

**Deliberative Democracy and the American Slave
Narrative: When Norms Collide**
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Abstract

[It is difficult to imagine the irony Frederick Douglass must have contemplated when authoring his know well known address entitled *What to the Slave Is the 4th of July*. Writing as a former slave and at the apex of the American Slavery experience, Douglass must have considered the plight of those who had yet to gain their freedom despite living in a nation formed and informed resting upon the notions of equality and freedom. Having joined the abolitionist movement and subsequently formed his self-edited news publication, Douglass devoted much of his life to the cause of eliminating both slavery and inequality based upon the moral principles which were enshrined in the nation's constitution. Among the central themes of this essay is to examine this critical intersection between contemporary normative practices as defined by societal 'consensus', and the ability of democratic deliberative models to address urgent and controversial issues of the day grounded predominantly in questions of moral values. The dilemma which Frederick Douglass faced as he participated in the slavery deliberative provides fertile ground from which to understand this intersection more clearly. While providing a lens from which to view this intersection between morality and deliberation, the American Slave Narrative, as represented by Frederick Douglass's *What to the Slave Is the 4th of July?*, also provides a substantial platform to inform as to the deliberative model's treatment of inequality of voice within the forum of public debate.]

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entitled *What to the Slave Is the 4th of July?*¹. Writing as a former slave and at the apex of the American Slavery experience, Douglass must have considered the plight of those who had yet to gain their freedom despite living in a nation formed and informed resting upon the notions of equality and freedom. Having joined the abolitionist movement and subsequently formed his self-edited news publication, Douglass devoted much of his life to the cause of eliminating both slavery and inequality based upon the moral principles which were enshrined in the nation's constitution.

Speaking and writing as he joined the contemporary deliberations, Douglass vehemently rejected what had become generally accepted as the 'institution' of slavery. As Douglass and other abolitionist would frequently remind the American public the institution of slavery was perpetuated based upon a gross injustice highlighted by a false morality which rationalized the concept of enslavement while clinging to the notion that the nation provided the comforts of equality and freedom for all of its 'citizens'. Indeed, Douglass was confronting a culture which had not only accepted slavery, but had permitted it to become a normative rationale. To be sure, the conditionality of morally conflicting concepts imposed upon Douglass as he sought to have his voice heard on the stage of 'deliberative democracy' proved to be a powerful normative obstacle.

While the environment and political landscape confronting Douglass was unique both in time and by circumstance, many of the theoretical challenges he faced as he interacted with the deliberative model have been the focus of ongoing debate among multiple scholars. The fabric of America's slavery experience presents an important and substantive challenge to the democratic deliberative model. While the contemporary deliberative model has enjoyed a substantial period of supremacy among democratic theory scholars, it

¹ Douglass, Frederick, *What to the Slave is the Fourth of July?*, *The Heath Anthology of American Literature*, 1979, Volume 1, Third Edition. Editor Paul Lauter, Boston, Houghton-Mifflin Company, pp. 1818-1836.

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is important to consider the specific challenges confronting its' theoretical foundations and the ability of deliberation to resolve matters of inequality or lack of agency in the public forum as well as the difficult task of mediating the collision of current societal morals and norms and public debate which would challenge these norms.

Among the central themes of this essay is to examine this critical intersection between contemporary normative practices as defined by societal 'consensus', and the ability of democratic deliberative models to address urgent and controversial issues of the day grounded predominantly in questions of moral values. The dilemma which Frederick Douglass faced as he participated in the slavery deliberative provides fertile ground from which to understand this intersection more clearly. While providing a lens from which to view this intersection between morality and deliberation, the American Slave Narrative, as represented by Frederick Douglass's *What to the Slave Is the 4th of July?*, also provides a substantial platform to inform as to the deliberative model's treatment of inequality of voice within the forum of public debate.

Emerging as a reincarnation of earlier deliberative models, the current iterations have, seemingly, supplanted the liberal democratic model as the focus of scholarly debate. Proponents of this model continue to champion the flexibility of its theoretical basis and its adaptability. Proponents point to the elastic nature of the model as it lends itself to the cause of citizen deliberation. Operating in an unfettered environment guided by equality of voice and procedural purity, supporters posit that this model engenders a plausible setting for the building of societal-majoritarian consensus.

The central focus of this essay is to provide an assessment of the deliberative model's capabilities to rectify both the challenges of inequality (and/or lack of agency) as well as its' ability to inform and accommodate the deliberation of civic issues grounded in moral arguments which are inconsistent with contemporary prevailing norms and practices. To do so, in the interest of framing this

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assessment, I will, articulate the operational foundations defining deliberative democracy as theorized by scholars who have provided substantial work in their treatment of the deliberative model. Additionally, having defined the deliberative model ‘rules of the game’, I will introduce the American Slave Narrative as represented by Frederick Douglass’s *What to the Slave Is the 4th of July?* The rationale for the introduction of both Douglass and his narrative is based on my desire to provide a lens from which to assess the deliberative model as it interacts and informs debate centered on moral confrontation as well as the ability of actors to participate in this debate while lacking agency and the benefit of equal standing in the public forum. And, finally, I will assess the central questions of this essay.

The Deliberative Model and the American Slave Narrative – Frederick Douglass’s *What to the Slave is the 4th of July?*

Of the great historical debates in American history, slavery is certainly considered to be a transformative instance. The modes, methods, and certainly the context in which the slavery debate was shaped is the subject of a great deal of scholarship. Certainly the very notion that slavery, in fact, existed at all within a nation founded on the democratic principles of liberty, equality and justice is a vexing question. It is the intent of this essay to more carefully review this question within the context of democratic theory. More specifically, my interest here is to understand the capabilities of democratic theory to both inform and account for the debate of slavery as it unfolded within the realm of public discourse.

Although the concept of deliberative democracy can be traced to Aristotle and Rousseau (among others), the recent incarnation took shape as a critique of liberal democracy. Formulations of deliberative democratic theory gaining scholarly attention in the 1980’s and 1990’s (Habermas, Dryzek, Bohman, Benhabib, Fishkin, Gutmann, Thompson among others) suggested a participatory account of an engaged citizenry, coming together in a

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deliberative public forum guided by a deliberative process resting upon fundamental notions of impartiality, recognition and respect for alternative opinion, equality of voice and the ultimate prospect that individual moralities and issue positions may undergo a transformative process yielding a consensual position of governance and justice. While the nuances and operational specifics of the deliberative model continue to be debated among contemporary scholars, the core assumptions largely remain as the foundational frameworks for the general theoretical model.

