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Filip Horák, Karel Řepa (eds)

# European Constitutionalism and the Virus of Distrust

Edited Volume from the International Conference  
Held in Prague, Czech Republic on April 27–28, 2022





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# TO END SLEEPWALKING: THE CONSTITUTIONAL POTENTIAL OF THE CONFERENCE ON THE FUTURE OF EUROPE<sup>1</sup>

*Max Steuer*

## **Abstract**

The purpose of this contribution is to critically scrutinize prominent reactions to two key innovative components introduced by the European Union (EU) institutions at the Conference on the Future of Europe (CoFoE) in 2021–2022: the CoFoE Plenary and the European Citizens' Panels. These components were at the heart of what has been considered a unique deliberative (quasi)constitutional experiment aimed at 'ending sleepwalking' characterized by low trust and engagement between EU citizens and institutions and deficits in democratic decision-making in the EU. How do the two components fare from the perspective of contributing to this outcome? To conduct a systematic evaluation, the chapter identifies two main approaches to evaluating deliberative processes with a constitutive element; the popular mobilizational and the ideational institutional accounts. Both oppose sceptical views of deliberation as competing with the principle of representation. After elucidating the key features of both accounts and highlighting the complementarities and contrasts between them, the chapter proceeds to address selected criticisms of the CoFoE Plenary and the ECPs. It finds that while some of these criticisms are largely supported by the popular mobilizational account, their purchase decreases with the ideational institutional account. Instead, the ideational institutional account sheds light on some shortcomings of these formats, that tend to be neglected by alternative perspectives. The findings contribute to understanding some lessons from the CoFoE for

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<sup>1</sup> This contribution was funded by the Slovak Research and Development Agency (project APVV-21-0237-SKEUDIFGOVRE). Text updated with developments until 1 September 2022 and links to online sources accessible to this date. The input received from the participants of the *European Constitutionalism and the Virus of Distrust* conference as well as the Special COST Action Meeting on *Future of Europe in Debate: Insights from a Deliberative Democracy Perspective* are gratefully acknowledged. The usual disclaimer applies.

a potential EU Convention triggering Treaty changes as well as more permanent deliberative mechanisms.

**Keywords:** conference on the Future of Europe, deliberative democracy, ideational institutionalism, popular mobilization, European Citizens' Panels, EU institutions, inclusion

## Introduction

After two years of preparation and a year of frenetic implementation amidst a raging pandemic and subsequently the Russian invasion of Ukraine, the ‘closing event’ of the Conference on the Future of Europe took place on 9 May 2022.<sup>2</sup> The EU’s leaders – the President of the Commission, the Parliament and the head of the state holding the rotating EU Presidency<sup>3</sup> – held individual speeches, in which they reinforced, *inter alia*, their joint commitment to respond to the proposals generated by the CoFoE. The usual audience in the Strasbourg Hemicycle, European parliamentarians (MEPs), were only present in small numbers. In the room there were mostly randomly selected citizens who authored many of the proposals presented in the CoFoE final report.<sup>4</sup> Present among them were the ‘ambassadors’: the randomly selected representatives of the ‘citizen participants’<sup>5</sup> from each of the four European Citizens’ Panels (ECPs), as the main ‘laboratories’, in which the foundational ideas on the future of the EU were developed. These ambassadors underwent a unique, but also exhaustive, seven-round meeting journey as members of the CoFoE plenary, where their role was to advocate for the recommendations developed by them and their fellow ECP members.

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<sup>2</sup> See the programme of the closing event at <https://futureeu.europa.eu/pages/about>.

<sup>3</sup> Emmanuel Macron. The French President was an important ideational proponent of the CoFoE himself, and his presence certainly helped attract attention to the event. The permanent European Council President (Charles Michel) was conspicuously absent, further boosting the image of the Councils as the vehicles for member state influence, rather than one of the EU institutions key for the unity and advancement of the common project.

<sup>4</sup> Report on the final outcome, May 2022, [https://cor.europa.eu/en/Documents/CoFE\\_Report\\_with\\_annexes\\_EN.pdf](https://cor.europa.eu/en/Documents/CoFE_Report_with_annexes_EN.pdf).

<sup>5</sup> The language utilized during the CoFoE is just one of the many subjects in need of further interdisciplinary study. The randomly selected participants were uniquely associated with the notion of the ‘citizens’, which arguably resulted in the presentation of the other stakeholders as divided from ‘citizens’ (despite them being citizens themselves). In addition, an image of the ‘citizens’ presenting the ‘ordinary people’ of the EU as opposed to the elites was permeated by this language. Alternative terms to identify the randomly selected citizen participants (such as ‘panel members’) were rarely used, thus perpetuating the language of othering which fuelled the juxtaposition of the panel members vis-à-vis elected officials.

At this moment the CoFoE already faced criticisms on several fronts. Both right-wing Eurosceptics<sup>6</sup> and progressive forces<sup>7</sup> claimed that it was not inclusive enough, though they differed sharply over which voices were under-represented. Experts on deliberative practices were sceptical about some of the design choices associated with the process of reaching conclusions<sup>8</sup> while proponents of strengthening representative democracy in the EU including the role of political parties spoke about an undesirable trend of challenging the achievements of the representative principle in burgeoning EU democracy.<sup>9</sup> Despite the criticisms, some of these actors as well as several prominent academics continued to defend the main idea of the CoFoE as an effort to reinvigorate EU democracy and push back against the loss of trust and citizens' 'sleepwalking' through EU politics. These defences, pointing to the releasing of the EU's 'democratic genie'<sup>10</sup> or a 'crucial democratic experiment',<sup>11</sup> exemplify the idea of academics and policymakers acting as 'critical friends' of the efforts at the EU's democratization.<sup>12</sup>

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<sup>6</sup> Jacek Saryusz-Wolski, 'Hijacked Europe: Downward Spiral or Return to the Roots', EU-RACTIV, 2 May 2022, <https://www.euractiv.com/section/future-eu/opinion/hijacked-europe-downward-spiral-or-return-to-the-roots/>.

<sup>7</sup> Daniela Vancic and Maarten de Groot, 'This Conference Can Still Go Either Way', EU-RACTIV, 22 February 2022, <https://www.euractiv.com/section/future-eu/opinion/this-conference-can-still-go-either-way/>.

<sup>8</sup> High-Level Advisory Group, 'Conference on the Future of Europe: What Worked, What Now, What Next?' (Brussels: Conference Observatory, 22 February 2022), pp. 5–7, [https://conference-observatory.eu/wp-content/uploads/2022/03/High\\_Level\\_Advisory\\_Group\\_Report.pdf](https://conference-observatory.eu/wp-content/uploads/2022/03/High_Level_Advisory_Group_Report.pdf).

