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Families and the Republic

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Restorative and responsive justice can be a strategy of social work practice that builds democracy bottom-up by seeing families as building blocks of democracy and fonts of democratic sentiment. At the same time, because families are sites of the worst kinds of tyranny and the worst kinds of neglect, a rule of law is needed that imposes public human rights obligations on families. The republican ideal is that this rule of law that constrains people in families should come from the people. Restorative and responsive justice has a strategy for the justice of the people to bubble up into the justice of the law and for the justice of the law to filter down into the justice of the people. The role of the social worker is to be a bridge across which both those democratic impulses are enabled to flow. The empowering side of the social work role fits the first side of the duality where the will of families bubble up; the coercive side of the social work role fits the second where the justice of the law filters down.

Key words: social work, responsive regulation, restorative justice, democratic theory, families, social justice

Social Work and Structural Justice

My thanks to the contributors to this special issue for a thoughtful and gracious set of contributions. When they arrived from Paul Adams he apologized that there was too heavy an emphasis on families and child welfare, bearing in mind the way *Restorative Justice and Responsive Regulation* (Braithwaite, 2002) ranges across all domains of law, business regulation and even peacemaking in international relations. When I was a young sociologist, social work was not my favorite discipline because it seemed to focus too much on micro-solutions, pejoratively referred to as band-aids, to problems of injustice that require structural solutions. So

my energy was directed to studying questions like *Global Business Regulation* (Braithwaite & Drahos, 2000), the role of the IMF and the WTO, how tax administration can become more effective in getting rich individuals and powerful corporations to pay their fair share of tax to support the welfare state, and the like. Some of our responsive regulatory initiatives in Australia to persuade multinational corporations to pay some tax seem to have been surprisingly effective (Braithwaite, 2003), so it is important not to neglect this part of our work.

We expect social workers to prioritize work with families, but we can be surprised when evidence-driven tax administrators do so. An intriguing development has been that a senior tax official seconded to our research group, Jenny Job, together with her colleague Monika Reinhart, has found that families hold the key to tax compliance! This research (Job & Reinhart, 2003) set out to test Robert Putnam's (2000) influential thesis that social capital and trust in government is driven by civic engagement and associational membership. Their AMOS analysis on survey data from 1,999 Australian taxpayers produced a rich texture of results the complexity of which I will not try to summarize. But the basic result was that civic engagement of various kinds—from not bowling alone, to volunteering, to political activism—had only minor effects on trust in government institutions, including the Australian Tax Office. Trust in family and friends (workplace colleagues really) is what drives their model. If you learn trust in your family, or failing that in your workplace, you trust strangers more, you trust other government institutions more, and these work through to higher trust in the tax authority. Perhaps it is perverse that we sociologists should be surprised to learn that families are much more fundamental than bowling leagues to social capital formation and the cultivation of habits of citizenship that enable the functioning of institutions like taxation that are so fundamental to redistribution of wealth from rich to poor.

As Kristin Kelly (this volume) says, partnerships with community organizations are still important and are here to stay; there are good reasons why these partnerships help secure improved effectiveness and decency in how we pursue important public purposes, from the protection of children to the environment. But what a mistake for Braithwaite the young sociologist to fail to see

that it is in families that most of us learn most of what equips us to be effective democratic citizens in community organizations. The New Zealand innovation of family group conferences is not merely something the evidence now shows to have promise as a way of confronting crime, delinquency (see Braithwaite, 2002; Latimer, Dowden & Muise, 2001; Nugent, Williams & Umbreit, 2003) and the care and protection of children (see Neff, this volume; Merkel-Holguin, this volume; Pennell, this volume), it is a strengths-based strategy for restoring families as a fundamental building block of strong democracies. Children are not born democratic. They must learn to be democratic citizens—to listen, deliberate, support others when their rights are abused, speak out against injustice (Barber, 1992). For most of us these are gifts of deliberative competence induced by participation in healthy family decisionmaking. Many who miss out on these gifts in their family lives learn them in schools that give children a voice. And some who miss out in both these institutions are lucky enough to get a job early in their life in a democratic workplace. The bowling league and other civic associations matter, but are thin reeds compared to family-school-workplace as pillars of education for democracy. If the most important pillar of the three is the family, then the social work road not taken by many young sociologists of the 1970s was not a band-aid on deeper societal sores, but one important path to healing wounds at their source.