It is not my intention here to provide a full rehearsal of deliberative democratic theory. However, it will be necessary (as a basis to form an opinion regarding the central questions of this essay) to locate the concepts of morality and equality (agency) as they are informed by the more general model of democratic deliberation.

In its early iterations in the 1980's, deliberation stood in contrast to notions of aggregation and competitive pluralism as a particular 'the forum' of discussion was developed as a distinctive rationale. Rather than encouraging a simple compromise, the goal of deliberation was consensus – the agreement of all parties to a decision. The attractiveness of the deliberative model was the prospect that the assumptions outlined in the theory would expand the notions of liberal democracy and insist on the democratic ideal as government truly guided by public reasoning which would transform a myriad of policy positions into a consensual 'will of the people'².

Although countless scholars have joined the conversation, each offering comment as to their interpretation, a broad definition as formulated by Habermas would suggest that public deliberation of free and equal citizens forms the core of legitimate political decision making and self-government. In particular the ideal of public reason, legitimate decisions are those that are accepted by all parties to the

² Habermas, Jurgen, *Legitimation Crisis*, 1975, Boston, MA., Beacon Press.

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decision outcome, and most importantly organized around an ideal of political justification requiring free public reasoning of equal citizens³.

Habermas further defined political justification as a process requiring citizens to see beyond their self-interests and assimilate themselves with the common good. Habermas reasoned that this 'public orientation' will "ensure a fair system of mutual cooperation without presupposing an already existing condition⁴."

For others such as Rawls, the concept of 'public reason' requires "guidelines of inquiry" (including the appropriate use of judgment, inference and evidence) and "virtues of reasonableness and fair-mindedness⁵." For Rawls, the guidelines of inquiry take the shape of procedural conceptions of justification, allowing the deliberative model to support both a moral and epistemic improvement of the common good. In that Rawls expresses this connection between moral and epistemic considerations in describing his ideal of public reason he understands deliberative democracy to be a "well ordered constitutional democracy⁶."

For Habermas and Rawls the concept of ideal procedures (while each advocating nuanced differences) makes the features of consensus consistent and impartially informed. Each see procedural integrity as a vehicle for legitimacy and issue outcomes which are normatively acceptable due to their lack of contextual conditionality. To this end, Habermas posits that "the legitimacy of law depends on

³ Habermas, Jurgen, *The Structural Transformation of the Public Sphere*, 1989, Cambridge MA, MIT Press.

⁴ IBID pp. 475.

⁵ Rawls, John. The idea of public reason revisited. 1997. *The University of Chicago Law Review*, pp. 765-807

⁶ IBID

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the democratic character of the process that makes possible a consensus of all citizens⁷.”

Deliberative theorists Gutmann and Thompson enter the procedural argument and place less privilege to its' importance as it informs the overall framework of public discussion. For Gutmann and Thompson “proceduralists build what are substantive values into the conditions that define adequate deliberation. On our view, these values, including the value of the practice of deliberation itself, should be made explicit, and the subject to deliberative challenge. We think it better not to characterize deliberative democracy” as procedural⁸.

Gutmann and Thompson are much less absolute in their conception of deliberative democracy. Seeing deliberative democracy as a ‘second-order theory’, Gutmann and Thompson seemingly make room for a wide variation of deliberative methodology and conceptualization. “Second order theories are about other theories in the sense that they provide ways of dealing with the claims of conflicting first-order theories. They can be held consistently without rejecting a wide range of principles expressed by first-order theories⁹.” For Gutmann and Thompson, much more essential is a robust definition as to both who is included as deliberators and to whom the deliberators must justify their reasons or outcomes. An ongoing theme that is consistently addressed in the scholarship of these theorists is the fact that the deliberative model should be free from exclusion and restriction either as a product of procedure or formal and informal norms.

⁷ Habermas, Jurgen, *Legitimation Crisis*, 1975, Boston, MA., Beacon Press. p. 110.

⁸ Gutmann, Amy and Thompson, Dennis, *Why Deliberative Democracy is Different*, 2004, Princeton University Press, Princeton, New Jersey, p. 131.

⁹ IBID. p 13.

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Indeed for a great many deliberative theorists, the framework of this genre is thematically consistent. Privileging access to the deliberation and the equality, and in some cases, the morally transformative powers, of the public forum is essential to deliberative issue orientation and the consensual outcome of public policy.

Having established an operational concept of deliberative democracy, I will now turn to my discussion of the American Slave Narrative viewed through the lens of Frederick Douglass and his speech *What to the Slave is the Fourth of July?* The principle effort here will be to consider the Douglass speech as it is situated (or perhaps not) within the previously described model of deliberative democracy.

Despite the widely acclaimed historical accounting of Frederick Douglass's oratory skill as a public speaker and commanding influence on the debate of slavery, the literary and political accounts of his significance in nineteenth century discourse are somewhat dismissive of the deliberative attributes of his rhetoric. Historically categorized as a genre belonging mainly to the African American slave narrative (although the oratory of Douglass replaces the written narrative), Douglass's public appearances are largely viewed as a subject of 'appearance' reduced largely to a commentary of style evidenced through the less important element of speechmaking¹⁰.

The reduction of Douglass's rhetoric to ceremonial function is no doubt a factor in the treatment of his works as substantial examples of political discourse. The dismissive nature of this treatment can be located and rooted in Aristotle's classifications of rhetoric in which epideictic oratory, in relation to deliberative discourse, is viewed as less important as it features ceremonial

¹⁰ Black, Edwin. "The Aesthetics of Rhetoric, American Style". *Rhetoric and Political Culture in Nineteenth Century America*. 1997, Michigan State University Press, East Lansing, Michigan, pp. 1-15.

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rhetoric and style of delivery of the orator rather than the invention of the speech itself¹¹.

