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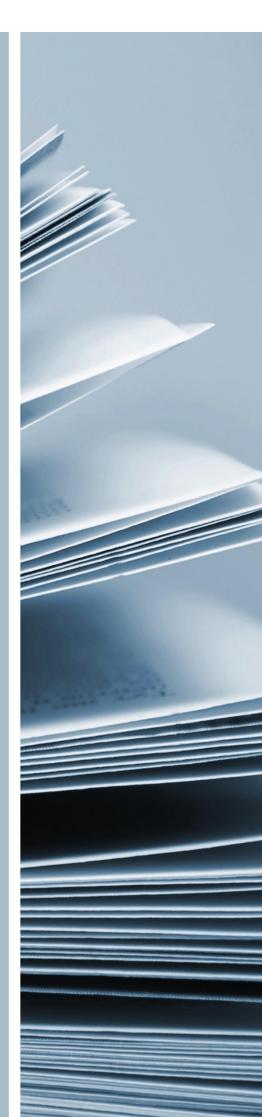
What does it tell us about democracy in the European Union?

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Introduction

On 15 July 2014 the European Parliament elected Jean Claude Juncker, the former Prime Minister of Luxembourg, as the next President of the European Commission. It was the final act in a process which had proved more controversial than the appointment of any of Juncker's predecessors. His nomination as a candidate on 27 June by the Heads of State and Government in the European Council was only agreed after two countries, Hungary and the United Kingdom, openly voiced their opposition and explicitly requested a vote. Never had the European Council taken such an important decision by majority vote, rather than seeking a consensus acceptable to all.

This paper will suggest that the bitterness of the argument reflects competing views about the nature of democracy in the European Union and the way in which it should develop. At one end of the spectrum, are those who argue that democracy in the EU resides and can only reside at the national level: the legitimacy of all that the European institutions do is entirely dependent on the readiness of Member States to accept their decisions; at the other end are those who point to the evolution of the EU and in particular, the empowerment of a directly elected Parliament, as an indication that democracy can and should develop beyond the nation state level. Whereas the latter see the election of Juncker as a natural development towards a more democratic EU, the former see it as an effective *coup d'état* against the member states, mounted by an overweening Parliament. The future shape of the EU will depend greatly on who wins this argument.[2]

The drama of the unexpected

When the Lisbon Treaty came into effect on 1 December 2009, there was a collective sigh of relief that the institutional struggles that had marked the previous decade had come to an end. In the aftermath of the failure to ratify a European Constitution, the view was widespread in academic and policy-making circles alike that the shape of the EU had surely been settled for the foreseeable future and there would be no need for further intergovernmental conferences or new constitutional conventions to discuss additional treaty revisions. It would now be possible to concentrate on developing policies to show that the Union was about more than institutional bickering and tinkering.

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[1] This paper is based on a keynote lecture given on 25 June 2014 at the opening of the European Integration Summer School at the University of Agder. The contents have been adapted to take account of the election of Jean Claude Juncker as President of the European Commission in July after the lecture was given.

[2] In academia such a stark binary choice has been resisted by those who have argued for a "third way", distinct from both national and supranational versions of single demos polities, which has been christened "demoicracy" (see, for example, Nikolaidis (2013)). The political debate is, however, likely to continue to be articulated around the two opposite poles identified here.

In fact, this point of view, although understandable, reflected a profound misunderstanding of the way in which the EU works. Not only did it not reckon with major shocks to the system, such as the global economic and financial crisis that subsequently translated into the euro-crisis, which obliged all to consider whether new policies could be accommodated in the existing structure, it also underestimated the scope for institutional change available within the provisions of the Lisbon Treaty. The legal texts do not only bind and constrain EU institutions as well as member states, they also offer opportunities for new forms of political action.

One major opportunity of this kind was provided in the Lisbon Treaty by a small addition to the text concerning the appointment of the President of the European Commission that had (perhaps) miraculously survived the deliberations and drafts elaborated during the Convention from 2002 to 2004. As before, the prerogative of proposing a candidate for the post remained in the hands of the European Council but under the terms of the new Treaty, it had to do so now, "taking into account the elections to the European Parliament and after having held appropriate consultations" (Article 17(7) of the Treaty on European Union).