<sup>9</sup> Evangelos Venizelos, 'The Conference on the Future of Europe as an Institutional Illusion', *Verfassungsblog* (blog), 16 December 2021, <https://verfassungsblog.de/the-conference-on-the-future-of-europe-as-an-institutional-illusion/>; Carlo Invernizzi Accetti and Federico Ottavio Reho, 'The Conference on the Future of Europe as a Technopopulist Experiment', *Review of Democracy*, 22 March 2022, <https://revdem.ceu.edu/2022/03/22/the-conference-on-the-future-of-europe-as-a-technopopulist-experiment/>.

<sup>10</sup> Alberto Alemanno, 'Releasing Europe's Democratic Genie', *Social Europe* (blog), 1 July 2021, <https://socialeurope.eu/releasing-europes-democratic-genie>.

<sup>11</sup> Eleonora Vasques, 'CoFoE Should Become Permanent Exercise into EU Legislative Process: Interview with Kalypso Nicolaidis', EURACTIV, 8 February 2022, <https://www.euractiv.com/section/future-eu/interview/eleonora-cofoe-should-become-permanent-exercise-into-eu-legislative-process/>.

<sup>12</sup> European University Institute, 'EUI-STG Democracy Forum', 2022, <https://www.eui.eu/en/academic-units/school-of-transnational-governance/stg-projects/transnational-democracy-at-the-school-of-transnational-governance/the-forum-on-democratic-participation-and-the-future-of-europe>. See also report at <https://cadmus.eui.eu/handle/1814/72598>, p. 2.

This chapter offers an alternative account for scrutinizing the CoFoE as an instrument to reinvigorate democracy in the EU, focusing specifically on the ECPs and the CoFoE Plenary. While the Plenary was responsible for the generation of the final recommendations and manifested the unique interplay between the representatives of EU institutions, national parliaments, civil society and randomly selected ambassadors of the ECPs, the ECPs are the most innovative component of the CoFoE as they enabled transnational, multilingual deliberation between EU citizens.<sup>13</sup> Rather than praising the ‘power of the people’ vis-à-vis the institutional context, the chapter argues that the achievements of these two key CoFoE structures come to the fore *precisely* in that context, which is best captured by an *ideational institutional perspective*, as opposed to the more commonly used *popular mobilizational perspective*. In the former perspective, those components of the CoFoE that bring the partisan representatives and the randomly selected citizens into an equal interaction with each other, as well as the empowering actions for participants’ capacity to express and defend their priorities carried out by the organizers (in particular the Common Secretariat of the CoFoE) count among the CoFoE’s strengths. The ideational institutional perspective furthermore provides a refreshing way to identify the avenues for improvement for transnational deliberative exercises and may yield lessons for a future EU Convention. Thus, it can help unpack the ways in which the CoFoE can indeed be seen as a ‘quasi constitutional’<sup>14</sup> experiment.<sup>15</sup>

<sup>13</sup> This chapter does not discuss other innovations, such as the multilingual digital platform for collecting ideas and events on the future of the EU, or the national citizens’ panels. For an early, but comprehensive analysis of the platform, see Alberto Alemanno, ‘Unboxing the Conference on the Future of Europe and Its Democratic Reason d’être’, *European Law Journal* 26, no. 5–6 (2020): pp. 494–99, <https://doi.org/10.1111/eulj.12413>.

<sup>14</sup> Federico Fabbrini, ‘The Conference on the Future of Europe: Process and Prospects’, *European Law Journal* 26, no. 5–6 (2020): 408, <https://doi.org/10.1111/eulj.12401>; Paul Blokker, ‘The Constitutional Deficit, Constituent Activism, and the (Conference on the) Future of Europe’, in *Imagining Europe: Transnational Contestation and Civic Populism*, ed. Paul Blokker, Palgrave Studies in European Political Sociology (Cham: Springer International Publishing, 2021), pp. 329–34, [https://doi.org/10.1007/978-3-030-81369-7\\_11](https://doi.org/10.1007/978-3-030-81369-7_11); Max Steuer, ‘The Conference on the Future of Europe as a Constitutional Experiment’, IACL-IADC Blog, 19 May 2022, <https://blog-iacl-aidc.org/new-blog-3/2022/5/19/the-conference-on-the-future-of-europe-as-a-constitutional-experiment>.

<sup>15</sup> At the time of writing, EU institutions as well as experts disagree whether, for the ultimate success of the Conference, a launch of a new EU Convention is needed. However, if a Convention ensues, it seems essential to minimize the risks of repeating the story of failure in the early 2000s. On that story, see, for example, Kalypso Nicolaïdis, ‘The EU’s Constitutional Moment: A View from the Ground Up’, in *The Rise and Fall of the European*

After a brief background concerning the contemporary debates on the CoFoE, the chapter details the ideational institutional account in light of existing scholarship on deliberative constitutionalism and popular mobilization in EU politics. Then, it zooms in on the ECPs and the CoFoE Plenary to explore whether and how the ideational institutional account affects the assessment of their strengths and weaknesses and how it might contribute to the debate on utilizing the experiences with the CoFoE for EU-level constitution-making processes.

## 1. The CoFoE: A few starting considerations

At the time of envisioning the CoFoE, no one could have predicted that it will unfold amidst the COVID-19 pandemic and the Russian invasion of Ukraine, both of which have had profound implications for EU integration.<sup>16</sup> Even without these ruptures, scepticism surrounded the initiative, given the poor record of the EU institutions to ‘put citizens into the driving seat’, as exemplified by the limited achievements of the European Citizens’ Initiative and other forms of public involvement in EU politics.<sup>17</sup> A cursory look at the ‘architecture of the Conference’<sup>18</sup> gives credit to the claim of deliberation at

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*Constitution*, ed. Nicholas W. Barber, Maria Cahill, and Richard Ekins (Oxford; Portland: Hart Publishing, 2019), pp. 41–49, <https://doi.org/10.5040/9781509910977>.

<sup>16</sup> Scott L. Greer, Anniek de Ruijter, and Eleanor Brooks, ‘The COVID-19 Pandemic: Failing Forward in Public Health’, in *The Palgrave Handbook of EU Crises*, ed. Marianne Riddervold, Jarle Trondal, and Akasemi Newsome, Palgrave Studies in European Union Politics (Cham: Springer International Publishing, 2021), pp. 747–64, [https://doi.org/10.1007/978-3-030-51791-5\\_44](https://doi.org/10.1007/978-3-030-51791-5_44); Floris de Witte, ‘Russia’s Invasion of Ukraine Signals New Beginnings and New Conflicts for the European Union’, *EUROPP* (blog), 14 March 2022, <https://blogs.lse.ac.uk/europpblog/2022/03/14/russias-invasion-of-ukraine-signals-new-beginnings-and-new-conflicts-for-the-european-union/>.