More contemporarily, and as a suggestion of deliberative theorists, deliberation 'breaks down' in a large scale forum and often is evidenced with "speech making" replacing conversation and rhetorical appeals replacing reasoned arguments¹². For these theorists, Aristotle's treatment of oratory provides evidence that, in their view, speech making detracts from meaningful discourse and can therefore, no longer be classified as deliberative.

Here I will submit that the oratory of Douglass was in fact deliberative as I reclaim the rhetorical significance of his 1852 address, "What to the Slave is the Fourth of July?" I suggest that his address more accurately reflects political deliberation as it represents a collective appeal emanating from a population of enslaved and disenfranchised members of American society. More importantly, as Dryzek explains "the pursuit of reasoned consensus and the 'civilising' norms of deliberative democracy submerge the genuine injustices suffered by 'other voices'. What is often required to make these voices heard is deliberate acts of speech: protests, resistance, emotional speech making and rhetoric designed to move the dominant consensus into perceiving what it has been blind to. Indeed emotional appeals may sometimes be the only things that can reach across the difference, 'to reach a particular audience by framing points in a language that will move the audience in question'¹³." Here, it is clear that Dryzek recognizes the value of rhetoric as it is utilized in the public forum, when the context of the debate makes it

¹¹ Black, Edwin. *Rhetorical Questions: Studies of Public Discourse*, 1992. Chicago, University of Chicago Press. p. 157.

¹² Goodin, Robert. "Democratic Deliberation Within", *Philosophy and Public Affairs*, 29, pp. 81-109.

¹³ Dryzek, J. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. 2000, Oxford, Oxford University Press. p. 52

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implausible to follow the 'procedural' conceptions as discussed in Habermas and others.

As Aristotle's conceptualization of oratory was introduced above to rationalize the historical treatment of Douglass's position in the public forum, I will once again bring in Aristotle to now support my position. In *Rhetoric*, Aristotle provides additional insight into what he posits as his 'third branch' of rhetoric. Specifically, the three divisions of oratory are political or deliberative (which "urges us either to do or not do something"); forensic (which "either attacks or defends somebody") and the ceremonial or epideictic oratory of display (which "either praises or censures somebody or something")¹⁴.

Here it is clear that in emphasizing his separateness from the audience, and speaking to them, not as an equal, but as a dialogic other, Douglass squarely distinguished his position not as simply a speechmaker, but an orator who clearly meets the requirements of political or deliberative discourse as outlined in Aristotle's third branch. In clearly articulating in his 4th of July Speech that the celebration "is *yours* not *mine*" and asking his audience "do you mean, citizens, to mock me, by asking me to speak today? To drag a man in fetters into the grand illuminated temple of liberty and call upon him to join you in joyous anthems is inhuman mockery and sacrilegious irony¹⁵." This passage seems to point clearly to a political and deliberative appeal designed to be much more than a 'ceremonial display'.

¹⁴ Aristotle, *Rhetoric*, in *The Rhetorical Tradition: Readings from Classical Times to the Present*, Patricia Bizzell and Bruce Herzberg, 1990, Boston, St. Martins Press. pp. 151-195.

¹⁵ Douglass, Frederick, What to the Slave is the Fourth of July?, *The Heath Anthology of American Literature*, 1979, Volume 1, Third Edition. Editor Paul Lauter, Boston, Houghton-Mifflin Company, pp. 1818-1836 [p. 1824]

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Douglass's refusal to identify himself (and perhaps his race) within the context of his current day America, when he intones – “Fellow citizens, pardon me, allow me to ask, why I am called to speak today? What have I, or those I represent, to do with your national independence? The blessings in which you, this day, rejoice are not enjoyed in common. The sunlight that brought life and healing to you has brought stripes and death to me. This seems to counter Aristotle's notion that a ceremonial display of an epideictic nature must show some affinity to the audience, Quite the contrary, here Douglass is clearly distancing himself from his audience in his inability to locate himself within the audience's celebration of an event that is clearly denied to him. Within the context of his deeper messages and topics, Douglass's expresses the political position which describes his present treatment of the African American slave community. Douglass' clear critique of the hypocritical nature of the celebration paints a clear deliberative picture in which he introduces the problem of slavery and racial identity into the public forum.

Leaving little doubt that Douglass's intentions are political, he directly confronts his audience with the less than ceremonial praise for the day's celebration in stating “My subject, then, fellow citizens, is American Slavery. I shall see this day, and its popular characteristics from the slaves' point of view¹⁶.” That Douglas would brazenly introduce such a culturally controversial topic at a 4th of July celebration is clearly a challenge to his audience to review his work by his words and consider these words as a call for a national dialog regarding the hypocritical and morally bankrupt notion of slavery.

Douglass's treatment of the constitution as it relates to the 'issue' of slavery is a clear indication of a well-conceived strategy to break with abolitionist (who believed the constitution to be an 'evil' pro-slavery document) and suggest that the constitution is, in fact,

¹⁶ IBID, p. 1825

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anti-slavery¹⁷. Here Douglass utilized this political strategy to construct an argument that the Constitution demanded “emancipation”. This strategy allowed Douglass the opportunity to demand moral justification for the continued practice of slavery. More importantly, it allowed Douglass to challenge “white” America to respond to the higher authority of the Constitution (or provide sufficient justification for non-compliance). Again evidenced in his 4th of July speech, Douglass challenges his audience to uphold the honor and integrity of following the wishes of the founding fathers in stating that not to do so “is slander upon the founding fathers’ memory.” He poses the question “Let me ask...if the Constitution were intended to be, by its framers and adopters, a slave-holding instrument, why neither ‘slavery’, ‘slaveholder’, or ‘slave’ can be found in it¹⁸”. Quite the contrary “it will be found to contain principles and purposes entirely hostile to the exercise of slavery¹⁹”

As a deliberative method, it is clear that through the content of the 4th of July Speech, Douglas was aware of the moral position of the ‘public’ which allowed them to not only justify slavery, but allow it to become a cultural norm. His consistent efforts to prod and significantly change the prevailing norms are evidence of a clear strategy. Pointing out the hypocritical nature of the “public” morality Douglas states, “Americans, your republican politics, no less than your republican religion, are flagrantly inconsistent... The existence

¹⁷ The position of leading white abolitionists such as the influential William Lloyd Garrison and others, considered the best strategy of the day was to interpret the Constitution as pro-slavery. Douglass vehemently argued against this position as it absolved current White slave holders and proponents of slavery from the necessity to comply with the intent of the Constitution. This ‘split’ between the white abolitionist Garrison and Douglass represented a shift, which offered Douglas the opportunity to position the issue as one of hypocrisy, demanding compliance with the Constitution as full ‘citizens’.