It was possible to downplay the importance of this change. One could argue that the phrase only formalised a situation that already existed. In both 2004 and 2009 the European Council had selected José Manuel Barroso as Commission President designate after the European People's Party (EPP) had won the most seats in the European Parliament and Barroso's own party in Portugal belonged to the EPP. Hence the phrase only imposed on the European Council the obligation to select a candidate from the largest party in the European Parliament after the elections.[3] Alternatively, one could suggest that the phrase left the Heads of State and Government totally free to choose whoever they wanted. "Taking into account" could be interpreted as meaning no more under these circumstances than it had meant in earlier years when the Council said it would take account of the opinion of the Parliament on legislative issues, promptly setting aside parliamentary amendments if it did not find them useful.

However, these interpretations were not the only ones possible. When Barroso gave his State of the Union address to the European Parliament in September 2012, he pointed in a very different direction, by calling on the European political parties to present candidates for the post of Commission President in advance of the 2014 European elections. He noted that it did not require a Treaty change but would be "a decisive step to make the possibility of a European choice offered by these elections even clearer".

Such a proposal might have gone unnoticed, had it not been for the reaction of the European political parties themselves. Remarkably, during 2013, five of these parties set in motion procedures for selecting candidates for Commission President, all of whom were known by early March 2014:

- the European Left party was the first into the field putting forward Alexis Tsipras, the leader of the radical Syriza party in Greece, as its candidate in December 2013;

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[3] In fact nothing would have prevented there being a competition between various candidates before Lisbon was ratified. Hix (2008) provided a plausible scenario of what could have taken place in 2009 if all the parties had chosen candidates as they did in 2014.

- the European Greens organised a primary election amongst four candidates, where anyone subscribing to Green ideas was free to participate. The numbers who took part were relatively small (less than 35,000) but it led to the selection of two candidates, a German and a French Green, Ska Keller and José Bové.
- there was also competition in the European Liberal party between Olli Rehn, the Finnish Commissioner, and Guy Verhofstadt, the leader of the Liberal Group in the European Parliament and former Belgian Prime Minister. The former won the support of 14 national Liberal leaders and prime ministers but at a conference held in London early in February 2014 Verhofstadt was selected after reaching an informal agreement with Rehn, which precluded the need for party members to choose between them.
- the Party of European Socialists chose Martin Schulz, the President of the European Parliament, as its candidate, without a contest, at its Congress in Rome at the end of February.
- the last party to nominate its candidate was the European People's Party in Dublin on 7 March. There was a vote between Michel Barnier, the French Commissioner, and Jean Claude Juncker, which the latter won by 382 votes to 245.

Not all European parties decided to nominate candidates. The Alliance of Conservatives and Reformists, including the British Conservative Party, was a prominent opponent of the very system of having lead candidates, a decision which excluded them from the open competition that ensued between the six candidates nominated by the five parties.

The candidates proved ready to give electors a chance to compare them. There were three major debates, the first at Maastricht University, the second at the European University Institute in Florence and the last at the European Parliament in Brussels, between the end of April and the beginning of May 2014. These events allowed each candidate to say what their programme would be, if elected, and to make clear why voters should support their particular party. The level of interest in these debates was small outside the Brussels "beltway" but their very existence changed the nature of the European election campaign.

Despite their policy differences, all six candidates agreed that the next Commission President would be one of them and that the candidate of the party that got the most votes in the elections between 22 and 25 May would be entitled to be the first to look for an absolute majority of 376 in the European Parliament. This was dismissed by some as fantasy: the European Council would never allow its effective ability to choose who it wanted to be President to be eliminated. In fact, maintaining the status quo proved more difficult than accepting a change in the method of electing the Commission President.

In the European elections the EPP lost sixty seats (dropping to 220 from 280) but it still had a 20 seat advantage over the Socialists. Inside the Parliament the leaders of the political groups that had put forward candidates agreed to call upon the European Council to recognise this fact and to invite Jean Claude Juncker to see if he could find an absolute majority of at least 376. This proposal met opposition of various kinds from inside the European Council. Some saw it as a power grab by the Parliament and an encroachment on the role of the Heads of State and Government; others, like Cameron, went further and argued that it drew completely the wrong conclusions from the European election results. He argued that the growth of eurosceptic forces in the

Parliament showed that electors wanted new faces to lead the move for reform inside the EU and that they were unhappy with the present state of the institutions, which they saw as too bossy and interfering (Cameron, 2014).