<sup>17</sup> Dominik Hierlemann and Janis Emmanouilidis, ‘The Missing Piece: A Participation Infrastructure for EU Democracy’ (Gütersloh: Bertelsmann Stiftung, January 2022), <https://www.bertelsmann-stiftung.de/en/publications/publication/did/policy-brief-012022-the-missing-piece-a-participation-infrastructure-for-eu-democracy>; James Organ, ‘Decommissioning Direct Democracy? A Critical Analysis of Commission Decision-Making on the Legal Admissibility of European Citizens Initiative Proposals’, *European Constitutional Law Review* 10, no. 3 (December 2014): pp. 422–43, <https://doi.org/10.1017/S157401961400131X>; Stefan Thierse, ‘The Conference on the Future of Europe – Finally, an Opportunity for More Top-down Bureaucracy?’, *Verfassungsblog* (blog), 16 March 2021, <https://verfassungsblog.de/cofoe-bureaucracy/>.

<sup>18</sup> See CoFoE final report, <https://www.europarl.europa.eu/resources/library/media/20220509RES29121/20220509RES29121.pdf>, pp. 6–9. The best critical analysis of the architecture to date is provided by Alemanno, ‘Unboxing the Conference on the Future



the EU level being ‘a costly and complex activity given the EU’s size and diversity and its multi-level governance framework’.<sup>19</sup> The foundations of the CoFoE, as articulated in the Joint Declaration of the Commission, Parliament and Council,<sup>20</sup> and the Rules of Procedure<sup>21</sup> remained open-ended in several key regards, notably the functioning and decision making procedure of the CoFoE Plenary and the form in which the outcomes would be considered and feedback provided to the participants. They prompted concerns about the actual aim of the Conference,<sup>22</sup> which, even when it was in full swing in late 2021, was described as a ‘political enigma’.<sup>23</sup>

To steer the practical functioning of the Conference, a Common Secretariat was set up ‘composed of an equal number of staff respectively from the European Parliament, the General Secretariat of the Council and the European Commission’.<sup>24</sup> This in itself was an innovative organizational unit, which added to several substantive innovations, such as one third of the ECP members being young people below 25 years,<sup>25</sup> and the random selection of twenty members (‘ambassadors’) of each of the four ECPs to join the CoFoE Plenary.<sup>26</sup> The number of new formations and the complex language sur-

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of Europe and Its Democratic Raison d’être. It is worth noting that the final report writes about the multilingual digital platform, four ECPs, ‘six National Citizens’ Panels, thousands of national and local events as well as seven Conference Plenaries’ as the summary of activities (p. 5). The fact that only six member states organized panels that met the deliberative criteria has become a source of discontent, as it meant that insights from other member states’ national events could only be considered via the digital platform. However, the responsibility for this oversight is not necessarily with the CoFoE organizers, but with the member states, which did not organize the national panels following the deliberative criteria.

<sup>19</sup> Firat Cengiz, ‘Bringing the Citizen Back into EU Democracy: Against the Input-Output Model and Why Deliberative Democracy Might Be the Answer’, *European Politics and Society* 19, no. 5 (20 October 2018): 590, <https://doi.org/10.1080/23745118.2018.1469236>.

<sup>20</sup> <https://futureu.europa.eu/uploads/decidim/attachment/file/6/EN - JOINT DECLARATION ON THE CONFERENCE ON THE FUTURE OF EUROPE.pdf>

<sup>21</sup> <https://futureu.europa.eu/uploads/decidim/attachment/file/9340/sn02700.en21.pdf>.

<sup>22</sup> Sergio Fabbrini et al., ‘The Conference on the Future of Europe: Vehicle for Reform versus Forum for Reflection?’, *Future of Europe Blog* (blog), 15 June 2021, <https://futureofeuropa.ideasoneuropa.eu/2021/06/15/the-conference-on-the-future-of-europe-vehicle-for-reform-versus-forum-for-reflection/>.

<sup>23</sup> Lucas Guttentag, ‘A Political Enigma: Four Open Questions about the Conference on the Future of Europe’, Hertie School, 21 December 2021, <https://www.delorscentre.eu/en/publications/detail/publication/a-political-enigma>.

<sup>24</sup> Art. 8, Rules of Procedure.

<sup>25</sup> Art. 5, RoP.

<sup>26</sup> The composition of the Plenary is detailed in Art. 16 of the Rules of Procedure. With 108 representatives each from the EP and the national parliaments, as opposed to 54 from the

rounding them have arguably amplified the difficulties with communicating the CoFoE in an understandable manner.

The four ECPs, each after three sessions,<sup>27</sup> endorsed a total of 178 recommendations, with another 25 proposed recommendations not receiving the required 70 % threshold in a final vote of each of the four ECP plenaries. The endorsed recommendations formed the basis of the deliberations in the CoFoE Plenary and its nine working groups, which combined elected representatives with ambassadors from the ECPs and other plenary members.<sup>28</sup>

After the event of 9 May 2022 which featured the official presentation of the final CoFoE report, hopes have been expressed towards both the institutionalization of new, permanent mechanisms of deliberative democracy in the EU,<sup>29</sup> and Treaty change as a follow-up to the CoFoE. Both have their basis in the recommendations of the ECPs. The former stems from the second ECP's last recommendation, which, however, comes with a twist: the ECP members ask for a 'legally binding and compulsory law or regulation' enshrining the Citizens' Assemblies, and 'the EU' to 'ensure the commitment of politicians to citizens' decisions taken in Citizens' Assemblies'.<sup>30</sup> The latter stems from another recommendation of ECP 2 'that the EU reopens the discussion about the constitution of Europe with a view to creating a constitution informed by the citizens of the EU. Citizens should be able to vote in the creation of such a constitution [...]'.<sup>31</sup> In addition, a portion of the recom-

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Council and only three from the Commission, the parliamentary component was clearly the most numerous, followed by the 80 ECP ambassadors, 27 representatives of national events (one per member state, selected at the discretion of the member state) and the President of the European Youth Forum, totalling 108 plenary members. The remaining 68 members represented the interests of economic and social partners, regional and local authorities, with only eight members representing civil society actors.

<sup>27</sup> One in-person, one virtual, and one hybrid. See Final Report, op. cit., pp. 15–22.

<sup>28</sup> <https://futureu.europa.eu/pages/working-groups>.

<sup>29</sup> High-Level Advisory Group, 'Conference on the Future of Europe: What Worked, What Now, What Next?', pp. 11–17.

<sup>30</sup> <https://futureu.europa.eu/assemblies/citizens-panels/f/299/>, recommendation no. 39. In the plenary proposals, this is watered down by demanding only a 'justification' by the 'institutions' in case of the citizens' proposals not being 'taken on board', and by underscoring that 'the EU is founded on representative democracy' where the prime expression of citizens about EU policies takes place during European elections (Proposal 36, sec. 7). For a study recommending the institutionalization of a particular form of permanent European citizens' assembly, see Alberto Alemanno, 'Towards a Permanent Citizens' Participatory Mechanism in the EU' (Strasbourg: European Parliament, 2022).

<sup>31</sup> Ibid., recommendation no. 35.

mendations clearly requires Treaty change,<sup>32</sup> so to the extent the recommendations articulate the panel members' will, these further support reopening the Treaties.