David Moore shows in his contribution to this volume that conferences are structured to “get to peace” before they seek to “get to yes” (Fisher, Ury, & Patton, 1991). This helps us see why restorative and responsive peacebuilding has an important contribution to make in societies in the process of putting down their guns to recover from armed conflict. In peacemaking contexts like the Bougainville civil war (in Papua New Guinea) we can see how New Zealand-style conferences adapted to Melanesian traditions are playing a major role in securing the peace (Howley, 2003). Empirical research on what works and what hinders care and protection and juvenile justice conferences will help inform how we can heal the wounds of children traumatized by atrocities against their parents in a war, how we can help in dissuading them from wanting to restart the war to avenge their family’s suffering in the next generation. By connecting the work of our micro-research

and practice community to the peace movement we inspire our mundane work with that wider significance. By connecting the peace movement to the social movement for restorative justice we can show peace activists a small way of acting locally to teach the young how to be democratic through their personal participation in protecting their sibling or mother from abuse, in how to protect their friend from being bullied in the school playground (Morrison, 2004). The peace movement can show the social movement for restorative justice how to make the personal political; just as restorativists can show the peace movement how to make the political personal, how to act locally in a way that gives our global aspirations for peace a more holistic grounding in the relationships that daily preoccupy us.

We get to peace before we get to yes by seeing conflict resolution as about the transformation of relationships rather than just bargaining over interests. Mediation reduced to doing deals does not offer up human relationships that are infused with integrity, that enable the trust and the social capital formation that Putnam (2000) rightly saw as fundamental to a flourishing democracy and economy. The evidence from observational studies is increasingly consistent with Moore's (this volume) observations that open expression of affect and a process that is shaped by the participation of stakeholders rather than by professionals is critical to the success of restorative processes in achieving the purposes they set for themselves.

Caring for Children

Lisa Merkel-Holguin (this volume) shows the rapid growth of child protection, as opposed to juvenile justice, family group conferences from existing in five US communities in 1995 to over 150 by 2000, from 4 pilot projects in England and Wales in 1994 to 97 local programs by 200. While most of these programs are not the mainstream in their locality, the spread has been surprisingly rapid intra-nationally and internationally across at least 20 nations. Merkel-Holguin suggests that a lot of the appeal of family group conferences has been their fit with the idea of strengths-based interventions. The notion of building out from the strengths of children and families in turn fits with the aspiration of bottom-

up education for democracy, a theme nicely developed in Merkel-Holguin's essay.

Yet the family group conference is not a pure deliberative democracy. Sometimes, as Joan Pennell (this volume) implies, the social welfare professional must enter the conference by communicating a clear "bottom line" such as securing the safety of a particular at risk child from a particular threat. Whether emphasizing "bottom lines" up front is the most effective way of securing safety is a question on which we have no empirical evidence as far as I know. What I would want to assert is that there is nothing wrong in democratic principle with "bottom lines" so long as they are bottom lines that are clearly demanded by a law voted through a democratic legislature. Bottom lines that enforce a standard that is not a legal obligation of families, that enforce merely a personal or programmatic preference of the professional, are democratically unacceptable. Whether up front through bottom lines grounded in human rights law or after the event in court decisions that overturn conference outcomes that abuse children's rights, a democracy will not be a democracy unless it builds in checks and balances against tyrannies of the majority, especially when the majority are adults and the minority are children dominated by them.

As Philip Pettit (1996) has explained in his republican theory of governance, the reason democracies are a good thing is that they advance the protection of all of us, not just some of us, enjoy from domination by others. Freedom as non-domination is the condition a republican theorist of democracy seeks to secure. A pure deliberative democracy where a primary group like a family or extended family votes for their interests without interference from legal principles from the wider demos might be viewed as desirable if one's theory is of maximum democratic choice as a good in itself. But if we value democracy as a means to the end of freedom as non-domination, then we want to both nurture richer deliberation of stakeholders and nurture the checking of that deliberation by actors with an obligation to protect human rights. Actually we want to do more. We also want to make the deliberative democracy of citizens vulnerable to the rule of the peoples' law (professionals communicating "bottom lines" may be one way of doing this). And we want the rule of law

to be vulnerable to the rule of the people. A family group being able to call in legal aid to contest the legality of a bottom line communicated by a professional at a conference is one way of doing this. This helps the legal system to clarify what kinds of bottom lines are democratically acceptable and which are not. This is Christine Parker's (1999) idea of the justice of the law filtering down into the justice of the people and the justice of the people bubbling up into the justice of the law.

