

The Spitzenkandidaten process has ‘presidentialised’ the Commission, but only time will tell whether it allows for better representation of citizens’ views

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The makeup of the new European Commission was announced by Jean-Claude Juncker on 10 September. Following the announcement, [Andrew Glencross](#) writes on the constitutional implications of the so-called Spitzenkandidaten process for the new Commission’s role. He argues that the process could be understood as a parallel to the use of direct democracy in Switzerland or a directly elected President in the United States to grant citizens a more direct connection with fundamental constitutional change. However this form of ‘presidentialisation’ in the Commission’s case is unlikely to bring about ‘bottom up’ constitutional agency overnight, particularly given the indirect nature of Juncker’s appointment.



With the nominations and portfolios for Jean-Claude Juncker’s College of Commissioners now decided, it is a good time to reflect on the broader dynamics at play in the creation of this new team. The appointment of Juncker himself came on the back of the so-called *Spitzenkandidaten* process, whereby the party groups in the European Parliament first selected representatives to be the leaders of their campaigns for the pan-EU elections in May 2014. Then, in what David Cameron labelled a “back-door power-grab”, the European Parliament made it clear to the heads of state and government in the European Council that the new Commission President would have to be the leader (*Spitzenkandidat*) whose party family won the most seats. Hence the best way to analyse this development is as a form of presidentialisation within the EU, potentially marking the transition to a new constitutional order.

The peculiar feature of the constitutional development of the EU is precisely that it has taken place in the absence of constitutional agency at a popular level. Courts, notably through the jurisprudence of the Court of Justice of the EU, as well as diplomats negotiating EU treaties, have left their imprint on the legal rules and institutional calibration underpinning ever closer union. This is understandable in a context of gradual integration between sovereign states, where the overarching aim was to have cooperation replace conflict. Indeed, the robustness of the EU’s legal order combined with the scope of its shared policy competences is remarkable compared with [other attempts](#) at regional integration.

However, the origins of the Swiss Confederation or the United States of America are not so dissimilar. Constitutional cleavages in both countries were dominated by questions of how much autonomy was retained by states or cantons. Yet in Switzerland and in the United States a political mechanism for [generating bottom up constitutional agency](#) eventually came into operation to help resolve constitutional debates without recourse merely to courts or elite diplomacy. Significantly, these mechanisms were extra-parliamentary – direct democracy (i.e. referendum) in the Swiss case, and presidentialisation for the US – because defining the Swiss or the Americans as a single people was itself highly contested.



Jean-Claude Juncker, Credit: European People’s Party (CC-BY-SA-3.0)

What direct democracy and presidentialisation offer is the ability to link together citizens of different territories by mobilising voters around a candidate or a particular policy issue. In this way, citizens demonstrate that they are part of a shared political community through practice rather than by merely having representatives that sit in a common chamber. This does not mean that legislatures become redundant, but that citizens can have a more direct connection with fundamental constitutional change, notably regarding the boundaries between central authority and unit autonomy.

Swiss voters have acted as constitutional agents in referendums, requiring a dual majority of both voters and of cantons to pass, to determine constitutional issues such as membership of the UN and EU, women's suffrage, and federal welfare policy. Likewise, presidentialisation in the US created an office that had the popular legitimacy to make decisive interventions in constitutional settlements over state rights and welfare policy, continuing to this day for instance with Obamacare.

So how does EU-style presidentialisation compare when it comes to injecting constitutional agency? One hope was that the *Spitzenkandidaten* would remedy an "elitist deficit" whereby popular views are under-represented in an otherwise remote, technocratic body. But the end result, at odds with the increasingly Eurosceptic tenor of the elections, was the appointment of Juncker: almost a caricature of an EU-insider from a small, Europhile country. Moreover, the Commission President is not directly elected, which precludes a personal connection with the EU electorate, while the presidency itself is not an office with the prerogatives needed to reconfigure the EU constitutional order.

Nevertheless, presidentialisation does offer the potential for integrating a European demos by creating a new link between the governed and governing. This will be most obvious in five years' time, when party groups will again have to select their *Spitzenkandidaten*. Voters at that point will have the power to sanction Juncker, or at least his party family, for the policies pursued by the Commission. Equally important, future candidates for Commission President will seek to develop further their transnational campaigns in order to establish a policy mandate. A foretaste of this increased politicisation of the Commission via political contestation for the presidency can already be seen in Juncker's [guidelines for his College of Commissioners](#). For instance, in response to critics of EU austerity measures, he calls for a "social impact assessment" to be made whenever a new bailout is required for a Eurozone country.

Hence it is far too much to expect that presidentialisation can engender constitutional agency overnight. The EU will have to find its own method for allowing political contestation to legitimise the constitutional evolution of a polity with changing boundaries between national autonomy and supranational competences. If the cross-national, partisan fight for the Commission President is to mark a turning point in that process, it will probably be as one of several ways of mobilising citizens around an increasingly politicised EU. In this context, [citizens' initiatives](#) for generating policy proposals and the early warning mechanism that allows national parliaments to challenge legislative proposals are also likely to be important. What matters most for the five years ahead is how far citizens feel their political agency is taken into account as and when EU elites decide on what ever closer union really means in practice.

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