2009). Bogdan Mucha’s study is also extremely valuable, see Bogdan Mucha, *System wyboru Prezydenta Stanów Zjednoczonych Ameryki* (Toruń: Wydawnictwo Adam Marszałek, 2014).

⁴ Ross, *Enlightened Democracy: The Case for the Electoral College*, 15.

⁵ The author analyzes the positions of several Founding Fathers, observing as follows: “Today, the ‘Fathers of the Constitution’ enjoy a well-merited reputation as the founders of American democracy. Yet, in reality, they were less than fond of unrestricted democracy and therefore it would be misguided to drape them in the togas of popular tribunes. For Alexander Hamilton, democracy meant a concept akin to ochlocracy; for Elbridge Gerry, the worst of all political evils; for Fisher Ames, ‘an illuminated hell, that in the midst of remorse, horror, and torture, rings with festivity’; and for John Adams—who would speak in the strongest of terms—‘the most miserable, unjust and hateful form of polity . . . arbitrary, tyrannical, bloody, cruel, and intolerable a government,’” see Ryszard Małajny, *Doktryna podziału władzy “Ojców Konstytucji USA”* (Katowice: Uniwersytet Śląski, 1985), 151–52.

⁶ Vernon Louis Parrington, *Mentalność kolonialna 1620–1800*, trans. Henryk Krzeczowski (Warszawa: Państwowy Instytut Wydawniczy, 1968), 457. It may be noted that the many classics with whom the Founding Fathers were conversant had also condemned democracy. For instance, Aristotle found democracy to be a “degenerate” form of government, see Giovanni Reale, *Historia filozofii starożytnej*, vol. 2, *Platon i Arystoteles*, trans. Edward I. Zieliński (Lublin: Redakcja Wydawnictw KUL, 2012), 516. More broadly on the influence of the antique thought in the political reflection of the Founding Fa-

Closely related to democracy, there is also the matter of the social relationship between the minority and the majority. Ross observes that the Founding Fathers were concerned about the threat to the liberties of the minority from the democratic majority. In her opinion, the Founding Fathers had learned the lessons of history and equated pure democracy with ochlocracy.⁷ According to a deep conviction they shared, governance relying on “the wise, the good, and the rich” was the superior form. In the American realities, the latter stratum consisted of people referred to as ‘gentlemen’ (the equivalent of the English gentry). The emphasis on the association between liberty and property resulted in a constant fear of the “rule of the mob.”⁸

In the subchapter tellingly titled “The Evils of Democracy,” Ross highlights the differences between the notions of “republic” and “democracy,” observing that: “The Constitution does not guarantee “every State in this Union” a democratic form of government, but rather ‘a Republican Form of Government.’ The difference is more than merely semantic. Republicanism expects that a country will thrive when people are governed by representatives who are elected based on their wisdom, integrity, and civic virtue. These representatives are intended to deliberate and reach wise compromise with other representatives. A democratic, or populist, theory of government, by contrast, would assume that the ‘main repository of wisdom and virtue’ is in the people themselves.”⁹

The fact that the Founding Fathers set “republic” against “democracy” has been extensively discussed in the literature. Bernard Bailyn asserts that the two terms were close to each other, often even being used as synonyms. This does not change the fact that “republic” carried more positive connotations, as it brought the primacy of order and virtue to mind. Conversely, “democracy” was often associated with social disorder.¹⁰ Małajny describes the relationship between the two terms in a similar fashion, as he finds that the founding fathers saw republic and democracy as opposites, and largely gave unequivocal preference to the former. In the spirit of Bailyn,

thers (mainly concerning the concept of a mixed system) see, for example, Małajny, *Doktryna podziału władzy* “Ojców Konstytucji USA,” 44–47.

⁷ Ross, *Enlightened Democracy: The Case for the Electoral College*, 16–17. Cf. another meaningfully titled work by Ross—that is, *The Indispensable Electoral College: How the Founders’ Plan Saves Our Country from Mob Rule* (Washington, DC: Regnery Gateway, 2017).

⁸ Małajny, *Doktryna podziału władzy* “Ojców Konstytucji USA,” 120–22.

⁹ Ross, *Enlightened Democracy: The Case for the Electoral College*, 19–21. Ross goes on to cite arguments raised during the ratification debate. She concludes that both supporters and opponents of the constitution generally agreed on the advantages of republicanism over democracy. Regarding the debate that accompanied the ratification of the US Constitution, it may be worthwhile to mention essay no. 39 in *The Federalist Papers*, in which James Madison examines whether the draft constitution is compatible with republican principles, see James Madison, “No. 39: The Conformity of the Plan to Republican Principles,” in Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (Mineola: CreateSpace Independent Publishing Platform, 2020), 182–87.