Treaty change has been endorsed by the European Parliament in its resolution from 4 May 2022<sup>33</sup> and formally triggered one month after the closing event of the CoFoE. In the 9 June resolution, the EP calls for strengthening qualified majority voting at the expense of unanimity, extend the EU's competences in several areas, 'co-decision rights on the EU budget' and the right to legislative initiative, and strengthening value protection in the EU.<sup>34</sup> The resolution also suggested involving several observers in the Convention,<sup>35</sup> though randomly selected citizens were conspicuously absent from the list.<sup>36</sup>

This background alone highlights some of the controversies associated with the CoFoE and its follow-up: the emphasis on competences versus policies, the role of randomly selected individuals in EU decision making and the split between legally binding and advisory measures. To evaluate these controversies, this chapter enlists the help of ideational institutional perspectives, which, contrary to what a superficial reading might suggest, can support broad popular involvement in EU politics.

<sup>32</sup> Eleonora Vasques, 'Over 10% of Citizen Proposals on EU's Future Require Treaty Changes, Expert Says', EURACTIV, 15 April 2022, <https://www.euractiv.com/section/future-eu/news/over-10-of-citizen-proposals-on-eus-future-require-treaty-changes-expert-says/>.

<sup>33</sup> [https://www.europarl.europa.eu/doceo/document/B-9-2022-0228\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-9-2022-0228_EN.html).

<sup>34</sup> P9\_TA(2022)0244, sec. 5. Not all these requests are based on the CoFoE's outcomes, however. In fact, the final statement of the 'citizens' component' of the CoFoE plenary in the report highlights a 'diverging position on measure 38.4, third bullet since it originated neither from the European nor the National Panels and was not sufficiently discussed in the Plenary Working Group' (report, p. 40). That measure precisely requests budgetary powers for the EP. The right to legislative initiative for the EP was not part of the ECP recommendations, but stemmed from the recommendations of several national citizens' panels and the multilingual digital platform.

<sup>35</sup> 'Representatives of the EU's social partners, the European Economic and Social Committee, the European Committee of the Regions, EU civil society and candidate countries.'

<sup>36</sup> The Citizens Take Over Europe coalition has highlighted how a Convention without broader popular involvement runs contrary to the ECP recommendation: <https://citizens-takeover.eu/blog/open-letter-to-eu-presidents-we-need-a-people-powered-convention/>. See also Paul Blokker, 'Experimenting with European Democracy', *Verfassungsblog*, 21 June 2022, <https://verfassungsblog.de/experimenting-with-european-democracy/>.

## 2. Making sense of the CoFoE: The ideational institutional and the popular mobilizational account

It is well-known that elections to the European Parliament alone do not suffice to generate interest in EU affairs and can be captured by national issues.<sup>37</sup> One solution to this deficit has been to increase avenues for public participation in EU politics. However, the existing avenues largely did not meet the expectations, prompting questions about alternative designs.<sup>38</sup> As an ad hoc mechanism, the CoFoE on its own could not aspire to meet the demands for a ‘systemic approach to EU democracy’.<sup>39</sup> Virtually all stakeholders, however, plausibly asserted that the CoFoE, nor participatory mechanisms in general, do not aim to replace representative democracy in the EU, with its dual arm encompassed by the Councils and the Parliament.<sup>40</sup> This alone represented an advancement of the debate on participation in EU politics, which initially presented participation and representation as mutually exclusive.<sup>41</sup>

The distinct added value of the CoFoE, however, lies in deliberation. Rather than offering only an avenue to share one’s perspective on the future of the EU, the components of the CoFoE encourage *interaction* between individuals, the sharing of their views and the possibility to *change or adjust* these to the arguments brought up during the deliberation. For long, deliberation has

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<sup>37</sup> Ariadna Ripoll Servent and Olivier Costa, ‘The European Parliament: Powerful but Fragmented’, in *The Institutions of the European Union*, ed. Dermot Hodson et al., Fifth Edition (Oxford: OUP, 2021), pp. 139–42; Sandra Seubert, Oliver Eberl, and Daniel Gaus, ‘Political Inequality and Democratic Empowerment in the European Union: The Role of the European Parliament’, in *Democratic Empowerment in the European Union*, ed. David Levi-Faur and Frans van Waarden (Cheltenham: Edward Elgar Publishing, 2018), pp. 40–62.

<sup>38</sup> E.g. Justin Greenwood, ‘The European Citizens’ Initiative: Bringing the EU Closer to Its Citizens?’, *Comparative European Politics* 17, no. 6 (1 December 2019): pp. 940–56, <https://doi.org/10.1057/s41295-018-0138-x>; Alberto Alemanno, ‘Europe’s Democracy Challenge: Citizen Participation in and Beyond Elections’, *German Law Journal* 21, no. 1 (January 2020): pp. 35–40, <https://doi.org/10.1017/glj.2019.92>.

<sup>39</sup> Alberto Alemanno and James Organ, ‘The Case for Citizen Participation in the European Union: A Theoretical Perspective on EU Participatory Democracy’, in *Citizen Participation in Democratic Europe: What Next for the EU?*, ed. James Organ and Alberto Alemanno (London; New York: ECPR Press, 2021), pp. 1–12.

<sup>40</sup> Alemanno, ‘Unboxing the Conference on the Future of Europe and Its Democratic Raison d’être’, 485–91; Michele Fiorillo et al., ‘A Citizens’ Europe?’, *Social Europe* (blog), 27 April 2022, <https://socialeurope.eu/a-citizens-europe>.

<sup>41</sup> Stijn Smismans, ‘Democratic Participation and the Search for a European Union Institutional Architecture That Accommodates Interests and Expertise’, in *The European Union: Democratic Principles and Institutional Architectures in Times of Crisis*, ed. Simona Piattoni (Oxford: OUP, 2015), pp. 88–111.

been reserved to elites (e.g. in the parliament or between judges at courts), with the *populus* at best tasked to express their support or opposition to proposals tabled by the elites.<sup>42</sup> Deliberation can be understood as ‘thoughtful consideration of an issue through a facilitated group process’,<sup>43</sup> which takes participation to the ‘next level’ by enabling an exchange and modification of views before decision making takes place. The outcomes of deliberation do not need to be (and rarely are) legally binding,<sup>44</sup> but the ideal of a deliberative *democracy* envisions them as key for the decision-making process.<sup>45</sup> In short, it is the *combination of participation and deliberation* which brings a distinct added value to democracy, as it combines inclusion and reflection.<sup>46</sup>

With the CoFoE as an *ad hoc* deliberative project, the conventional institutional perspective, emphasizing the significance of competence changes for reforming the EU,<sup>47</sup> has been rather sceptical of its potential. For example, a dialogue section on the CoFoE in an EU law journal is concerned almost exclusively with avenues to prevent the unanimity rule to block meaningful reform.<sup>48</sup> The ambiguity of the CoFoE’s purpose surrounding its launch in

<sup>42</sup> James S. Fishkin, ‘Deliberative Democracy and Constitutions’, *Social Philosophy and Policy* 28, no. 1 (January 2011): pp. 242–60, <https://doi.org/10.1017/S0265052510000129>.