¹⁸ IBID, p. 1834

¹⁹ IBID, p. 1835

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of slavery in this country brands your republicanism as a sham, your humanity as a base pretense, and your Christianity as a lie²⁰.”

It is certain that Douglass not only moved from the standard American Slave Narrative mechanics towards a more deliberative process of engaging and challenging his audience to enter the dialog with him. While literary and perhaps political scientist theorists may debate the utilitarian nature or functionality of oration as a form of deliberation, it cannot be disputed that Frederick Douglass's 4th of July Speech and his larger body of work is consistent with a grand historical tradition of political discourse in the form of a delivered speech.

Although advocates of procedural integrity as a framework for deliberative democracy may raise objections that Douglass's oratory lacks conformity, I have and will continue to maintain (as others have) that deliberation cannot be distilled into a strict instrumental outcome of carefully controlled mechanics. A single set of procedural principles, surely cannot capture the myriad of effective deliberative typologies. Insisting on a strict interpretation of proceduralism and its regulating effect on deliberation, would simply reduce the dialectic to a simple matter of deductive argumentation --- hardly the outcome imagined by deliberative democracy.

On another level, while not addressed at length here, as Sandra Gustafson has suggested, there seems to be somewhat of an academic gridlock in discussions of deliberation itself. Gustafson suggests that “on one hand we have Habermas's Kantian, rational public discourse, while on the other hand we have postmodernism's trademark: an impassioned embodied, contestatory discourse informed by identity politics. To help resolve the fundamental ongoing challenge of deliberative politics: the need to develop

²⁰ IBID, p. 1833

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practices and institutions capable of framing multilingual, transcultural deliberations that are inclusive and just²¹

The important practice of rhetoric as embodied in the work of Frederick Douglass cannot be overlooked as a deliberative methodology. Douglass's rhetoric and appeal to the public forum at minimum, sought to level the 'deliberative playing field' through his insistence that all who might otherwise be relatively disempowered be enabled to achieve agency of voice as they passionately appealed their case. In essence, Douglass's work challenges deliberative democracy to live up to its basic provisions, and to be --- deliberative democracy.

Challenging the Deliberative Democratic Model

It is not difficult to argue that the two greatest challenges faced by Frederick Douglass and the American Slave Narratives in general was the ability to speak with equal agency (further exacerbated by the inability to simply gain access to the public forum) as well as the ongoing struggle to illicit a change in the deeply held societal moral conceptualization of slavery itself.

I will first address here the notion of morality as a foundational concept within the deliberative model. Deliberative theorists argue that deliberative forums encourage both an evolution in moral reasoning – as the participant considers a number of what might be opposing value judgments, as well as formulation of a more general public will. This process is encouraged by the discursive exercise which serves to broaden and deepen a higher order of reflection. The logic is further extended to suggest that the act of deliberation is important as it gives rise to a process, which by design, promotes a more robust consideration of the moral basis of an argument.

²¹ Gustafson, Sandra M., *Imagining Deliberative Democracy in the Early American Republic*, 2011, Chicago, University of Chicago Press, p.38

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As I have outlined in my account of the challenges faced by Douglass, that while the crafting of his narrations were largely designed to nudge the reader or listener into a new moral perspective, his strategy was often largely without effect as his appeals were directed to a public lacking ability to discern that their moral responsibilities were anything other than what was the cultural norm. It is here that I will assert that contrary to arguments posited by proponents of the democratic deliberative model, the treatment regarding arguments of moral concern are largely problematic and present a questionable rebuttal from deliberative theorists.

Although little attention has been paid to the effect of the American slave narrative and the impassioned reasoning of Frederick Douglass as it served to plead the case of the Abolitionist movement, Kimberly Smith, *Storytelling, Sympathy and Moral Judgment in American Abolitionism*, suggests that the problem was not a lack of substantive and rhetorically effective arguments, but that the arguments lacked the ability to motivate because the audience was very often populated by advocates of slavery who were “in a disturbing way, unaware, curiously out of touch with their moral impulses’ and therefore, lacked the capacity for sympathy or empathy²².”

Smith further elaborated, the unreasonable assumption that slaves were not persons, blocked any empathetic responsiveness and that this psychological pre-disposition was deep-rooted in the public’s upbringing, education and social norms so much so that the practice of slavery, for many was not considered a moral issue, let alone a practice which could be changed by political discourse argued by slaves, former slaves or abolitionist in general²³.

Smith does, however, point out that the multiple lines of appeals to the public through the voice of the slave, in the form of

²² Smith, Kimberly. 1998. “Storytelling, Sympathy and Moral Judgment in American Abolitionism,” *The Journal of Political Philosophy* 6:356-377, p. 357

²³ IBID, p. 359

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storytelling, served to replace rational discourse as an alternative form which approached the subject in a less threatening manner, appealing to emotions, and sought to “improve public judgment in a way rational arguments could not²⁴.” Smith concluded that the act of owning slaves “infected one’s entire moral nature in such a way that neither sympathy nor reason can work properly. That is why it is so hard to disentangle slaveholders’ bad reasoning from their lack of compassion- both are a result of the same deep moral corruption²⁵.”

Interestingly, similar to Smith, John Rawls’ account of the public’s notion of fairness and justice begins with a hypothetical “original position”. Acting as a self-interested and rational being, individuals select from a number of options which will inform their perceptions and moral foundation as they move from behind a “veil of ignorance” to a moral position which will guide them throughout life. Like Smith, Rawls suggests that empathy and sympathy are largely motivated and informed through societal context and norms and are fundamentally dependent on the principles of self-interest defined at an early age and are largely self-perpetuated by early notions of rational choice exercised in the name of self-interest²⁶.