¹⁰ Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Belknap Press of Harvard University Press, 2017), 282.

Małajny also underlines a peculiar kind of concurrence of those notions. From the standpoint of this study, it may also be noted that the vision of a republic espoused by the Founding Fathers was decidedly elitist according to the latter author.¹¹ Based on the conceptions of the Founding Fathers, Marcin Król attempts to define the term "republicanism": "In the simplest terms, republicanism may be defined as a conviction that citizens motivated by public virtue should dedicate themselves to the common good. Thus, republicanism condemns individualism, egoism, pursuit of one's own interest, while praising such virtues as selflessness and concern for the good of the community. The community is more important than the individual."¹² In the subchapter "Reflecting the Sense of the People," Ross elaborates on the attitude of the Founding Fathers' attitude to "the people," noting that "the Founders' statements against democracy were not indicative of the opposition to self-government. To the contrary, the Founders knew and often spoke of the need to allow the will of the people to operate in the new government that they were crafting." As an example of such a stance, Ross cites Madison.¹³

In another tellingly titled subchapter, "A Republic, If You Can Keep It,"¹⁴ Ross draws attention to the political system established under the US Constitution, referring to bicameralism with its distinct modes of electing members of the various chambers, the division of power between the federal government and the states, or

¹¹ Małajny, *Doktryna podziału władzy "Ojców Konstytucji USA"*, 154–55. Incidentally, the elitism of the Founding Fathers came in various shapes and shades. Examining their approach to the natural equality of the people, Wiktor Osiatyński observes: "It is self-evident to Jefferson, much less to Adams, and least to Hamilton." Wiktor Osiatyński, *Ewolucja amerykańskiej myśli społecznej i politycznej* (Warszawa: Państwowe Wydawnictwo Naukowe 1983), 52. Absence of elitism on Jefferson's part seems more complex; Michał Urbańczyk describes the attitude of the statesman to equality of the people thus: "[P]eople are equal in the moral aspect, which the law should respect. However, every man makes different use of their reason and abilities. Hence, there is no actual equality between people and a certain hierarchy emerges in a society." Consequently, the differences in one's use of reason and ability prompt Jefferson to distinguish a "natural aristocracy," composed of individuals distinguished by talent and virtue. Michał Urbańczyk, *Idea godności człowieka w orzecznictwie Sądu Najwyższego Stanów Zjednoczonych Ameryki* (Poznań: Wydawnictwo Naukowe UAM, 2019), 55–56.

¹² Marcin Król, *Historia myśli politycznej: od Machiavellego po czasy współczesne* (Gdańsk: ARCHE, 2003), 99. The author points out that the prevalent notion among the Founding Fathers was that people are generally driven by passions. Even so, they believed that the latter could be transformed into interests that may be balanced against one another, thus working towards the common good.

¹³ Ross, *Enlightened Democracy: The Case for the Electoral College*, 22. The author draws attention to Madison's attachment to self-governance as expressed in *Federalist No. 39*, see James Madison, "Federalist No. 39: The conformity of the plan to republican principle," 182. Ross also cites James Wilson, who argued in a similar vein. As an aside, the latter Founding Father contributed substantially to the shape of the American presidency. This issue is discussed by Christopher S. Yoo in "James Wilson as the Architect of the American Presidency" in *The Life and Career of Justice James Wilson*, ed. Randy E. Barnett (Washington, DC: Georgetown Center for the Constitution, 2019), 64–96.

¹⁴ The title of the subchapter echoes the question addressed to Benjamin Franklin after the Constitutional Convention. When asked about the systemic shape of the American state was, he replied: "Republic, if you can keep it." Quoting the anecdote, Ross refers to the system of checks and balances that the Founding Fathers had created, see Ross, *Enlightened Democracy: The Case for the Electoral College*, 23.

the special majority required to overturn a presidential veto. Against this background, Ross places the Electoral College, which she considers an ultimate safeguard of the system.¹⁵ Indeed, the American system of checks and balances is invoked in the literature exceedingly often. It was premised on enhancing the Montesquian doctrine of the separation of powers with interrelationships and limitations, pursuing the idea of having things in check and balance.¹⁶ The question of the relationships between the powers is one of the reasons why the participants in the Constitutional Convention established the Electoral College for the purpose of electing the president. Simplifying somewhat, it may be said that the introduction of a strong legislature into the American political system prompted the decision-makers gathered at the convention to abandon the idea of electing the executive through the national lawmaking body. Carol Berkin draws attention to the correlation between these two issues: “As the debates unfolded, the central question proved to be whether the president should be empowered to police the legislature. For having created a bicameral congress and endowed it with broad-ranging powers, including the right to levy taxes and to regulate foreign trade, the delegates now wondered if the legislature needed some check upon its authority.”¹⁷ Following Ross’ argument, the matter is discussed below.