<sup>43</sup> <https://rm.coe.int/cddg-2022-3e-mappingdeliberativedemocracy-2-2-2765-5446-0166-v-1/1680a62671>, p. 2.

<sup>44</sup> See, for example, Claudia Chwalisz, ‘Good Practice Principles for Deliberative Processes for Public Decision Making’ (Paris: OECD, 2020), <https://www.oecd.org/gov/open-governance/good-practice-principles-for-deliberative-processes-for-public-decision-making.pdf>, which mentions accountability as a key practice in terms of ‘influence on public decisions’ and a commitment, from the public authority, to ‘responding to or acting on participants’ recommendations in a timely manner’ (but not be legally bound to do so).

<sup>45</sup> Jon Elster, ‘Introduction’, in *Deliberative Democracy*, ed. Jon Elster (Cambridge: Cambridge University Press, 1998), pp. 1–18.

<sup>46</sup> Stephen Elstub, ‘Deliberative and Participatory Democracy’, in *The Oxford Handbook of Deliberative Democracy*, ed. Andre Bächtiger et al. (Oxford: OUP, 2018), pp. 186–202, <https://doi.org/10.1093/oxfordhb/9780198747369.013.5>; Dennis F. Thompson, ‘Deliberative Democratic Theory and Empirical Political Science’, *Annual Review of Political Science* 11, no. 1 (2008): pp. 511–12, <https://doi.org/10.1146/annurev.polisci.11.081306.070555>. It can also combat loneliness as a dangerous trend in politics noted prominently by Hannah Arendt, whereby lonely individuals who do not engage over matters of public concern with fellow members of their communities are more prone to support authoritarian regimes. <https://www.wpr.org/how-loneliness-can-lead-totalitarianism>.

<sup>47</sup> Sergio Fabbrini, ‘Institutions and Decision-Making in the EU’, in *Governance and Politics in the Post-Crisis European Union*, ed. Ramona Coman, Amandine Crespy, and Vivien A. Schmidt (Cambridge: Cambridge University Press, 2020), pp. 54–73.

<sup>48</sup> Federico Fabbrini, ‘Reforming the EU Outside the EU? The Conference on the Future of Europe and Its Options’, *European Papers – A Journal on Law and Integration* 2020, no. 2 (15

May 2021 prompted the question whether it would become merely a ‘forum for reflection’ and argued that there is a significant risk in it fuelling populists’ claims of a self-fulfilling prophecy in terms of EU impotence.<sup>49</sup> As these examples illustrate, the traditional institutional perspective does not have high hopes in the transformative potential of the CoFoE.<sup>50</sup>

Deliberation is much more central in an alternative view with a rich tradition encompassing the work of Jürgen Habermas.<sup>51</sup> This approach, here called popular mobilizational, encompasses a wide range of views which are, however, supportive of the constitutive potential of deliberation. Paul Blokker distinguishes between legal, political, popular and democratic constitutionalism, whereby only the latter places more substantive citizen participation centre-stage, while sharing ‘with political constitutionalism an emphasis on the open-endedness of the democratic process, and the ultimately open-ended nature of rights.’<sup>52</sup> Scholars of ‘deliberative constitutionalism’ have engaged with the ways in which the polity can be made more inclusive by its laws providing ample space for deliberation, and in turn their quality and legitimacy being enhanced via that deliberation.<sup>53</sup> They, similarly to Blokker, tend to reject the emphasis of popular constitutionalism on majority will

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December 2020): pp. 963–82, <https://doi.org/10.15166/2499-8249/407>; Frank Schimmelfennig, ‘The Conference on the Future of Europe and EU Reform: Limits of Differentiated Integration’, *European Papers – A Journal on Law and Integration* ‘5, no. 2 (15 December 2020): pp. 989–98, <https://doi.org/10.15166/2499-8249/409>; Bruno De Witte, ‘Overcoming the Single Country Veto in EU Reform?’, *European Papers – A Journal on Law and Integration* 2020, no. 2 (15 December 2020): pp. 983–88, <https://doi.org/10.15166/2499-8249/408>.

<sup>49</sup> <https://www.eu3d.uio.no/publications/eu3d-policy-briefs/eu3d-policy-brief-1-may-2021.pdf>, p. 6. The joint coordination of the CoFoE was also critiqued as contributing to a lack of stability and effective management.

<sup>50</sup> Of course, some of the institutionalist views published in 2021 did not have the benefit of the hindsight to the extent that this chapter does. Hence, they serve also as a snapshot of the perceptions of the CoFoE before the ECPs and the Plenary formats were specified and started their work.

<sup>51</sup> For more sources of this claim, see Max Steuer, ‘A Dual Legitimacy for a Democratic European Community? Jürgen Habermas and Constituent Power in the European Union’ (International Centre for Democratic Transition, 2015), <http://archivesicdt.demkk.hu/publications/2015/max-steuer-a-dual-legitimacy-for-a-democratic-european-communitiy-jurgen-habermas-and-constituent-power-in-the-european-union>.

<sup>52</sup> Paul Blokker, ‘Constitutional Reform in Europe and Recourse to the People’, in *Participatory Constitutional Change: The People as Amenders of the Constitution*, ed. Xenophon Contiades and Alkmene Fotiadou (London: Routledge, 2016), [8 of a pre-print version].

<sup>53</sup> Hoi L. Kong and Ron Levy, ‘Deliberative Constitutionalism’, in *The Oxford Handbook of Deliberative Democracy*, ed. Andre Bächtiger et al. (Oxford: Oxford University Press, 2018), pp. 624–39, <https://doi.org/10.1093/oxfordhb/9780198747369.013.40>.

only, which translates into only a limited participatory toolbox such as referenda or imperative mandates.<sup>54</sup>

Yet, the popular mobilizational account does not look favourably at (or does not even engage with) the embedding of deliberation in robust *existing* institutional designs and the *involvement of institutions* in the deliberative process. Rather, the strength of deliberation is in extra-institutional forms of mobilization and activism. In the CoFoE context, Aliénor Ballangé, while expressing several concerns about the CoFoE,<sup>55</sup> identifies a ground of optimism in ‘an unforeseen form of insurgency from arising from the citizens themselves on the occasion of an issue sufficiently mobilizing for a pluri-ideological and pluri-national micro-society to be self-constituted during, or even after, the CoFoE.’<sup>56</sup> This requires the transformation of ‘the self-understanding of participants in a cooperative venture,’<sup>57</sup> whereby they decide to take collective action beyond the formal roles they were expected to fulfil by the convenors of the deliberation. Such activism does not require established institutions, which instead form a potential obstacle to its realization.