This would suggest that deliberative appeals to empathy and moral reasoning would need to meet the requirements of self-interest as rationalized by slave-owners. As a result, deliberation would seemingly have little effect on slave-owners pre-disposed to accept only their own self-defined notions of morality and equality. Unlike deliberative theorists who are wholly confident in the ability of the deliberative model and procedural soundness of the discursive to deliver up reasoned and mutually beneficial moral conclusions, Smith

²⁴ IBID

²⁵ IBID, p. 364

²⁶ Rawls, John. 1971. in Bohman, James and William Rehg (eds.). 1997. Bohman, James and William Rehg (eds.). 1997. *Deliberative Democracy: Essays on Reason and Politics*. Cambridge, Massachusetts: MIT Press, 1997. P.93 & 99.

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and Rawls suggest that challenges to the individual self-interested moral belief system, is suspect at best.

Similarly, I argue here that the Smith account of a deeply ingrained cultural bias in support of moral justifications for slavery detracts from the deliberative model and its ability to support a rationale which suggests that discursive public debate will produce a morally justified outcome featuring a greater justice. Deliberative theorists would certainly counter this argument pointing out that the deliberative model could be viewed as a success in bringing an end to slavery. That the consistent drumbeat of abolitionist sentiment ultimately played a part as the ongoing forum of deliberation provided the basis for the citizenry to self-correct an existing norm when challenged to justify its continued basis for normative practice.

Indeed Gutmann and Thompson account for this theoretical challenge in speaking to the notion of the self-correcting capacity of deliberative democracy in suggesting that the “provisionality”²⁷ of the theory invites “revision in response to new moral insights or empirical discoveries”²⁸. Furthermore, Gutmann and Thompson distance themselves from any claim that the deliberative model is intrinsically morally consistent with the public view at any one

²⁷ Provisional theory as suggested by Kant instructs that certain rights apply to institutions which imperfectly mirror their own normative principles, and thus that practical politics must follow a rule of provisional rather than conclusive right. “Always leave open the possibility of entering into a rightful condition”. (Kant, 1902-. “Kants gesammelte Schriften.” Preussischen Akademie der Wissenschaften. Berlin and Leipzig: Walter de Gruyter & Co. p. VI:347) in Ellis, Elizabeth, *Provisionalism in the Study of Politics*, 2002 Yale University Press. p. 3. Also see more recently Gutmann, Amy and Thompson, Dennis. 2004. *Why Deliberative Democracy?* Princeton, New Jersey. Princeton University Press. and their discussion arguing that morally provisionality allows for a “second-order” theory as a way of dealing with “claims of conflicting first-order theories.” P. 13.

²⁸ Gutmann, Amy and Thompson, Dennis. 2004. *Why Deliberative Democracy?* Princeton, New Jersey. Princeton University Press. p. 57.

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specific place in time. Rather, they suggest that the act of deliberation is an ongoing process shaping and molding accepted public morality as a reaction to the ebb and flow of public discourse in stating, “Deliberation cannot make incompatible values compatible, but it can help participants recognize the moral merit in their opponents’ claims when those claims have merit²⁹.”

For Gutmann and Thompson the purpose of deliberative democracy is to “provide the most justifiable conception for dealing with moral disagreement in politics³⁰.” Among the purposes of deliberative democracy, Gutmann and Thompson propose as its first aim is “to promote the legitimacy of collective decisions³¹.” In their singular reference to the issue of slavery, Gutmann and Thompson address the issue as a *post hoc* anecdote item in explaining the notion of provisionality. Their treatment of the notion provides a singular clue to understanding that for these scholars, the deliberative model was triumphant in its contributions to ushering in the end of slavery (and along with it the rejection of the rationale which perpetuated it). For Gutmann and Thompson, the case to end slavery was fairly tested against those that favored its continuation. They seemingly insinuate that the fact that a debate took place in the public sphere rightly justifies the notion that the deliberative model was the conduit through which it was resolved in stating that “Some results are rightly regarded as more settled than others. We do not have to reargue the question of slavery every generation. But the justification for regarding such results as settled is that they have met the deliberative challenge in the past, and there is no reason to believe that they could not today³².”

Although it is not within the scope of this essay, these remarks lead me to rhetorically question the manner in which

²⁹ IBID. p. 11.

³⁰ IBID. p. 10.

³¹ IBID

³² IBID. p. 12-13.

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Gutmann and Thompson would treat equally morally grounded debates like abortion and same sex marriage, which continue to be vehemently argued in the public sphere and continue to rage on with seemingly little resolution in sight. Although these are perhaps questions for further treatment, the inability of the deliberative model to deliver a morally justified resolution within a reasonable time period, calls into question the theories capabilities to address issues of the day in a manner which is both prudent and timely. While proponents of deliberation certainly set no expectations as to timing, theoretical models which are devoid of utilitarian design seem to not only be ineffectual as operational concepts, but render themselves of little use in failing to meet demands calling for timely resolution of the most urgent issues of the day.

Elisabeth Ellis provides some direction here in her discussion of “right” policy outcomes. While her discussion does not embrace the issue of timeliness, it does illuminate the deliberatist argument which seems to be based in a rationale ‘that time heals all wounds’. Ellis posits that “deliberative theory remains saddled with some of the traditional shortcomings of standard liberal theory: an implausible model of political change that relies on unlikely accounts both of individual psychology and of the time-frame shifts in social mentalities³³.”

Bringing into focus the issue of cultural relativism, Ellis points out that Gutmann and Thompson miss the point when they posit that “Imagining the time in the future when one’s argument might win the day does not add anything to the strength of one’s argument in the present³⁴. Ellis suggests Gutmann and Thompson “miss the force of historical and cultural arguments” as offered by

³³ Ellis, Elisabeth, *Provisionalism in the Study of Politics*, 2002. Yale University Press. p. 11.

³⁴ Gutmann, Amy and Thompson, Dennis. 1999. *Democratic Disagreement* in Ellis, Elisabeth, *Provisionalism in the Study of Politics*, 2002. Yale University Press. p. 11.

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Robert P. George³⁵. George argues that one day permissive abortion laws will be viewed in the same light as permissive slavery laws are today with the Kantian point that privileging any particular historical standpoint cannot be justified³⁶.” Ellis criticizes the rationale of Gutmann and Thompson in believing, that given the right institutional background, public reason will trump social context and historical prejudice in the short run. Ellis suggests that contrary to the belief of Gutmann and Thompson, the deliberative model may not be the cause of change, but rather the simple passage of time changes the discursive environment making some arguments more or less plausible to make³⁷.