Ross formulates a similar view to Berkin’s. Having the executive elected by the national legislature was indeed taken into consideration for most of the time of the Constitutional Convention,¹⁸ owing, among other things, to the experience of the colonial period. As Wilson stated: “Before the Revolution, both the executive and the judiciary did not rest in the hands of the people, or those whom the people had empowered. It had a different and alien source. It was exercised according to foreign rules and geared towards the realization of foreign interests.”¹⁹ Hence, it is no sur-

¹⁵ Ross, *Enlightened Democracy: The Case for the Electoral College*, 24. Ross states: “The Founders buttressed the new government with one last protective device: The Electoral College. The new presidential election system provides at least two reasonable concessions to the minority. First, a presidential candidate cannot be elected simply by gaining a majority in a handful of states. Instead, the presidential candidate must garner support across the nation to have a reasonable probability of being elected. Second, the majority is provided with several methods by which may amplify its voice, allowing it to make a statement that would otherwise go unnoticed in a direct popular vote.” This quote foreshadows the exposition on the merits of the Electoral College, discussed here in greater detail later on.

¹⁶ Jolanta A. Daszyńska, *Kryzysy i kompromisy w Stanach Zjednoczonych Ameryki czasów Ojców Założycieli* (Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2018), 53. The classic essay pertaining to the system is *Federalist No. 51*, which delves into the division of powers, see James Madison, “Numer 51,” in *Eseje polityczne federalistów*, ed. Frederick Quinn, trans. Barbara Czarska (Kraków, Warszawa: Znak, Fundacja im. Stefana Batorego, 1999), 149–54. The checks and balances system is described in detail by Andrzej Pułło in *System konstytucyjny Stanów Zjednoczonych* (Warszawa: Wydawnictwo Sejmowe 1997), 20–24, 56.

¹⁷ Carol Berkin, *Doniosłe rozstrzygnięcie. Tworzenie amerykańskiej konstytucji*, trans. Jerzy S. Kugler (Warszawa: Wydawnictwo Sejmowe: Kancelaria Sejmu, 2005), 93–94.

¹⁸ Ross, *Enlightened Democracy: The Case for the Electoral College*, 30–31.

¹⁹ Mucha, *System wyboru Prezydenta Stanów Zjednoczonych Ameryki*, 25. Naturally, in Wilson’s view, the attitude towards the legislature—which apparently protected the interests of the colonists—was quite different.

prise that the experience informed the debate at the Convention, whose participants would set out by affirming the option of the executive being elected by the national legislature.²⁰ Only after the aforementioned stalemate over the shape of the legislature was broken did new conditions arise in which the choice of the executive could be envisioned differently, although it provoked new concerns as well. Previously, most had believed that a strong legislature must exercise control over the executive—of which they were distrustful—whereas after July 16 they began to fear the rise of the legislature.²¹ As a compromise solution, the Electoral College dispelled the doubts regarding the division of power between its branches, but also mitigated the concerns about the redistribution of powers between the federal government and the states. Ross underlines that during the deliberations of the Constitutional Convention, the College was perceived as a solution that benefited both large and small states: “The election requires the active involvement of each state, yet support from a regional constituency alone is insufficient to win the Electoral College. The President must win local support across the nation to be elected.” According to Ross, the Electoral College reified the values of the “Great Compromise” and lent them a federal dimension.²² The author outlines the origins of American federalism, noting, for instance, the weakness of the state when the Articles of Confederation were in force. The problem was then resolved by establishing a “federalist republic,” where the duties and responsibilities were shared between the central government and the states.²³

AN ENLIGHTENMENT SOLUTION IN THE TWENTY-FIRST CENTURY

Ross discusses the benefits for American society arising from the existence of the Electoral College. Drawing attention to the (aforementioned) federalist element in the debate on the Electoral College, she concludes that modern Americans often have little understanding of the emphasis on state sovereignty that many of

²⁰ Early on in the debate, this view received strong support in, for example, the statement by Charles Pinckney of June 2, see Max Farrand, ed., *The Record of the Federal Convention of 1787* (New Haven: Yale University Press, 1911), 1: 91.