In Joan Pennell's (this volume), Paul Adams and Susan Chandler's (this volume) and David Crampton's (this volume) contributions, responsive regulation is seen as useful for reconciling the tension between empowering democratic deliberation and intervention to protect children. At the base of the pyramid informal civic deliberation in families, communities and neighborhoods is relied upon to prevent the abuse and neglect of children. Then, as in Crampton's Figure 3, there can be escalation to more structured family meetings that reach agreements on how to keep children safe within their existing family. When those protections cannot give enough assurance against a grave risk or when experience proves them to have failed, the next step in Crampton's pyramid is family meetings that decide to remove children from their parents and place them with extended family. The next rung of the pyramid is formal foster care.

Adams and Chandler, Pennell, and Crampton have all grasped the basic idea that responsive regulation is a way of thinking, not a definite list of prescriptions. Some pyramids may specify moving an adult out of the family rather than a child, for example, or moving an adult member of the extended family into the household to keep an eye out for the rights of the child. Indeed the superstructure of the pyramid can be redesigned by democratic deliberation at the base of the pyramid. So a family group conference might decide that there will be a trial period of a family member attending an anger management program. Further it might agree that if this fails and degrading tirades of anger persist, there will be an escalation of intervention that requires this person to move out and live with their uncle. Finally, if the tirades still come back to haunt the family and spill into violence, family members may resolve to escalate to lodging a formal assault complaint with the police. Signaling in advance

that these escalations will occur if interventions at lower levels fail can be good protective practice. This is because it communicates to the actors who need to change their behavior that if change does not occur, this will not be tolerated. The pre-commitment to an escalated response can motivate change because of the message the pre-commitment gives that change is inexorable.

Later, the conference may resolve that if the tirades have dissipated under the joint influence of the anger management program and living under the firm hand of the uncle, conditions may be set for a return to live with the family. Signaling a pre-commitment to deescalate in advance can also be good practice because it offers a positive incentive for change. The idea of responsive regulation is that it is better to be at the base of the pyramid where democratic conversation does the regulatory work, but that if escalation is necessary the decision to escalate should always be open to revision, so de-escalation occurs.

A virtue of a restorative approach of plural deliberation at the base of the pyramid is that the engagement of a plurality of participants actually opens up new options in the middle of the pyramid. For example, Crampton (this volume) refers to some preliminary Ohio data that children are more likely to be placed with relatives rather than in foster care when relatives attended the family meeting.

While the accumulation of evidence on the efficacy of child welfare conferences cited in this volume is encouraging, it is early days and large studies with excellent designs are yet to flourish. Some of the most crucial questions of conference design are still being questioned by empirical evidence, as in the case of Crampton's (2001) result that preparation time did not predict success at diverting children from foster care into kinship care.

Lobbying for quality, independent research has paid dividends for restorative justice advocates with criminal and juvenile justice because early vaguely encouraging results have now become higher quality, more decisively encouraging results (Braithwaite, 2002; Nugent, Williams, & Umbreit, 2003). Independent evidence is needed to contend with what Crampton (this volume) discusses as the neostatist backlash. Neostatists believe in a heavy emphasis on state intervention and a greater emphasis on adoption as the best option if children are maltreated. Cost-benefit

studies of high quality may be needed to address the concerns of critics who say family group conferences are too expensive (Adams & Chandler, this volume). Adams and Chandler describe the affectionate labeling of Hawaiian conferencing innovators as "bungee jumpers". Of course most folk in welfare bureaucracies are not bungee jumpers; they prefer to stand on the bridge and watch to see if the jumpers survive. They may not jump until there is evidence showing that it is unequivocally bad practice not to. Strengths-based strategies are always vulnerable to worldly-wise cynicism that a particular family, whose details are only understood by this caseworker, is devoid of strengths and supports. There are no extended family supports that will come if called upon; the family does not have the capacity to make such difficult decisions, and so on. Adams and Chandler also point to more banal bureaucratic obstacles that need to be dealt with, like access to flextime and overtime to allow conferences to be convened at times like the evenings and weekends where maximum numbers of family members might be able to attend.