The issue of political change under deliberative conditions assumes that rational citizens’ transform either loosely held or firmly held opinions and moral beliefs through the course of public discourse in some enlightened manner. The evidence, while not widely studied, suggests that this transformation takes place over a longer (as was the case of the slavery issue) rather than shorter period of time. This viewpoint would be consistent with the treatment of the issue in Kant³⁸. This notion is further supported by James Fishkin³⁹ who suggests that the deliberative case for “short-term individual moral enlightenment would be strengthened by examples of the phenomenon in action, but these are unfortunately in very short

³⁵ Ellis, Elizabeth, *Provisionalism in the Study of Politics*, 2002. Yale University Press. p. 11.

³⁶ George, Robert P. 1999. “Law, Democracy, and Moral Disagreement: Reciprocity, Slavery, and Abortion,” pp. 11 in Ellis, Elizabeth, *Provisionalism in the Study of Politics*, 2002. Yale University Press.

³⁷ Ellis, Elizabeth, *Provisionalism in the Study of Politics*, 2002. Yale University Press. p. 11.

³⁸ Kant in “An Answer to the Question: What is Enlightenment” VIII:35-37.

³⁹ Fishkin et. Al have constructed a model to study deliberative institution making through deliberative polling. Results indicate that the short term may not be represented in dynamic shifts in public reasoning (in Ellis, Elizabeth, *Provisionalism in the Study of Politics*, 2002. Yale University Press. p. 19.

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supply – deliberative enlightenment seems unlikely to occur on the time-scale contemplated by most of its contemporary advocates⁴⁰.”

Finally, on the issue of morality and the capability of the deliberative model to transform moral belief systems from one position to another, Jurgen Habermas’s work stands out as a rational basis for the later positions held by Gutmann and Thompson. As a leading proponent of deliberative discourse⁴¹, Habermas has advanced the notion that civil society possesses the capability to provide meaningful forums for debate and issue resolution. Additionally, Habermas considers the notion of public debate grounded in a discourse theory of morality. To be sure, the depth and magnitude of Habermas’s scholarship in the area of morality development is quite extensive. It is not my intention to provide a full rehearsal here. Rather, I will focus on the more general principles which will directly inform this discussion.

The Habermas theoretical design and discourse of morality seeks to expose what he regards as core moral insights. His most prominent general aims are to firstly identify and understand the atmosphere through which moral participants might gain impartial agreement on a proposed issue regulating norm (or the agreed upon moral point of view). Secondly, he suggests that the basis of the impartial agreement must be submitted to a process of moral

⁴⁰ Fishkin, James S., Robert C. Luskin, and Roger Jowell. 2000. “Deliberative Polling and Public Consultation,” *Parliamentary Affairs* 53: 657-666 in Ellis, Elizabeth, *Provisionalism in the Study of Politics*, 2002. Yale University Press. p. 19.

⁴¹ Jurgen Habermas work is widely read as foundational scholarship in critical theory. Among the works of Habermas, *The Theory of Communicative Action* (1981), has been recognized as an important contribution in the area of deliberative discourse. Habermas strident defense of civil societies capabilities to provide a forum for informed debate in search of mutually accepted policy positions, has contributed greatly to the work of deliberative theorists. Additionally, Habermas has written extensively regarding the issue and theory of morality as it intersects and informs public discourse.

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justification prior to being grounded as a mutually accepted belief. Habermas's discourse theory of morality suggests that moral judgments innately possess a proposition which more or less makes their acceptance evident under the closer scrutiny of assessment. Additionally, the process in which moral based norms is processed undergoes further synthesis in becoming impartial outcomes he refers to as "generalizable interests" – morals which would suggest universal validity. Furthermore, this transformative process is guided by formal if not procedural rules of reasoning which conspire to render a 'just' decision. This process begins with a transition from "conventional" to "post-conventional" moral transformation. It is at the transformative stage of post-conventional moral belief systems that actors fully adopt alternative notions of morality which dissuades previously held morals based upon custom or tradition from becoming perpetual and un-challenged normative practices⁴².

As much as Habermas's design and theoretical framework is carefully designed in *The Theory of Communicative Action*, it nonetheless requires a belief in the capacity of the transformative process of deliberation to somehow guide and direct participants to a morally "correct" normative position. No matter the processes detailed by proponents of deliberation, it seems as though we continue to arrive at the point from which we began the critical assessment of this model. Namely, how does deliberation take us to a morally appropriate action as a response to a compelling public debate in a timely fashion.

Although speaking generally through a feminist issue orientation, Seyla Benhabib joins this debate to argue that Habermas's moral theory is inadequate to meet the needs of feminist moral theory. Her arguments and her focus share many of the same characteristics with earlier slave narratives. Benhabib argues that Habermas inflates the conception of a universal morality and wrongly

⁴² Habermas, Jürgen. *The Theory of Communicative Action* (1981), Beacon, New York.

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narrows the moral domain as a singular issue of justice. Benhabib counters that “how we define the domain of the moral is a separate matter than the kinds of justificatory constraints which we think moral judgments, principles, and maxims should be subject to⁴³.” Benhabib contends further that Habermas fails to recognize the fundamentally, and often times rigid moral foundations shaped as a function of either cultural assimilation or early conceptions of right and wrong. Referring to a “lived moral experience”, Benhabib insists that “the moral issues that touch [one] most deeply arise in the personal domain.” She questions Habermas’s account in asking “How is it possible that the spheres of life so essential to every individual’s well- being can be excluded from the domain of morality⁴⁴?”

I turn now to the final question of this essay. Does inequality or lack of agency inflict the largest toll in damaging the case for the democratic deliberative model? Here, as in the case on the issue of morality, proponents of democratic deliberation insist that their framework properly emphasizes the importance of inclusion. Gutmann and Thompson argue that “What makes deliberative democracy democratic is an expansive definition of who is included in the process of deliberation –an inclusive answer to the questions of who has the right (and effective opportunity) to deliberate or choose the deliberators, and to whom do the deliberators owe their justifications. In this respect, the traditional tests of democratic inclusion, applied to deliberation itself, constitute the primary criterion of the extent to which deliberation is democratic⁴⁵.”