²¹ July 16 witnessed the “Great Compromise”; Daszyńska describes the moment as follows: “The Great Compromise between large and small states, those with high population density and those where population was scarce. What satisfied the delegates from such diverse states were the principles governing the elections to Congress. Two senators would always be elected to the Senate, or the upper house, regardless of the state’s population. On the other hand, members of the House of Representatives, or the lower house, would be elected proportionately to the population of the state,” see Daszyńska, *Kryzysy i kompromisy w Stanach Zjednoczonych Ameryki czasów Ojców Założycieli*, 51–52. Małajny discussed the Founding Fathers’ fears of an overly powerful legislature in a fragment on the “despotism of the legislature,” see Małajny, *Doktryna podziału władzy “Ojców Konstytucji USA,”* 142–47.

²² Ross, *Enlightened Democracy: The Case for the Electoral College*, 31–33.

²³ Ross, *Enlightened Democracy: The Case for the Electoral College*, 34–35.

the Founding Fathers had valued. In Ross' opinion, the latter was convinced that limited powers of the federal government would be a safeguard of the freedom which they had won. Present-day Americans often look to the federal government for action.²⁴ The evolution of the relationship between the states and the federal government is also a major topic in American constitutionalism. Given our context, Pułło aptly observes that "the creators of the Constitution were more inclined to see the danger to the future state in the federal competence being assumed by the states than vice versa. The authors of *The Federalist* devoted much effort to demonstrating how strong the power of the states was compared to the central government. The future development of the country, however, brought about the opposite."²⁵ Ross observes that Americans have considerably devalued the significance of federalism, and as a result, no longer see the advantages of the Electoral College.²⁶ Consequently, federalism is understood as a token of "respect" for the sovereignty of the states and acknowledgment of the fact that the United States is a "union of states." The Electoral College is commonly associated by scholars with support for federalism thus construed.²⁷ Ross' approach to such a notion of federalism is critiqued by Alan E. Johnson, who argues that it lacks historical and constitutional grounds. Moreover, he does not share Ross' conviction that the Electoral College was established to protect what he calls "her version of eighteenth-century federalism."²⁸

Ross also accentuates the problems arising from the "development of a populist mentality." Once again, she underscores the gap between the republican approach of the Founding Fathers and the far more democratic approach of the Americans today, who do not understand the republican logic of indirect elections behind the Electoral College. In the relevant section of her argument, it constitutes a contradiction with evidently practical and contemporary consequences: "The founding generation established republican safeguards as protection against tyranny, but modern Americans have never been exposed to such tyranny (or mob anarchy for that matter) and such a threat seems more hypothetical than real." Even so, such a mindset affects contemporary American attitudes towards the Electoral College. Since they do not consider "pure democracy" a threat, they have no reason to endorse the solution

²⁴ Ross, *Enlightened Democracy: The Case for the Electoral College*, 56–57.

²⁵ Pułło, *System konstytucyjny Stanów Zjednoczonych*, 151. Małajny's more general reflections on federalism are also valuable in this context, see Ryszard Małajny, *Amerykański prezydenccjalizm* (Warszawa: Wydawnictwo Sejmowe, 2012), 32–33.

²⁶ Ross, *Enlightened Democracy: The Case for the Electoral College*, 60.

²⁷ Donald Haider-Merkel et al., "The Role of Federalism in Presidential Election," in *Choosing A President. The Electoral College and Beyond*, eds. Paul D. Schumaker and Burdett A. Loomis (New York: Chatham House Publishers Inc., 2002), 131.

²⁸ Alan E. Johnson, *The Electoral College. Failures of Original Intent and proposed Constitutional and Statutory Changes for Direct Popular Vote*, 2nd ed. (Pittsburgh: Philosophia Publications, 2021), 142.

that such concerns brought forth.²⁹ In her deliberations, Ross links the distinct approaches of modern-day Americans and the Founding Fathers toward democracy with the problem of the "minority president." This corresponds well with a remark by Bogdan Mucha, who observes that the system of electing the President through the Electoral College is criticized today chiefly from a doctrinal and philosophical standpoint. Opponents of the system allege its being undemocratic and maintain that it leads to "wasting" votes cast for the losing candidate in a given state.³⁰ To date, candidates who had not received the most votes in the general election were elected president on five occasions.³¹ Ross asserts that the winner-take-all principle which applies in most states is not constitutional. The decision of individual states to implement it manifests, in her view, the benefits of federalism. The states of Nebraska and Maine have exercised their discretion in this regard, shaping their systems differently than the rest.³²