There is also a tension between being evidence-based and being democratic of course, as there is to tapping affect to motivate change (Moore, this volume). What happens when citizens vote for a solution that the evidence clearly shows makes such situations worse? What should happen when emotion drives people like stampeding cattle toward an outcome that the evidence shows to be counterproductive? The other side of this argument is that high quality evidence is no use if people are not motivated to use it (Pease, 1998). Our biological inheritance is that we tend not to engage our capacity for evidence-based reasoning unless our emotions are harnessed to motivate us to do so. Why is the evidence so strong with criminal cases that restorative justice processes lead to more implementation of decisions than for cases in control groups that went to court and other command and control forms of processing (Latimer, Dowden, & Muise, 2001; for child welfare conferences see Neff, this volume)? A probable reason is that democratic deliberation leads to more commitment to the decision than command and control by a court. But there is also great practical capacity for monitoring. So, for example, a next-door neighbor who promises at a conference to check in

on the family regularly to ensure that an undertaking is being honored is likely to have more practical capacity to do so than their welfare worker. What we need is a marriage of the evidence-based philosophy and the democratic ideal. We need evidence-based practitioners who provide conference participants not only with a list of community and professional support options available for the kind of problem the conference is addressing but also feedback on what the evidence says about when these interventions are likely to be effective and ineffective. It is the amalgam of deliberation, intelligent analysis of evidence and emotional intelligence that has delivered the greatest accomplishments of human beings, not deliberation alone, nor evidence alone, nor emotion alone.

There is also a need to work harder at connecting restorative justice practice to rich existing bodies of empirical research that establish relationships between variables that are strongly in play during restorative justice processes. An example of how to do this is Rob Neff's (this volume) illuminating treatment of the issue of procedural justice and how it can improve not only compliance with legitimate authority but also the realization of quite a list of family group conference principles (Neff, this volume, Table I). Procedural justice is likely to be best secured by neither top-down legalism nor by pure deliberative democracy, but by the law's conception of procedural justice being contested by the people's conception of fairness and by what citizens in a conference feel is fair being constrained by procedural safeguards in the law.

Finally, there is a need to draw upon the methodological contributions that have been developed in other fields. Joan Pennell's (this volume) factor analysis of the objectives of participants in family group conferences to form three factors—cultural safety, community partnerships and family leadership—is a good example. The factors appear robust empirically and are conceptually evocative. There is another reason why this aggregating of objectives into conceptual clusters is useful. This is as a response to the critique that Andrew Von Hirsch et al. (2003) among others, has made against my work—that every value under the sun seems to be a restorative justice value, so there is no parsimony about it as a normative theory.

Domestic Violence

Peggy Grauwiler and Linda Mills (this volume) contend that existing policy is not working to deal with intimate abuse. They cite results from the 2000 National Violence Against Women Survey that only a fifth of all rapes and a quarter of all physical assaults perpetrated against females by intimate partners were reported to the police in the United States. Grauwiler and Mills see restorative justice as having a lot to offer toward correcting this situation, especially for women of color given the way automatic recourse to criminal prosecution for domestic violence tends to play out more to the disadvantage of black than white women (and men). Their idea of Intimate Abuse Circles connects in an interesting way to the strengths-based theme of the last section. Grauwiler and Mills argue that without blaming victims, we should grant victims the dignity of having the strength to concede that things they have done may have contributed to the social dynamic that led to violence. The important thing is to vindicate the victim by making it clear that what was done to her was unjust and not deserved in any way. Once these things are secured it makes no sense to treat the victim as someone who has no power in the situation. She has the power to do things that make her safer and the power to do other things that add fuel to the emotional dynamic that leads to violence. Intimate Abuse Circles comprise an approach oriented to assisting women and men to acquire greater wisdom about things they sometimes do that escalate violence as a stepping stone to designing a plan that will actually work to prevent violence in the face of these cruel realities. The analysis is courageously articulated in a way that makes a good case for experimentation and rigorous evaluation of Intimate Abuse Circles.