As we have seen, the Cameron argument did not win the day. Once 9 Centre Left leaders met in Paris and stated their support for Juncker, a Centre Right politician, it became clear that it would be very unlikely that any other candidate would have a chance of being elected. In addition, inside the EPP, despite some hesitations, it was very difficult to argue that there should be a different candidate after the national parties had voted so decisively in favour of Juncker at the Dublin Congress back in March. No-one could offer an adequate reason for disavowing a candidate who had been supported only three months previously. Moreover, none of the opponents of Juncker could provide the name of a plausible counter-candidate. Possible names, such as Christine Lagarde, the Head of the International Monetary Fund, made it clear that she had a job to do and was not available.

Before the decision of the European Council of 27 June, there were many who thought that there was likely to be an impasse between the Parliament and the European Council which could lead to institutional paralysis for several months. However, the resistance to Juncker's appointment melted away in the days before the vote, leaving the British and Hungarian leaders on their own in opposing the nomination. They were not able to muster the blocking minority required to stop the decision and were reduced to claiming that the European Council would live to regret what it had decided. That which had seemed unlikely, if not impossible, only six months earlier had come to pass, to the utter shock and amazement of many onlookers (for a full account of what happened and why, see Peñalver and Priestley, 2015, forthcoming).

A 'democratic drama'

The battle over Juncker's election was not just a clash of personalities: it brought to the fore the argument over the democratic credentials of the European Union. One might consider that the Lisbon Treaty had resolved this issue by including four Articles on Democratic Principles, including the statement that "the functioning of the Union shall be founded on representative democracy". However, the Articles do not make clear whether such representation is expressed through the European Parliament or through the national parliaments of the Member States or if both, whether either has any claim to precedence in the democratisation of the EU. This ambiguity can be seen more clearly by considering the extent to which the basic shape of a democratic society at national level can be transposed to the European level. The struggle for the Commission Presidency was in large part a conflict over the possibility of such a transposition.

At national level within Europe, democratic discourse assumes that elections serve to determine who will hold executive office, that elections allow voters to change the policy direction taken by those in government and that elections legitimise the exercise of power by government. Until 2014 no-one seriously argued that the European elections could strongly influence who holds executive power. The European Parliament can certainly stop individual Commissioners assuming power, as it did as a result of the hearings of prospective Commissioners (Buttiglione in 2004 and Jeleva in 2010), but

voters had no direct influence over these changes. Similarly, for all the increases in legislative and budgetary powers that the Parliament has gained in the last twenty years, it is very difficult to claim that votes cast in the elections have directly influenced the direction of EU policy. The Parliament has certainly shaped policy but not as a direct consequence of the ballot box. And it is hard to see how power exercised by the executive at EU level can be legitimised by elections which are totally separate from the establishment of that executive.   Even if voters recognise the Parliament as an influential body, there has been no reason for them to accept the legitimacy of executive action at EU level because of the votes they cast at European elections.

What happened in 2014 called into question all previous assumptions about the role of the European elections and opened up the possibility that democracy at European level could look more like democracy at national level. Might voters in future have a chance to influence who heads the EU executive and what policies they pursue, as well as being more ready to accept that those policies are legitimate?   This heady prospect was as attractive to those wishing to reinforce the European level of government as it was alarming to those reluctant to see any loosening of the grip of the member states on the development of the European Union.

Influencing the shape of the executive

In all European democratic traditions there is an explicit link between the holding of elections and the shape of the executive. Voters see that the outcome of their actions can be a change of government and thereby they have a major stake in the political system. What we witnessed in the 2014 elections were the first signs of a comparable development at European level:

- Several candidates competed openly for the right to be elected as President of the European Commission, rather than one candidate emerging from negotiations between governments behind closed doors.
- All candidates had to indicate in advance what they would do if elected, thereby creating a bond of accountability between them and the electorate rather than offering up a programme for action after the elections that no elector was aware of (as Barroso, for example, did in 2009).
- All candidates accepted in principle that they had to debate with the other candidates so that their suitability could be compared rather one candidate emerging to present his or her credentials after the elections, a change that would incidentally have made it very difficult for any candidates nominated after the elections by the European Council to have won credibility.