Ross also raises the question of access to information and the latest news, as well as the ability to communicate, which have changed radically since 1787.³³ She maintains, however, that this does not render obsolete that particular reason for the introduction of the Electoral College, which derived from the amount of information available to the citizens. After all, global interdependencies and socio-economic in-

²⁹ Ross, *Enlightened Democracy: The Case for the Electoral College*, 61–63. This is aptly reflected in the following: "Many critics of the Electoral College maintain that the country's presidential election powers have become outdated in a society that increasingly believes itself to be democratic."

³⁰ Mucha, *System wyboru Prezydenta Stanów Zjednoczonych Ameryki*, 298.

³¹ This was the case in 1824, 1876, 1888, 2000 and 2016. Ross, *The Indispensable Electoral College. How the Founders' Plan Saves Our Country from Mob Rule*, 161–71.

³² Ross, *Enlightened Democracy: The Case for the Electoral College*, 68–70. It is worth quoting from Ross: "Maine and Nebraska, with four and five votes, respectively, have each adopted a different system. Their elections do not follow the winner-take-all rule; instead, votes are allocated based upon congressional district. The freedom of states to do exactly as they wish is one of the great benefits of federalism." Due to the fact that when commenting on the Americans' attitudes to democracy Ross mentions a president who lost the popular vote but won in the Electoral College, I follow a different order of description than the successive chapters of *Enlightened Democracy: The Case for the Electoral College*.

³³ As noted earlier, access to information and news was one of the main reasons why the Electoral College was introduced. However, it is worth recalling what access to information people in eighteenth-century America actually had. In 1725, only five newspapers were published in the colonies. By 1765, there were already twenty five, two of them appearing in a foreign language (i.e., in German). Their relative spread does not change the fact that only a fraction were available in more remote regions of the colonies. The process of formulating an opinion that spanned all colonies was forged only gradually, see Henryk Katz, *Historia Stanów Zjednoczonych Ameryki* (Wrocław: Zakład Narodowy im. Ossolińskich, 1971), 16. Zbigniew Lewicki provides a comprehensive depiction of the communication realities in eighteenth-century America. In a somewhat pessimistic tone, this author states that "the development of the postal system was dependent on the development of the road infrastructure, which was a major limiting factor. Until the mid-eighteenth century, practically no real roads had been built in the colonies: Indian roads were used, the simplest ways of access to new farms were created; at times it proved possible to improve the path used by pack horses enough so that carts could pass through as well, but wherever possible goods were transported by water," see Zbigniew Lewicki, *Historia cywilizacji amerykańskiej. Era tworzenia 1607–1789* (Warszawa: Wydawnictwo Naukowe Scholar, 2021), 429–30.

terconnectedness have increased: “Along with the improvement in communications has come a similar change in the nature of commerce. The economy increasingly becomes, not just more national, but also more global.” As a result, sound political choices require much greater knowledge than before, hence the classic argumentation from the time of the Constitutional Convention, which emphasized access to knowledge and the vision of politics as a matter of one elite or another, remains valid.³⁴ The chapter entitled “The Benefits of Federalism”³⁵ contains a section defending the federal perspective in thinking about the Electoral College. According to the author, the advantages of the electoral system outweigh its shortcomings, whereas the consequences of its elimination are difficult to predict.³⁶

Towards the end of Chapter Five, Ross draws attention to several other interesting issues. The author stresses that by recognizing the value of the smaller states the Electoral College protects them from being dominated by the larger ones.³⁷ This is a classic theme, articulated emphatically in the deliberations of the Constitutional Convention. Gunning Bedford’s speech offers an eloquent example: “Gunning Bedford, the lumbering giant from Delaware, was the first to bluntly accuse his enemies of conspiracy. ‘I do not, gentlemen, trust you,’ he told the large-state delegates. ‘If you possess the power, the abuse of it could not be checked.’”³⁸ In “Preserving Federalism,” Ross compellingly recapitulates the observations concerning the influence of the Electoral College on the contemporary facet of American federalism. Specifically, people who call for direct election of the president overlook the interests of their states whilst focusing on what they may gain from a different voting paradigm.³⁹ In the author’s opinion, the Electoral College continues to fulfill its tasks, which from the outset include protecting the rights of the smaller states. In a similar vein, the rights of the smaller states are underlined by Earl Ofari Hutchinson.⁴⁰

³⁴ Ross, *Enlightened Democracy: The Case for the Electoral College*, 63–64.