The popular mobilizational account has merits over the conventional institutional perspective in underscoring the responsibility of individuals for the future of democracy and calling for more robust forms of inclusion than established democratic processes typically enable.<sup>58</sup> It effectively opposes the calls for creating a dichotomy between strengthening representative in-

<sup>54</sup> Cf. Mark Tushnet, ‘Institutions for Realizing Popular Constitutionalism’, *Revus. Journal for Constitutional Theory and Philosophy of Law / Revija Za Ustavno Teorijo in Filozofijo Prava*, no. 47 (26 January 2022), <https://doi.org/10.4000/revus.7744>. Popular and deliberative constitutionalism need not be opposed to each other, if the qualities of popular constitutionalism are seen in the dialogue not only between institutions of the separation of powers, but also between institutions and citizens. Gideon Sapir, ‘Popular Constitutionalism and Constitutional Deliberation’, in *The Cambridge Handbook of Deliberative Constitutionalism*, ed. Ron Levy et al. (Cambridge: Cambridge University Press, 2018), pp. 311–23, <https://doi.org/10.1017/9781108289474.024>.

<sup>55</sup> The top-down organization, the restriction of the ECP members to European citizens and the risk of an overly polarized composition of the ECPs caused by the fact that those uninterested in EU affairs would be unlikely to participate.

<sup>56</sup> Aliénor Ballangé, ‘Why Europe Does Not Need a Constitution: On the Limits of Constituent Power as a Tool for Democratization’, *Res Publica*, 15 November 2021, p. 16, <https://doi.org/10.1007/s11158-021-09535-y>.

<sup>57</sup> Simone Chambers, ‘Kickstarting the Bootstrapping: Jürgen Habermas, Deliberative Constitutionalisation and the Limits of Proceduralism’, in *The Cambridge Handbook of Deliberative Constitutionalism*, ed. Ron Levy et al. (Cambridge: Cambridge University Press, 2018), p. 264, <https://doi.org/10.1017/9781108289474.024>.

<sup>58</sup> <https://citizenstakeover.eu/blog/open-letter-to-executive-board-civil-society-organisations-call-for-conference-to-include-marginalised-communities/>

stitutions, such as political parties, and the direct voices of individuals and communities,<sup>59</sup> and succeeds in highlighting the need to discuss the meaning of key values and constitutive features of the (EU) polity.

However, its scepticism towards existing institutions, including those that may, on occasion, constrain majority will may ultimately run against the worthy goal of furthering inclusion, due to the deliberative process *not* encouraging the support of minority voices without adequate institutional design and involvement. This has been illustrated in the ECPs with the fact that some of the most minority-regarding recommendations generated by the ECPs working groups were not approved by the final ECP plenary votes, in which 70 % of the ECP members had to endorse the proposed recommendation in an online vote in order for it to become part of the ECP's official output and be forwarded to the CoFoE Plenary.<sup>60</sup>

What if we 'bring institutions back in' though, not as adversaries but potential partners of the deliberative processes, not just by offering internal spaces for interaction but also by supporting popular deliberations,<sup>61</sup> such as the ECPs or the Plenary at the CoFoE? Strands of institutionalist thought have highlighted the potential of institutions to bring to the fore and solidify key political ideas and encourage new, transformative ones.<sup>62</sup> Instead of generating a rift between 'regular citizen' participants and elected representatives,<sup>63</sup> this account encourages mutual learning and the capacity

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<sup>59</sup> Accetti and Reho, 'The Conference on the Future of Europe as a Technopopulist Experiment'.

<sup>60</sup> At the same time, the existence of this 70% threshold offsets criticisms of the pro-EU bias of the ECPs, which have been voiced particularly by Eurosceptic actors, cf. Saryusz-Wolski, 'Hijacked Europe'. Motion for an EP resolution B9-0235/2022, point 6. A minority of ECP members could have voted down proposed (more 'pro-EU') recommendations at the closing ECP plenary. Steuer, 'The Conference on the Future of Europe as a Constitutional Experiment'.

<sup>61</sup> E.g. Conrado Mendes, *Constitutional Courts and Deliberative Democracy* (Oxford: Oxford University Press, 2014), Chapter 3.

<sup>62</sup> Vivien A. Schmidt, 'Discursive Institutionalism: The Explanatory Power of Ideas and Discourse', *Annual Review of Political Science* 11, no. 1 (2008): pp. 303–26, <https://doi.org/10.1146/annurev.polisci.11.060606.135342>; Colin Hay, 'Constructivist Institutionalism', in *The Oxford Handbook of Political Institutions*, ed. Sarah A. Binder, R. A. W. Rhodes, and Bert A. Rockman (Oxford: Oxford University Press, 2008), pp. 56–74.

<sup>63</sup> The CoFoE has arguably encouraged this by utilizing the language of 'randomly selected citizens' and 'citizen component' (in the context of the Plenary) in presenting the CoFoE structure. Illustratively, the badges given out at the ECP in-person sessions differentiated between 'citizens' (i.e. ECP members) and other stakeholders (media, observers, staff, experts), as if the latter were not citizens themselves.



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of generating ideas in participant-elite interactions. Elites cannot be completely isolated from the design and implementation of deliberation, particularly if it concerns broad visions of the future of a polity.<sup>64</sup> While, according to one survey, ‘public servants hold unfavourable – and sometimes factually unsupported – assumptions about deliberation and decision-making by members of the general public’, this ‘elite problem’<sup>65</sup> does not fade away by focusing on extra-institutional fora. It may be more productive to see how established institutions could become partners for the deliberating agents, hence maximizing the potential that not just the process, but also the outcomes of deliberation enhance mutual trust and the quality of democracy. The table below summarizes how this ideational institutional account, while not incompatible with emphasis on popular mobilization, emphasizes slightly different features of successful deliberation. The next section uses the distinction between these two accounts to scrutinize some frequent critiques levelled vis-à-vis the ECPs and the CoFoE Plenary.

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<sup>64</sup> Ron Levy, ‘The “Elite Problem” in Deliberative Constitutionalism’, in *The Cambridge Handbook of Deliberative Constitutionalism*, ed. Ron Levy et al. (Cambridge: Cambridge University Press, 2018), p. 352, <https://doi.org/10.1017/9781108289474.009>.

<sup>65</sup> Levy, pp. 366–67.

**Table: Comparison of the ideational institutional and popular mobilizational accounts to deliberative mechanisms in EU politics.**

Source: author.

Approach to CoFoE/deliberative mechanisms	Institutions' position towards participation	Structure of deliberation	Actors involved in deliberation	Content of deliberation	Position towards majority will
<i>Ideational institutional</i>	Traditional institutions may enhance participation	Understanding and learning between institutions and individuals	Involvement of a broad range of institutional actors	Openness to discuss key values and broad ideas	Going beyond majority will
<i>Popular mobilizational</i>	Traditional institutions generally limit participation	'Civic populism' challenging status quo	Involvement of marginalized communities		Realizing the neglected majority will

### 3. The CoFoE in an ideational institutional perspective: Revisiting the critiques

The ideational institutional perspective puts several aspects of the ECPs and the Plenary into a different light. In this introductory survey, I focus on how it helps offset criticisms pertaining to the breadth of topics, the role of professionals (EU officials, facilitators and experts) and the results of the recommendations. At the same time, it indicates the insufficient involvement of officials and institutions from across the EU's institutional structure and beyond it.