Kristin Kelly (this volume) sees the battered women's movement as an exemplar of state-community partnership because of the attachment it has always shown to both community-based and statist responses to domestic violence. Kelly believes that both community and state interventions can be strengthened. She says liberal legalist trepidation that bolstering community interventions will mean reduced commitment to treating domestic violence as a serious criminal matter is a false choice. Braithwaite

(1998) likewise contends that hydraulic arguments about stronger states weakening communities or markets, and vice versa, are common but theoretically highly contingent contentions. It is also a theoretical possibility that we can strengthen one institution in a social system in a way that reinforces rather than weakens other systems. Hence, it is absolutely coherent to struggle politically for a social democratic dispensation of strong markets, strong communities, and a strong state. Kelly's trilogy of institutions makes families, rather than markets, the third key institutional sector. The earlier discussion of Job and Reinhart's (2003) research on families, community organizations, and state institutions of taxpaying is actually a nice illustration from a completely different domain of the fertility of Kelly's trilogy.

With domestic violence we can choose politically to struggle for legal and policing reforms to make criminal prosecution effectively more available to victims of domestic violence at the same time as we make family group conferences and community support from battered women's shelters more effectively available. If it is correct that restorative justice is a powerful tool for securing respect for legal rights, but more powerful if it is backed by the possibility of responsive escalation to litigated justice, then an important way of securing equal protection of rights is to make both restorative justice and responsive regulation as available to the most powerless citizens as they are to wealthy individuals, powerful corporations, and state regulators. Too much of the debate around the advantages and disadvantages of state versus community or family justice is about where the imbalance of power will be greatest. My suspicion is that there is a lot of contingency here as well. Sometimes an Intimate Abuse Circle will dispense justice with less imbalance of power than is found in a courtroom; in other contexts, the reverse will be true. If this contingency claim is right then the greatest inequity will exist when the powerful party has the capacity to choose whether to go to court or to opt for restorative justice while the less powerful party is forced to lump one option or the other. It also follows that simultaneously struggling for greater access to the justice of the courts and greater access to restorative justice for weaker parties will strengthen their hand in conflicts with better-resourced parties. The model in Figure 1 of Kelly's paper

therefore seems fundamentally right with respect to justice. There can be synergies between strengthening state justice, community justice, and family justice where each enhances the capabilities of the other.

The Language of Reform

The R Word

While the articles in this special issue make a good case that regulatory theory has some use for changing how we think about challenges like child welfare and domestic violence, regulation does not always sit comfortably as a word to describe specific interventions. Of course there is a brutal truth to the fact that child welfare bureaucracies do regulate families as Burford and Adams (this volume) explain in their introduction to this volume. Families are also regulated by other actors in the community sector and they self-regulate. It is not that pluralist regulatory theories are unattractive as a way of describing and explaining the reality of what happens in welfare practice. It is that at the normative level, the R word is not the stuff of politically resonant practice. My favored solution when deploying regulatory theory in a context where the R word turns people sour is to use governance. For those of us who use regulation in its broadest sense as governing the flow of events, this works fine.

The Other R Word

The other R word is restorative. David Moore (this volume) prefers transformative. For years people like David and myself were working on conferencing in New Zealand and Australia without using this second R word. Restorative justice was the term of art in North America. My research group went along with this mainly because we think social movements matter and they don't get far unless they share a language that participants find politically resonant. Also of course America matters in any kind of global social movement politics in a way Australia does not. But restorative has some negatives when we are dealing with abuse and neglect in families. Do we want to restore patriarchal families? No, we would rather transform them. Desmond Tutu would reply that of course the South African Truth and Reconciliation

Commission, which he conceives as a restorative justice initiative, was not about restoring Apartheid. It was about restoring human dignity, justice, and the rights that are fundamental to our humanity. At the end of the day, it does not matter much that David Moore is using the T word and I the R word, so long as we are collaborating effectively to develop ideas, practices, critique, and evidence that assist the same broad reform movement.

The J Word and the C Word

Another difference in language with David Moore's work is that David and his colleagues like to speak of conflicts, whereas I prefer to see restorative justice as about responding to injustice. This is because of a desire to separate restorative justice from older versions of mediation and alternative dispute resolution that feminists in particular have found unattractive for application to domestic violence and family law disputes. So it seems important when a rape is being responded to for this not to be conceived as merely a conflict about which a mediator is morally neutral. Certainly the restorative justice facilitator must not be biased against either side. Yet there is moral clarity that there are values at the heart of restorative justice; fundamental is the value that we must confront injustices and correct them as best we can. Again David Moore can and does agree with this while opting for a different default usage of language. His side of this argument might point out that injustice is not a particularly apt framing for a family group conference concerning a conflict over whether a child should live with a father with a drug problem or an aunt after the child's mother has died. While no one is being accused of wrongdoing here, my perspective would be that the value centering of the process is still about justice in the sense of securing the fundamental human rights of that child. For all this, the fundamental point I wish to make here is that we must not be misled into allowing a disagreement over language to cloud a more fundamental agreement over practice and underlying values.