³⁵ In the *Introduction* to the chapter, Ross quotes an excerpt from President Ronald Reagan’s speech, in which the latter states that without the Electoral College, the dominance of the large and populous states would be considerable. Furthermore, Reagan emphasizes the importance of state sovereignty to American freedom. Ross subscribes to such vision, reasserting the link between the Electoral College and federalism, see Ross, *Enlightened Democracy: The Case for the Electoral College*, 67–68.

³⁶ Ross, *Enlightened Democracy: The Case for the Electoral College*, 70–71. The subchapter analyzes a number of election campaigns.

³⁷ Ross, *Enlightened Democracy: The Case for the Electoral College*, 79. Ross observes: “The Electoral College, then, accomplishes an important goal: it ensures that the voices of small states are not drowned out altogether, as they otherwise could be. It ensures that the largest states will not rule as majority tyrants over their smaller neighbors. As the small states are protected, so are the voters who reside within them.”

³⁸ Berkin, *Doniosłe rozstrzygnięcie. Tworzenie amerykańskiej konstytucji*, 85. More statements along those lines may be found, such as Oliver Ellsworth’s of July 25, in which he expressed concern about the potential dominance of the larger states during the elections of the executive. Farrand, *The Record of the Federal Convention of 1787*, 111.

³⁹ Ross, *Enlightened Democracy: The Case for the Electoral College*, 79–80.

⁴⁰ Earl O. Hutchinson, *What’s Right and Wrong with the Electoral College* (Los Angeles: Independently published, 2020), 29.

In the chapter entitled “Moderation and Compromise,” Ross highlights the relationship between the two-party system in the United States and the Electoral College, as she finds that the combination of these institutions contributes to preventing extreme groups and radical minorities from coming to power.⁴¹ This tallies with one of the reasons for the introduction of the Electoral College, namely the fear of factions and conspiracies. To the Founding Fathers, “faction” meant “an association pursuing socially reprehensible ends.”⁴² In this respect, the Electoral College demonstrated an advantage over the election of the President by the national legislature as an hoc body, whereby the electors did not gather in one location but voted in the capitals of their states. Consequently, it was less susceptible to the factional conspiracies that Gouverneur Morris warned against if the president were to be elected by the national legislature. Berkin observes: “Gouverneur Morris raised old fears—and added what for these overwhelmingly Protestant delegates was a chilling comparison to the practices of Roman Catholicism. ‘If the Legislature elect,’ Morris declared, ‘it will be the work of intrigue, of cabal, and of faction; it will be like the election of a pope by a conclave of cardinals; real merit will rarely be the title to the appointment.’”⁴³

In another fragment,⁴⁴ Ross shows how the Electoral College fits in with the entire system of checks and balances and, considering the systemic context, notes that it would be difficult to predict the impact on the American system should the Elec-

⁴¹ Ross, *Enlightened Democracy: The Case for the Electoral College*, 81–82.

⁴² Ryszard Małajny, *Trzy teorie podzielonej władzy*, (Warszawa: Wydawnictwo Sejmowe, 2001), 271. The meanings of terms such as “faction” and “party” derived from the work of numerous authors, such as St John (1st Viscount Bolingbroke), David Hume, or Edmund Burke, see Izabella Rusinowa, *Z dziejów amerykańskich partii politycznych* (Warszawa: “Egros,” 1994), 10. Bolingbroke’s thoughts on the matter are worth quoting here: “*Faction* is to *party* what the *superlative* is to the *positive*. *Party* is a political *evil*, and *faction* is the *worst of all parties*,” see Henry St John Bolingbroke, “Idea króla—patrioty” in *Idea króla—patrioty. Wybór pism*, trans. Agnieszka Kuczkiewicz-Fraś and Piotr Musiewicz (Kraków: Ośrodek Myśli Politycznej, 2020), 200–01.

⁴³ Berkin, *Doniosłe rozstrzygnięcie. Tworzenie amerykańskiej konstytucji*, 94. The matter is addressed by Hamilton in *Federalist No. 68*: “And as the Electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the People, than if they were all to be convened at one time, in one place. Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption.” Alexander Hamilton, “No. 68: The Mode of the Electing the Presidency,” in *The Federalist Papers*, 333. *Federalist No. 68* is a classic contribution to the debate on the Electoral College. Georg Grant notes that Hamilton’s aim was indeed to defend the Electoral College, and includes the text of the entire essay in his book (*The Importance of the Electoral College*), thus underscoring its importance. Georg Grant, *The Importance of the Electoral College* (Tennessee: Franklin, 2020), 87–92.