The rationale for such a selection process was presented by the author and colleagues from a number of universities in a letter published in the Financial Times:

"The open competition that is taking place is adding a new layer of public debate about Europe, offering voters a chance to hear and evaluate different recipes for reforming the EU. All the candidates are opening themselves up to public scrutiny in a way that none of their predecessors ever had: any other nominee, however worthy, would conveniently escape such an examination. And the electorate is being offered a chance not only to vote for their MEP on 22 May but also to shape the character of the executive of the EU. This is

more democratic than leaving the choice of commission president to the whims of a fireside chat at a European Council meeting" (Financial Times, 2014)*.*

It was not a line of argument that was readily accepted, particularly in the United Kingdom. There was a powerful counter-blast put forward by those unwilling to accept the logic of our letter.   We were reminded that the electorate did not know and could not be expected to know that they were voting for Presidential candidates: in no country was there any indication on the ballot paper that a vote for a Liberal MEP, for example, was also a vote for Guy Verhofstadt as President of the Commission. In any case, the names of all the candidates were very little known outside their own country, making it impossible for the vast bulk of the electorate to make any informed judgement about whether they should vote for them or not. And even if they did know who the candidates were, they could not necessarily vote for them. In the UK, for example, the EPP effectively does not exist since the Conservative party left it in 2009, with the result that no-one in Britain could vote for Juncker.

What those arguing against the candidate experiment also argued was that European elections are essentially national affairs, where the outcome is determined by the state of the political parties in each country, not by broader European issues. Hence the first places won by UKIP in the UK and by the Front National in France were the product of a tide of euro-scepticism in those countries as much as the victory of Renzi's Democratic Party in Italy was the consequence of the success of his first months in office as Prime Minister. By contrast, the European component of the elections remained small, as reflected in a level of turnout that slipped to its lowest level since European elections had been introduced in 1979.

There are naturally ways to improve the visibility of the candidates across the EU, for example, to put their names, or at least that of the European political party that they were selected by, on the ballot paper and to make people more aware that European elections are also elections about the shape of the European executive. There is certainly some polling evidence to suggest that such changes would make people more likely to vote at European elections.

Nevertheless, these changes would be unlikely to alter the resistance of many to such a form of democratisation of the EU. It was widely argued, particularly in the UK, that the European Commission needs to be neutral and that more overt politicisation of the institution would prevent it from doing its job properly (see, for example, Grabbe and Lehne, 2013). It would no longer be accepted as a mediator between Council and Parliament or as an impartial agent in implementing the Treaties. There would always be the suspicion that party political considerations had played a part in the decisions it took.

We who signed the letter to the Financial Times argued that this was too purist a view, that the Commission was already a political body and that in any case, the President would always be surrounded by Commissioners of other political persuasions and could not pursue a single party's agenda.   This difference of appreciation was as much a question of values as of analysis. It is not simply whether it is feasible for the electorate to have a say in the composition of the European executive in the way that national electorates influence the shape of their governments. You also have to ask whether such

a move is desirable, whether the European level of government should look more like the national level. This value judgement was at the root of the 2014 argument over Juncker's election.

Bringing about policy change

It is a commonplace of domestic political discourse that elections are a means of getting rid of a government that you do not like and putting in power a party or parties that will introduce different policies. It is equally clear that at European level, elections do not serve this purpose. The manifestoes of the European political parties have traditionally been very bland, reflecting the need to win the support of all national parties. And once elected, MEPs are confronted with proposals that come from the Commission and that they can only influence by seeking support from across the political spectrum. Without a stable centre-left or centre-right majority, the obligation is to find acceptable consensus. As a result, it is hard to see the European elections as a way of censuring those who were in office and voting in politicians committed to a different course.

There is little doubt that the EU is unlikely to witness a radical shift from the kind of consensus building that has stood it in good stead for half a century and that in any case, reflects the way in which politics is conducted in many continental countries. However, these elections did open up the possibility of adding an extra component to the way in which policy priorities are established. All the candidates for the post of Commission President did come forward with their own ideas for what they would do once elected. Verhofstadt, for example, was the only candidate who expressly stated that he would use his position as Commission President to propose a Treaty change to move the seat of the European Parliament from Strasbourg to Brussels. It was an obvious way of appealing to those voters who disapprove of the Parliament's "travelling circus" image but also a commitment against which he could be subsequently held accountable.