The S Word

David Moore and I have been in the same hot water from restorative justice folk who don't like the S word—shame. David

has made a great contribution by documenting, as summarized in his contribution to this volume, the profound emotional turning point that regularly occurs in conferences from collective vulnerability or collective shame to acknowledgement that we all have some ownership of this problem and we are going to fix it. My colleagues Eliza Ahmed and Nathan Harris, among others, have also done important empirical work showing that when injustice occurs, whether a minor act of bullying or a serious crime, we cannot understand the productive and unproductive ways of responding to it without understanding the shame that both the victim and the bully are feeling (Ahmed et al., 2001). As Tom Scheff points out, we cannot comprehend the origins of World War II without understanding the collective shame Germans experienced from the humiliation of Versailles that Hitler so effectively exploited. Nor can we comprehend the peaceableness of Germany since World War II without understanding their acknowledgement of shame after Nuremberg and their reintegration into the world community through the Marshall Plan and other gestures that rejected the path of humiliation of the vanquished that had been followed after World War I.

A belief that understanding the joint emotions of shame and pride is fundamental to grasping what is productive and counterproductive in restorative justice processes does not mean that the language of shame provides a politically resonant discourse for the social movement for restorative justice. It does not. The political discourse of shame is dangerous because it is so vulnerable to appropriation by those who wish to stigmatize and humiliate. Here I think David Moore and I would agree on how to use language. But we would also agree that simply because some people take political shots at our theoretical writings as a result of our seeing shame as central, we should not be deterred from evidence-based theory development about shame and restorative justice.

Conclusion

As Burford and Adams (this volume) argue in their introduction to this collection, family group conferences can be conceived as a strategy for reconciling the rights to autonomy of members

of families and their right to privacy. The conference honors the private space of the family while leaving the obligation of the state to protect and safeguard fundamental human rights undiminished (especially for children). Burford and Adams draw an interesting parallel with my work on enforced self-regulation as a business regulatory strategy (Ayres & Braithwaite, 1992: Chapter 4), viewing the family group conference as a form of state-enforced family self-regulation. Burford and Adams see sociological critics of social work as one-sidedly emphasizing the social control character of social work while some social work educators one-sidedly romanticize the profession as about empowerment. If they are right that my work is of some use for reframing this central duality of the profession, it is because it involves a normative rejection of both of those one-sided views and also of any wishy washy middle ground between the two. Rather it says that social work should have a strong commitment to being a coercive agent of the state's law and a strong commitment to empowering citizens to run their own lives. But those two imperatives are temporally ordered. Social work's presumptive strategy should be empowerment. But when empowered citizens use that power to threaten the safety of vulnerable others, then escalation to more and more coercive interventions should be inexorable—until safety is secured. Then, and only then, there can be a dialogue about deescalating intervention to reinstate community and family empowerment.

Burford and Adams are right that coercion is inevitable and just in social work practice. What a pyramidal approach to institutional design can deliver is a strategy for minimizing coercion. This is because the paradox of the pyramid is that by signaling inexorable escalation until justice is secured, more of the action is driven down to the deliberative base of the pyramid. People are most likely to take responsibility for securing the rights of vulnerable others when the institutional design shows them that failure to do so is a slippery slope to responsibility to secure those rights being taken from them. The state's taking over that responsibility is not threatened in the foreground but threatening in the background. Social workers should proceed on their routine work of empowerment not by making judgments that some people are fit to accept responsibility and others not. By

assuming that all people have a willingness to take responsibility for securing the rights of vulnerable others with whom they are in close relationships until that presumption is proved wrong, by seeing all people as having multiple selves that include socially responsible and irresponsible selves, social work practice is about empowerment to coax and caress the socially responsible self to the fore. It is about building democratic problem solving, but equally it is about enforcing the democracy's human rights and freedoms when democratic deliberation fails to honor them.

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