⁴⁴ Entitled “The Solar System of Governmental Power.” This is a reference to a speech by John F. Kennedy, who spoke of the Electoral College as follows: “It is not only the unit vote for the Presidency we are talking about, but a whole solar system of governmental power. If it is proposed to change the balance of power of one of the elements of the solar system, it is necessary to consider all the others,” see Ross, *Enlightened Democracy: The Case for the Electoral College*, 87.

toral College be abolished. Perhaps, as proponents of direct voting see it, it would be minimal, but Kennedy, who anticipates the loss of systemic balance, may also be right.⁴⁵ Although such arguments concern power relations within the already existing political system of the United States, it is worth stressing once again that much the same provided grounds for the creation of the Electoral College.

Another issue examined by Ross is the alternative methods of electing the President, where she once again embraces the systemic perspective to assert that change may have adverse, system-wide corollaries. The crucial question is whether the potential introduction of direct presidential elections would entail the elimination of the second ballot. Such a requirement has been formulated in most historical proposals for direct voting, but Ross points out that it does not feature in the National Popular Vote (NPV) project. Presidential campaigns in France (of 2002 and 2012) are cited by the author as an example of a system where the second round is harmful to the stability and moderate nature of political life: "As demonstrated in these examples, the French direct election system had worked against coalition-building and moderate candidates in that country."⁴⁶

The National Popular Vote plan presupposes "an interstate agreement, whereby the legislatures in the fifty states and the District of Columbia would appoint presidential electors who would be obligated to vote for the candidate who has received the highest proportion of voter's votes nationwide."⁴⁷ Interestingly, Ross notes that NPV would promote the winner-take-all phenomenon, which is one of the complaints voiced by the critics of indirect presidential elections through the Electoral College as part of the current model: "NPV realizes on the same dynamic, removing 'winner-take-all' from the state level and implementing it at the national level. In this way, third parties will still be discouraged, but these direct election advocates will be able to achieve the more purely democratic process that they desire."⁴⁸ Indeed, the criticism is often leveled at the Electoral College that the winning candidate takes over all the electors in a state, a problem described above. Another frequent consequence to which Ross refers in the preceding quote is the perpetuation of the two-party system. According to Mucha, it is quite common in jurisprudence to criticize the unitary method, because the adoption of the winner-take-all principle exacerbates the possibility of asymmetries arising between the number of votes of the voters and the electors.⁴⁹

"Stability and Certainty in Elections" is a chapter devoted to the advantages of the Electoral College with respect to the elections themselves. The author observes

⁴⁵ Ross, *Enlightened Democracy: The Case for the Electoral College*, 87.

⁴⁶ Ross, *Enlightened Democracy: The Case for the Electoral College*, 88–91.

⁴⁷ Mucha, *System wyboru Prezydenta Stanów Zjednoczonych Ameryki*, 316.

⁴⁸ Ross, *Enlightened Democracy: The Case for the Electoral College*, 91–92. Ross expounds her views on the NPV in the article entitled "Legal and Logistical Ramifications of the National Popular Vote Plan," *Federalist Society Review* 11, no. 2 (2010): 37–44. Accessed November 20, 2022, https://www.ifs.org/doclib/20101021_Ross2010NPVIssues.pdf.

⁴⁹ Mucha, *System wyboru Prezydenta Stanów Zjednoczonych Ameryki*, 304.

that supporters of the Electoral College often emphasize its importance for the stability of the election process. In the case of direct elections, the "theft" of votes may have an impact—albeit a minor one, of course—on the final outcome. With the Electoral College, such a possibility is radically limited; an attempt to influence the outcome of an election by "stealing" votes would have to be coupled with a prediction where such an action could yield the desired effect. Naturally, opponents of the Electoral College argue that the prospect of electoral fraud is greatly exaggerated, whereas Ross points out that the Electoral College tends to amplify an electoral victory and contributes to the finality of elections.⁵⁰ As regards that "finality," Berkin makes some pertinent remarks on the 2000 elections: "Albert Gore or George W. Bush—Americans would learn the name of the victor over their morning coffee. It was not so. For weeks, indeed months, what will surely become the most celebrated disputed election in presidential history dragged on. Accusations and counteraccusations of fraud, deception, mechanical error, and human error raged around the votes cast in the state of Florida."⁵¹ Ross further emphasizes the impact of the Electoral College on reducing errors and potential fraud, advantages which should be attributed to the very essence of electing a president in this manner: "The Electoral College minimizes the impact of fraud and error by isolating problems to one state or a handful of states."⁵²