However, the significance of this change has to be put into perspective. Much of the debate about the programme of the Commission for the coming five years still took place *after* the elections. Juncker, as the potential candidate for President, was obliged to meet all the political groups in the European Parliament to persuade them to vote for him. He had to get a minimum of 376 votes and he could not get this only with the support of his own EPP party. The strength of eurosceptic voices and the opposition of the British Conservatives meant that it was particularly important for him to get the backing of the Socialists. They for their part were only willing to give him their support if he committed to a review of the austerity policies that had marked the last five years. Hence his ability to lay down a clear set of policies was limited by the obligation to get cross-party support.

It is also important to recognise that the Commission is not a government in the same sense as national governments are. Much of the agenda of the EU is determined by the European Council where the President of the Commission sits alongside the Heads of State and Government of the 28 Member States. This proved equally true after this year's European elections. At the same time as they nominated Juncker as candidate for Commission President, the European Council adopted a strategic agenda for the EU, with five main objectives. Although rather general in character, they revealed the

determination of the national governments to retain a central role in fixing where the EU should go, not leaving it to the Commission and its President.

Nevertheless, the idea of European electors having some influence over the direction of policy is a powerful one that will develop further. If the experiment with Presidential candidates is repeated in 2019, and I would suggest that this is very likely, then the political parties are likely to devote considerably more energy to identifying candidates and developing policy ideas in the two or three years before the elections. We can expect think tanks of left and right to come forward with proposals, and potential candidates to float ideas so that the electorate would be better able to understand the broad difference between voting for different parties, in European and not just national terms. Indeed David Cameron's claim that the 2014 elections were a sign that people were fed up with Europe meddling in affairs that should be left to national governments could be given clearer policy shape, with a Conservative candidate for President fleshing out what sort of a non-meddling role she or he would foresee for the Commission (assuming, of course, that the UK is still a member!).

Whether you think such a move towards European policy agendas established in advance of the elections to the European Parliament is a good thing depends essentially on the extent to which you believe the EU can be legitimised by changes at European level. Many do not want to allow strong Commission Presidential candidates with clear manifestoes behind them to emerge but it is my contention that the experience of 2014 will make such a development much more likely at future European elections.

Raising the democratic temperature in the EU

One reason why European elections do not arouse a level of interest comparable to national elections is that the electorate do not feel as much is at stake. Herman Van Rompuy, the President of the European Council (until November 2014), put it very bluntly: "the difference between the parliament and those who take the real decisions is very clear to citizens". In other words, the electorate senses that power lies with national governments and that the Parliament cannot match this degree of influence on the direction of the EU, however significant the increase in its role has been.

Such a stance presupposes that European elections are not linked to the exercise of executive power at EU level. Once one accepts that a link of this kind is conceivable, it is possible to open the way to the legitimation of that power, the sense that what is done at EU level has been democratically authorised at the ballot box.   Hence the importance of seeking to establish the principle that it is the party that wins the most seats in European elections that has the right to put forward its candidate as the next President of the Commission. In this way the Parliament can indeed be connected with "real decisions".

The outcome of the struggle over this principle will depend greatly on the degree to which people come to care who becomes Commission President. Traditionally the democratic temperature at European elections has been relatively low. The sense of excitement has not been comparable with that for national elections. Party differences have been played out at the national level, with European agendas assuming a very limited importance.

The events of 2014 showed how a much wider public debate over who should lead the Commission could become the norm. The struggle over whether Juncker should be nominated became highly politicised outside the Brussels "beltway". The British press, in particular, went out of its way to delegitimize his candidature by fair means or foul. Most suggested he was a man of the past, when what was needed was a new broom. Some went further and tried to establish that his family had a doubtful past during the German occupation of Luxembourg in the Second World War. Ironically, such attacks only served to raise the temperature in a way which resembled much more closely a national election campaign. A precedent had been set for moving the choice of Commission President outside the corridors of power in Brussels, with very contrasting views emerging across Europe. In Germany, the population, by a large majority, backed Juncker as the candidate of the largest party and made it much more difficult for Angela Merkel to renege on the backing her party had given him at the March meeting of the EPP in Dublin.

It is possible to argue that what happened in 2014 was an anomaly that will not be repeated but it is my contention that the European Union rarely undoes a practice once it has been established. The evolution of "codecision" provides a clear example. After the European Parliament had been given codecision powers in the Maastricht Treaty, there was no question of rowing back and returning exclusive powers over EU legislation to national governments. Whatever the reticence of some governments, successive Treaty changes expanded the scope and range of the Parliament's legislative rights, ending up in the Lisbon Treaty by using the term "Ordinary Legislative Procedure" to refer to codecision. It had become a standard part of the EU scenery (Rasmussen, Burns and Reh (eds.), 2013).