To begin with, with the ideational institutional account, the criticism of the ECP topics having been too broad to reach concrete, meaningful recommendations<sup>66</sup> loses its purchase, as it is precisely the open-endedness and bottom-up character of the deliberation that supported the presentation of

<sup>66</sup> [https://conference-observatory.eu/wp-content/uploads/2021/09/1st\\_CoFoE\\_Citizens\\_Panel.pdf](https://conference-observatory.eu/wp-content/uploads/2021/09/1st_CoFoE_Citizens_Panel.pdf), pp. 4–5

ideas, including on the general direction and nature of the EU and the meaning of the key values.<sup>67</sup>

The intensive involvement of other stakeholders (the CoFoE Secretariat and facilitators in the design and the organization of the ECPs and the Plenary and experts in sharing their insights with the ECP members) is also put into different light with the ideational institutional account. Rather than bureaucrats who, at worst, represent obstacles for the citizens' will or, at best, provide the administrative backbone for a complex organizational endeavor, the Secretariat members from the three EU institutions are participants in the process, providing their expertise to enable the randomly selected ECP members (and, in case of the Plenary, randomly selected ambassadors) to more effectively articulate their views and preferences. The fact that they hail from different institutions that maintain disagreements between each other, while potentially complicating decisions on the procedure, may help more consideration and mutual feedback placed into the avenues chosen, and prevent decision making at the whims of a single, supreme leader.<sup>68</sup> This does not mean that certain interventions by the organizers into the ECP process were not overly intrusive, or that more bottom-up designs could not be imagined.<sup>69</sup> However, this account avoids framing the officials *a priori* as adversaries or barriers to the 'genuine' articulation of the ECP members' will.<sup>70</sup> A similar point can be made in relation to the facilitators of the ECP sessions, who played essential role in coordinating the ECP working groups, but also in designing the methodology of the ECPs and later supporting the ECP ambassadors in the process of the CoFoE plenaries. Facilitators engage in cru-

<sup>67</sup> At least this was the case at the very beginning of the ECPs that asked a broad question on the participants' vision of the EU in 2050. Later stages, particularly the generation of the 'streams' for subsequent discussion, were not inclusive enough. See Max Steuer, 'Roots of the EU Tree', *Verfassungsblog* (blog), 9 October 2021, <https://verfassungsblog.de/roots-of-the-eu-tree/>.

<sup>68</sup> See, for a similar argument against strong leaders with respect to the EU as a whole, Armin von Bogdandy, 'Our European Society and Its Conference on the Future of Europe', *Verfassungsblog* (blog), 14 May 2021, <https://verfassungsblog.de/our-european-society-and-its-conference-on-the-future-of-europe/>.

<sup>69</sup> Steuer, 'Roots of the EU Tree'.

<sup>70</sup> See also Alberto Alemanno and Kalypso Nicolaïdis, 'Citizen Power Europe', *Revue Européenne Du Droit*, no. 3 (4 January 2022): p. 15. These scholars present a somewhat more moderate argument highlighting that the CoFoE – as a unique endeavour – would not have been made possible without the intensive institutional involvement. However, they rightly note that the prevailing tendency of the CoFoE observers has been to 'bemoan' this 'overengineering' of the process.

cial 'frontstage and backstage' work surrounding deliberative sessions,<sup>71</sup> and thus can have enabling effect on generating an inclusive atmosphere in which ideas are presented, exchanged and shaped in the collective of the participants. Finally, the experts are themselves actors with own worldviews, however, they bring to the table the benefit of in-depth overview over a particular area and hence may enhance the quality of the deliberation.<sup>72</sup>

The ideational institutional perspective can similarly respond to the major claims levelled by Eurosceptic actors in the two motions for a resolution they had submitted in the European Parliament.<sup>73</sup> These actors see in the outcomes of the work of the ECPs and the Plenary a manifestation of disproportionate influence of 'federalist' views (though the concept of 'federalism' does not appear in the approved proposals) and the neglect towards the actual concerns of citizens across the EU by focusing on competence transfers. Theoretical sophistication is not required to note that most of the 49 proposals are not focused on competences, but policies, such as climate, health, migration, employment or education.<sup>74</sup> A basic infusion with deliberative theory demonstrates that the value of interaction and compromise stemming from deliberation cannot be squared with simple public opinion polls, which do not require 'considerable resources – time, money and some form of political

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<sup>71</sup> Oliver Escobar, 'Facilitators: The Micropolitics of Public Participation and Deliberation,' in *Handbook of Democratic Innovation and Governance*, ed. Stephen Elstub and Oliver Escobar (Cheltenham: Edward Elgar Publishing, 2019), pp. 178–95.

<sup>72</sup> This is not an evaluative claim of the extent to which the CoFoE ECPs succeeded in realizing this role for the experts. Rather, it specifies the *potential* of the experts that gets more easily obscured in the participatory-mobilizational account, that emphasizes the will of the collective subject in presenting an alternative to current affairs.

<sup>73</sup> Motions for resolutions B-9-0229-2022 and B-9-0235-2022, submitted for the plenary sitting on 2 May 2022.

<sup>74</sup> This is also underscored by the documentation prepared by the Council and the Commission ahead of the European Council meeting on June 23, which show how many modifications can be implemented without competence changes: <https://data.consilium.europa.eu/doc/document/ST-10033-2022-INIT/en/pdf>, <https://data.consilium.europa.eu/doc/document/ST-10033-2022-ADD-1/en/pdf>, [https://www.consilium.europa.eu/en/documents-publications/public-register/public-register-search/results/?WordsInSubject=&WordsInText=&DocumentNumber=10033%2F22&IntinstitutionalFiles=&DocumentDateFrom=&DocumentDateTo=&MeetingDateFrom=&MeetingDateTo=&DocumentLanguage=EN&OrderBy=DOCUMENT\\_DATE+-DESC&ctl00%24ctl00%24cpMain%24cpMain%24btnSubmit=](https://www.consilium.europa.eu/en/documents-publications/public-register/public-register-search/results/?WordsInSubject=&WordsInText=&DocumentNumber=10033%2F22&IntinstitutionalFiles=&DocumentDateFrom=&DocumentDateTo=&MeetingDateFrom=&MeetingDateTo=&DocumentLanguage=EN&OrderBy=DOCUMENT_DATE+-DESC&ctl00%24ctl00%24cpMain%24cpMain%24btnSubmit=) (Proposals and related specific measures contained in the report on the final outcome of the Conference on the Future of Europe: Preliminary technical assessment and Annex); [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_3750](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3750) (Commission sets out first analysis of the proposals stemming from the Conference on the Future of Europe).

expertise, constant updating and learning.<sup>75</sup> The value of learning (between ECP members as well as ECP members and the institutions) is key also to understand that the resulting recommendations are ‘more the by-product of the genuine transnational experience gained by the Conference’s participants than the inevitable result of a supposedly pro-EU biased initiative.’<sup>76</sup>

However, as compared to popular mobilizational approaches, ideational institutionalism has fewer difficulties to justify the involvement of professional facilitators and organizers, as well as to defend the legitimacy of the CoFoE Plenary, which, while including a non-negligible component of the randomly selected ECP members, primarily comprised elected representatives from the EP and national parliaments. Nor does it have a difficulty of claiming that the perspectives obtained via deliberation might differ from the majoritarian preferences obtained via public opinion, and yet, implementing them cannot be deemed illegitimate merely on the grounds of this contrast.<sup>77</sup> Both accounts meet in supporting explicit and vivid engagement with questions of values, and the popular mobilizational account is arguably more vocal in highlighting the need to include marginal voices that are not captured by the existing institutional structures,<sup>78</sup> but are nevertheless essential for drawing an inclusive vision of the future of the EU.