The tellingly titled "Imperfect World, Optimal Solution" is the last of the subchapters discussed here. In it, the author reiterates her observations about the merits of the Electoral College. The realistic overtone is tangible in both the title and the content since the crux of the matter lies in searching for the best possible solution rather than an ideal one. Such a position is well reflected in the fragment concerned with eliminating potential electoral fraud: "The Electoral College system cannot completely eliminate the incentive for fraud. Where people are vying for power, there will always be motivation to cheat. This is human nature."⁵³ It would be difficult not to see this as a conservative stance, which is widely believed to involve the conviction that human nature is permanently flawed while social conflicts are inevitable.⁵⁴

⁵⁰ Ross, *Enlightened Democracy: The Case for the Electoral College*, 97.

⁵¹ Berkin, *Doniosłe rozstrzygnięcie. Tworzenie amerykańskiej konstytucji*, 7–8. Mateusz Radajewski maintains that this was one of the most significant cases heard by the US Supreme Court in recent years, see Mateusz Radajewski, "Weryfikacja ważności wyników wyborów na przykładzie sprawy *Bush v. Gore*," in *Identyfikacja granic wolności i praw jednostki. Prawnoporównawcza analiza tożsamego przypadku pod kątem praktyki stosowania prawa amerykańskiego i polskiego*, ed. Mariusz Jabłoński (Wrocław: E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, 2016), 343.

⁵² Ross, *Enlightened Democracy: The Case for the Electoral College*, 101–02.

⁵³ Ross, *Enlightened Democracy: The Case for the Electoral College*, 104–05.

⁵⁴ Kazimierz Dziubka, Bogdan Szlachta, and Lech M. Nijakowski, *Ideologie we współczesnym świecie* (Warszawa: Wydawnictwo Naukowe PWN, 2008), 120–21.

CONCLUSIONS

The above excerpts from *Enlightened Democracy: The Case for the Electoral College* are not intended as an exhaustive overview of Ross' thoughts on the Electoral College. Nor, of course, do they aim to cover all the issues associated with this institution. The aim of this study is merely to introduce the reader to Ross' observations concerning two specific areas mentioned in the title and popularize her views on the College.

The rather frequent critical voices according to which the Electoral College is ineffectual simply because it is an institution with a long history seem to verge on oversimplification.⁵⁵ Elucidating the origins and some of the principles that govern the functioning of the College may be important for readers in Poland and elsewhere because one can be virtually certain that the institution will remain a part of the American legal and political system in the foreseeable future. Mucha advances a valuable commentary: "In the American constitutional system, it is extremely difficult, if not impossible, to adopt constitutional amendments which would violate the interests of the states in the process, since it suffices for sixteen states to disagree, and which would go against the interests of the two largest political parties, notably their systemic position, by, for example, adopting a proportional allocation of electoral votes and opening the way to a multi-party system modeled on the parliamentary democracies of Europe. The alternative proposals are interesting, but with no real chance of being implemented."⁵⁶

Summary: This text discusses Tara Ross' reflections on the Electoral College of the United States of America. In her book *Enlightened Democracy: The Case for the Electoral Colleges*, the author explores the origins and functioning of the Electoral College, and an analysis of these themes is the primary goal of this study. Moreover, it sets out to introduce the Polish reader to the Electoral College in greater detail and acquaint them with the debates concerning that institution in the United States. The views of other authors are also cited, as Ross' observations are considered in the light of the history of political-legal thought and constitutionalism.

Keywords: Tara Ross, Electoral College, US Constitution, Enlightenment

⁵⁵ In this context, one could cite the valuable remark Andrzej Kohut makes regarding the 2016 presidential election: "The complicated electoral procedure, sometimes considered a relic of the past, proved to be effective." Such observations concerning the Electoral College are another objective of the text. Popularization of the issue may be helpful for those who approach it from different perspectives than purely legal ones, see Andrzej Kohut, *Ameryka. Dom podzielony* (Kraków: Szczeliny, 2022), 31.

⁵⁶ Mucha, *System wyboru Prezydenta Stanów Zjednoczonych Ameryki*, 324.

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