⁴³ Benhabib, Seyla, . *Critique, Norm, and Utopia – A Study of the Foundations of Critical Theory*, 1992, Columbia University Press, New York. P. 185

⁴⁴ IBID

⁴⁵ Gutmann, Amy and Thompson, Dennis. 1999. *Democratic Disagreement* in Ellis, Elizabeth, *Provisionalism in the Study of Politics*, 2002. Yale University Press. p.9-10.

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Gutmann and Thompson further elaborate that the ‘reason-giving’ process must be “accessible to all the citizens to whom they address. To justify imposing their will on you, your fellow citizens must give reasons that are comprehensible to you⁴⁶.” Certainly, critics would counter that deliberative democracy is, in fact, exclusionary either through legal or formal restrictions (as was the case involving slavery), as well as formal and informal norms colluding to define the process, provide perfunctory judgments as to those that should be allowed in the deliberations, and, as we have seen above, the universal morals which inform the debate.

I will argue here that the problem of exclusion and lack of agency is far from trivial. In fact equality and agency must serve as the foundational premises if deliberation is to qualify as democratic. Further, I argue that the failure of deliberative theorists to address the problems of exclusion creates too great of a disjuncture between the requirements of agency and the reality of deliberation within the public sphere.

I argue here that even in its purest form, deliberation provides no solution for exclusion and therefore is not able to meet its own minimal standards. The issue of disenfranchisement highlights a large amount of the ‘public’ who routinely speak less either through the practices of exclusion resulting from race, gender or other conditionality leading to a diminished standing or agency within the public sphere. Certainly deliberative theorists are aware of this problem. Cass Sunstein points out that deliberative democracy “cannot neatly be separated from republican practices of exclusion of women, Blacks and those lacking property⁴⁷.”

In addition to Sunstein, contemporary theorists continue to point out that deliberation requires a free and unconstrained public

⁴⁶ IBID, p. 4.

⁴⁷ Sunstein, Cass. *Beyond the Republican Revival*, 1988, Yale Law Journal, 97:1539-90

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discursive. Equalization of access is not an issue which can be ignored by deliberative theorists. The issue was certainly illuminated when the obstacles confronting Frederick Douglass were considered. Unfortunately, it is difficult to locate any level of substantive progress among deliberative theorists. The deeper problem is not simply a recognition by these theorists that inequality exists but that, ultimately some people's ideas may still count more than others. Ongoing prejudices rooted deeply in the moral fabric of the generalized citizenry would continue to compel citizens to privilege one argument over another.

As example, Habermas suggestion and dependency on open arguments 'against' prejudice and their ability to overcome the obstacle of prejudice is heavily reliant on the intellectual force and transformative prospects of the discursive process itself seems to be highly altruistic. One need only point to the public debate of slavery and the ongoing contemporary debate related to other morally grounded issues (same sex marriage, abortion etc.) to highlight the inconsistency of his argument.

Others, including Schumpeter point to an even darker anti-democratic, inequality engendering element of a public centered deliberative model of democracy. Schumpeter suggests that the realities of human behavior when under the influence of public idea 'assimilation', evokes a lack of moral restraint, civilized modes of thinking and the sudden eruption of primitive impulses", whose aggressive positions encourage inequality as their self-interested moralities are adopted by the mere force of their presence⁴⁸. Certainly Schumpeter's appeal to the 'darker side' of humanity represents perhaps an extreme interpretation of public debate - the version nonetheless cannot be dismissed out of hand.

⁴⁸ Schumpeter, Joseph. *Capitalism, socialism and democracy*, 1942, London, Allen and Unwin.

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The equality challenge within the deliberative model is further amplified when considering the ‘procedural’ requirements imposed on the forum itself. For these theorists, deliberation requires ‘no force except that of the better argument is exercised’⁴⁹ while participants must meet a set of procedural conditions which minimally include communicative competence, reciprocity, inclusiveness⁵⁰ and a willingness to be persuaded, to have one’s pre-formed preferences transformed in the face of a better argument, and thus to set aside strategic concerns and behavior in pursuit of those preferences⁵¹. The end result of such procedural requirements encourages only those in the forum that meet these requirements will be provided voice or agency in the deliberative forum.

The issue of equality in deliberation is further taken up by scholars in the form of legitimacy. Legitimacy as an element of equal voice in the public forum as well as legitimacy in terms of equality of representation in so far as all those affected by a decision or outcome of the deliberative condition are present and represented in the forum. Deliberative democracy is an account of legitimacy, “that outcomes are legitimate to the extent they receive reflexive assent through participation in authentic deliberations by all those subject to the decision in question⁵².” Logically, if the classic formulation is to be accepted here, there remains an evident contradiction in that it is not reasonable or possible to ensure that all parties affected by a decision are engaged in the forum.⁵³

⁴⁹ Habermas, Jurgen. *Legitimation Crisis*, 1975, Cambridge MA., Beacon

⁵⁰ Gutmann, Amy and Thompson, Dennis, *Democracy and Disagreement*, 1996., Cambridge MA, Belknap Press of Harvard University Press. p.81.

⁵¹ Dryzek, J. “Legitimacy and economy un deliberative democracy”, *Political Theory*, 2001, p. 651-69.

⁵² IBID

⁵³ The problem referenced here is often referred to as an issue of scalability. Recent scholarship has begun to address and develop emergent options to this problematic dilemma. See Remer, 2000 “Two Models of deliberation: oratory

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Much of the recent scholarship of Iris Young and Seyla Benhabib, recognizes the deliberative models struggle with the inclusion of the 'marginal others', often by way of societal prejudices, lacking ability to participate or are altogether dismissed as having an interest in the dialogue in general. Youngs' program, decidedly rejects the notions of equality (as altogether implausible) in favor of forging a more radical agenda which provides, in her work, the economically dis-advantaged with equal capability as a result of their inclusion in just political institutions which will advance the claims of the previously dis-enfranchised⁵⁴. For Benhabib, while largely owing to work in the area of liberal democracy, the rejection of democratic deliberation takes a somewhat different path to equality. Benhabib begins by de-transcendentalizing reason and reformulates non-substantive forms of universality and equivalence⁵⁵.