Just as some of the critiques lose their persuasiveness with the ideational institutional account, however, previously neglected avenues on improving the structure and operation of the CoFoE Plenary and the ECPs reveal themselves. These can only be sketched here and require further elaboration beyond the CoFoE context. Firstly, if institutions matter for mutual learning, an inclusive approach should be adopted also towards the range of institutions represented in the deliberations. In the ECPs, this would have been particu-

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<sup>75</sup> David Levi-Faur and Frans van Waarden, eds., *Democratic Empowerment in the European Union* (Cheltenham: Edward Elgar Publishing, 2018), p. 5.

<sup>76</sup> Alemanno and Nicolaïdis, ‘Citizen Power Europe’, p. 8.

<sup>77</sup> As noted by Palermo (although he does not distinguish between participation and deliberation in this respect), the ‘key criterion’ advancing these forms of democracy is ‘the abandonment of the majority principle’. Francesco Palermo, ‘Towards Participatory Constitutionalism? Comparative European Lessons’, in *Constitutional Acceleration within the European Union and Beyond*, ed. Paul Blokker (London: Routledge, 2017), p. 28.

<sup>78</sup> These entail the random selection of the ECP members or the composition of the main EU institutions. The latter has been criticized for insufficient inclusion of officials with minority background. E.g. Dermot Hodson, Uwe Puetter, and Sabine Saurugger, ‘Why EU Institutions Matter: Five Dimensions of EU Institutional Politics’, in *The Institutions of the European Union*, ed. Dermot Hodson et al., Fifth Edition (Oxford: OUP, 2021), p. 4 and sources therein.

larly doable via inviting representatives of such institutions with an expert status.<sup>79</sup> Secondly, important institutions for democracy protection in Europe should have had a say in the CoFoE, either via representation in the CoFoE Plenary or at least expert status in the ECPs. Notably, the Council of Europe, which brings together more Europeans than the EU via its institution of EU citizenship, including the European Court of Human Rights and the Venice Commission, could be a particularly important institution for the deliberations.<sup>80</sup> Thirdly, institutions beyond Europe should be actively sought to be invited to observe the process, and share their views. While the openness of the multilingual platform regardless of the geographical provenience of the authors of ideas and the inclusion of representatives from the Western Balkans and Ukraine to selected CoFoE plenaries are welcome steps in this direction, there is more space to include, for example, actors struggling for the consolidation and protection of democracy and enhancement of citizen participation in other continents, particularly in non-Western settings. If the CoFoE is indeed a ‘decisive moment for citizen participation in Europe,’<sup>81</sup> effort is needed to truly include Europeans and avoid pre-defined, inward-looking notions of ‘Europe’<sup>82</sup> when doing so.

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<sup>79</sup> Some of them were invited, but the selection was controversial. Notably, the invitation of the (now former) Executive Director of the European Border and Coast Guard Agency (Frontex), who was subject to criticism of human rights monitoring organizations: <https://citizenstakeover.eu/blog/ctoe-expresses-strong-concerns/>. Instead of ‘disinviting’ the Frontex representative, an ideational institutional perspective would have supported inviting experts from other institutions with alternative views (including the European Ombudsman and the Fundamental Rights Agency, as well as the CJEU). On the latter, see Max Steuer, ‘Neglected Actors at the Conference on the Future of Europe’, *Verfassungsblog* (blog), 30 June 2021, <https://verfassungsblog.de/neglected-actors-at-the-conference-on-the-future-of-europe/>.

<sup>80</sup> The lack of attention towards the Council of Europe might also have been linked to the fact that the EU’s accession to the European Convention on Human Rights progresses slowly, and with virtually no public attention. See <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/accesion-of-the-european-union-to-the-european-convention-on-human-rights> for (very detailed, but not particularly accessible) documentation of the current negotiations, and an ‘idea’ on the multilingual digital platform shared by the author of this chapter: <https://futureu.europa.eu/processes/ValuesRights/f/12/proposals/263242>.

<sup>81</sup> Gabriele Abels et al., ‘Next Level Citizen Participation in the EU: Institutionalising European Citizens’ Assemblies’ (Gütersloh: Bertelsmann Stiftung, 24 June 2022), p. 5.

<sup>82</sup> See the idea of ‘reversing the gaze’ as presented by Kalyps Nicolaidis, ‘Bringing Europe Back In: Global IR, Area Studies and the Decentring Agenda’, *St Antony’s International Review* 16, no. 1 (1 August 2020): p. 198.

## Conclusion

The two perspectives on initiatives fostering deliberative democracy in the EU, introduced in this chapter via the analyses and critiques of the Plenary and the European Citizens Panels of the Conference on the Future of Europe, should be seen as potentially complementary, rather than inherently contradictory. The popular mobilizational account is valuable in pushing back against a minimalist approach to democracy constrained to elections<sup>83</sup> while retaining its reading of the majority will as essential for democratic ordering. Furthermore, it demands more inclusion of diverse voices into participatory mechanisms *qua* deliberation that are capable to trigger policy and even polity changes. However, the popular mobilizational account alone is vulnerable to criticisms by voices sceptical of participation *qua* deliberation, particularly if it is to have more than informational value as a feedback and possibly advisory mechanism for political elites.

The ideational institutional account helps respond to these criticisms. While it shares the emphasis on values over material interests with the popular mobilizational account, it focuses more the interactions between individuals and institutions, with the latter capable to 'change the distribution of political interests, resources and rules by creating new actors and identities [...]'.<sup>84</sup> The majority-minority distinction becomes less central, as institutions are not juxtaposed to individual and collective preferences, but seen as essential for the articulation and shaping of those preferences. This account also identifies previously neglected areas which could be improved, should elements of the CoFoE (particularly the random selection of European people's representatives deliberating with societal elites) serve as a foundation for an EU Convention. Such inspirations would be more than welcome to minimize the risk of a Convention failing stop citizen sleepwalking in EU affairs or even pushing to wake them up on the wrong side of the bed.

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<sup>83</sup> See, for example, Adam Przeworski, *Crises of Democracy* (Cambridge: CUP, 2019), p. 5.

<sup>84</sup> James G. March and Johan P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: The Free Press, 1989), pp. 160, 164.