This change in the Parliament's powers can be seen as the unexpected consequence of a Treaty change and I would suggest that we may be witnessing something similar with the case of European political parties. Article 10(4) of the Treaty on European Union states that "political parties at European level contribute to forming European political awareness and to the expressing the will of citizens of the Union". It is a phrase that might have been dismissed and forgotten if the parties had not decided to put candidates up for Commission President in 2014. Instead, they took up the challenge and have put national governments in a difficult position. After all, the member states remain masters of the Treaties and included this sentence in the Lisbon Treaty. Hence one can only assume that they wanted the parties to find new ways of expressing the will of European citizens. Unwelcome it may have been but it could not be dismissed as contrary to a direction available under the Treaties.

Indeed the continuing institutional development of the European Union will not end here: the 'Spitzenkandidaten' experiment may well have provided another twist to the development of European institutions. The recognition of the split nature of the executive at EU level - with national governments and the Commission operating occasionally uneasily alongside each other - could reinforce pressures to improve the coherence of governmental action at European level. Hence it is not impossible, for example, to imagine the merger of the post of Commission President with that of President of the European Council. A precedent has been set by the creation of the High Representative, who has a foot in both camps, as Vice-President of the Commission and

Chair of the Foreign Affairs Council. Indeed nothing in the Treaties would need to be changed to enable such a change to come about: the two posts are not mutually exclusive.

Such a change would be seen as revolutionary today but there is a momentum created by this year's events that may be difficult to stop. If anyone complained that such an important post should not be the result of a bargain in the Parliament between parties, why not make the post one that is directly elected? It is obvious that this would raise the democratic heat in the Union substantially. It would create a post whose occupant could be seen as a major rival to heads of national governments and yet could they object to such a post being subject to direct election? And would not such a person contribute to legitimising what is done at EU level?

I am not suggesting that such a change will necessarily occur but rather that we are witnessing a widening of the argument about the democratic credentials of the EU. The old struggle between proponents of the European Parliament and defenders of national parliaments is being broadened to a debate about the whole structure of the EU. The advocates of the competition between candidates for Commission President, like me, may be over-optimistic about the speed with which change will come about but, equally the events of this year have made it extraordinarily difficult to continue to defend making such choices behind closed doors (see also, for example, Baldoli et al., 2014; Hobolt, 2014). Disagreement about what can or should legitimise the use of power at EU level remains as strong as ever but the context of that disagreement has altered radically.

Conclusion

The debate that was generated by the election of Jean Claude Juncker is not one where either side in the argument about democracy in the EU can claim victory. It is an argument that is inherent to the structure of the EU and will continue to divide political opinion. Nevertheless, the shape of the argument has been changed and issues are starting to be discussed that were ignored hitherto, not least what the consequences would be of a deeper politicisation of the Commission.

What, for example, would be the impact of taking power away from the European Council and creating a system where it is the strength of European political parties that starts to weigh more heavily? Does such a more majoritarian system mean, for example, that Germany will inevitably become more influential in determining who exercises power at EU level? Is it possible to imagine that someone from a state like the UK could win enough support inside a European political party to be put forward as a prospective Commission President? As Simon Usherwood (2014) has pointed out, at the very least it seems unlikely that a candidate could be elected against the wishes of the largest country in the EU, particularly where its MEPs have traditionally brought the largest delegations into the EPP and Socialist groups in the Parliament. One might say that this is the inevitable result of a more majoritarian system but at least we should be aware of its consequences, particularly if the system develops further and the Commission President is able to exert more influence over the names and portfolios of her or his fellow Commissioners.

Perhaps even more important is the question of whether Europeans as a whole, inside or outside the Brussels world, are ready for such a change. Jo Weiler, President of the European University Institute, made the point as follows:

> "The ideological politicisation of the Commission and, in its wake, the politicisation of Europe as a whole, is an entirely new ball game. It would require not only a huge shift in the institutional culture of the institutions of the EU, but an adaptation of the political culture of the polity as a whole with not insignificant trade-offs. Are we ready for this first step to veritable democracy?" (Weiler, 2014)

The fact that such a question can be posed shows just how significant the election of Juncker is to the future of the EU and the balance between national and supranational claims for democracy.

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