Young's strategy recognizes the political and socio-economic barriers to effective participation by the marginalized, while Benhabib largely ignores these barriers and believes existing institutional mechanisms can be crafted to include the voice of the previously unheard. Despite the differences of approach, both Benhabib and Young acknowledge the implausibility of equality of voice within the deliberative democratic model and seek alternative pathways.

and conversation in ratifying the constitution" *Journal of Political Philosophy*, 8, 68-90) for a discussion of the use of rhetoric and other oratory vehicles as an alternative. Others have posited that the number of deliberative occasions should be restricted to particular events. Dryzek ("Legitimacy and economy un deliberative democracy", *Political Theory*, 2001), Benhabib (*Democracy and Difference*, 1996), and Young (*Inclusion and Democracy*, 2000) draw on discursive methods in which the public reasoning is thought of as a decentered conversation carried on across time and space, and democratic to the extent that these conversations are controlled by competent, reflective actors.

⁵⁴ Young, Iris. *Inclusion and Democracy*, 2000. Oxford, Oxford University Press.

⁵⁵ Benhabib, Seyla. *Situating the Self*, 1992. New York, Routledge.

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Jeffrey Green's, *The Eyes of the People*, provides another dimension from which to view the conundrum of equality in democracy, if not the democratic deliberative model. Green suggests that unlike Aristotle, contemporary democratic theorists are not able to privilege ruler over being ruled, that the 'citizen-being-ruled' must today conform to the ideal of human equality. Green posits that "the norm of equality means not only that democracy must be theorized as something that is fundamentally opposed to the naturalization of inequality in such institutions as slavery and inequality of women, but that one of the features of present-day democracy (and contemporary political philosophies grounded on the democratic ideal) is a concern for the political lives of everyday individuals⁵⁶." Green here, rejects the Aristotle notion of a natural inequality and clearly suggests that 'the citizen-being-ruled' should be granted equal agency.

Additionally, Green suggests that "the category of being-ruled would appear to be a direct violation of human equality and the commitment to democracy as a uniquely egalitarian regime⁵⁷." Here Green joins the argument of contemporary conventional scholarship which defines and perhaps elevates the role of the average citizen into that of a 'citizen-governor' empowered and ready to make decision for the greater polity⁵⁸. Although pulling back from casting this elevation of the citizen fully engaged and empowered as a notion which requires outright rejection, Green clearly sees the untenable nature of the deliberatists claims of equality of voice in the public forum. In fact, Green's later notions will take on a much more plebiscitary notion of democracy.

To be certain Carl Schmitt's work identifies equality as a deliberative notion as an illogical notion at the most fundamental levels. Schmitt notes "in the sphere of the political, one cannot abstract out what is political, leaving only universal human equality

⁵⁶ Green, Jeffrey. *The Eyes of the People*, 2010, Oxford University Press, p. 41.

⁵⁷ IBID, p. 42.

⁵⁸ IBID, p. 43.

Schmitt's critique of Rousseau in suggesting that "the equality of all persons is not a democracy but a certain kind of liberalism... Despite all the work on Rousseau and despite the correct realization that Rousseau stands at the beginning of modern democracy, it still seems to go unnoticed that the theory of state" set out by Rousseau in the *Social Contract*, "contains two elements which exist incoherently next to each other: the state's legitimacy is justified by a free contract. But the general will that demonstrates a true state according to Rousseau can possess no religious differences, nothing that can divide persons, not even a public financial concern⁵⁹."

Conclusion and Future Research

Certainly Schmitt's account leaves us with a less than attractive critique of deliberative democracy. While I have spent the entirety of this essay pointing out the troublesome intersection of issues grounded in moral arguments as well as the problematic of inequality of voice in the democratic deliberative model, Schmitt and others would suggest that the model in general is fatally flawed. This would assume that there is a diminished capability to simply embark on a program to repair, so to speak, the structural damage inflicted on the deliberative method by its critics.

While, to be sure, I have introduced a great deal of evidence, through the work of scholars in the field of democratic theory, providing a rather robust level of criticism regarding the deliberative model, it seems that while it required much bloodshed and generations of deliberation, slavery did in fact come to an end. The pessimist would maintain that the work of Frederick Douglass and other American slave narrative efforts were simply in vein --- it was just a matter of waiting it out, so to speak, before the nation in general would finally see the light. More contemporary and equally controversial issues continue to make their way through the public

⁵⁹ Schmitt, Carl. *The Crisis of Parliamentary Democracy*, translated by Ellen Kennedy, Cambridge, MA, The MIT Press, pp.12-13.

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domain of deliberation. While it is not within the scope of this essay, it would be useful to adopt a research program that would consider the movement of these issues through the public sphere more closely. After all, the issue of slavery is certainly no longer of public debate within the public domain. That is not to say that the treatment here of this issue does little to inform future consideration of the deliberative model, but that it has now been well established here and other more widely read scholarship that the issues of morality and equality are indeed problematic.

While scholarship has not adopted the research program I suggest in the previous paragraph, there have been more recent attempts to rectify the difficult notions I discussed through the introduction of supplemental, additive and in some cases alternative pathways to improve upon the deliberative democratic model (see Budge, 2000 and Parkinson 2001)⁶⁰. Although the deliberative model has certainly enjoyed a contemporary level of acceptance among democratic theorists, it will be important that its proponents recognize its limitations and improve upon its utilitarian and operational design.

⁶⁰ Budge discusses further alternatives in terms of the manner in which institutions and procedures may further contribute to deliberative democracy in [Budge, I. "Deliberative Democracy versus Direct Democracy – Plus Political Parties", in M. Saward (ed.) *Democratic Innovation: Deliberation, Representation and Association*. 2000, London, Routledge] and Parkinson who looks at direct democratic models such as citizen-initiated referendums and telecommunication methods such as polling and social media in [Parkinson, J., "Deliberative Democracy and Referendums", in K. Dowling, J. Hughes and H. Margetts, *Challenges to Democracy: Ideas, Involvement and Institutions*. 2001. London. Palgrave]

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