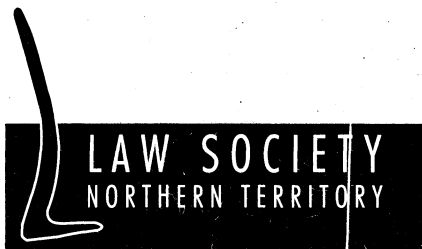


# BALANCE

LAW SOCIETY NORTHERN TERRITORY



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# BALANCE

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# THE WISDOM OF KING SOLOMON

I was speaking to a colleague the other day and we were discussing a matter before a magistrate in the local court. I was explaining the intractable positions of the parties, and my colleague asked whether the magistrate had “done a Solomon” and decided a position midway between the parties’ claims. I was thinking about that in one of my more idle moments, and I reflected on what had happened in the biblical story.

King Solomon was a king of rare wisdom, and this was one of the stories about how he had applied that wisdom. What is widely accepted is that Solomon’s wisdom was to cut the problem in half. I am not much of a theological scholar, notwithstanding two formative years in a (High) Church of England Boys’ School, but I did recollect what had happened on this occasion. I have reproduced a section from the ‘firm bible’ below:

Solomon was called on to give judgment in relation to a dispute between two harlots who claimed the same baby.

And the king said: “Bring me a sword.” So they brought a sword before the king. And the king said, “Divide the living child in two, and give half to one and half to the other.”

Then the woman whose son was living spoke to the king, because she yearned with compassion for her son; and she said, “Oh my lord give her the living child, and by no means kill him!” But the other said, “Let him be neither mine or yours, but divide him.

So the king answered and said, “Give the first woman the living child, and by no means kill him; she is his mother”.

And all Israel heard of the judgment which the king had rendered; and they feared the king, for they saw the wisdom of God was in him to administer justice.

Being unable to judge by any other means the veracity of the two claims, the wise king took a step that allowed

him another piece of information, to look at the problem from a different direction (or laterally, as we say now) and to make his decision on the determinative and diagnostic piece of information he was able to elicit by his barbarous command. Instead people have come to remember him as someone who solved a problem by doing something violent, and more importantly, thoughtless. I expect that to be known as the man who cut the baby in half would make him turn in his grave.

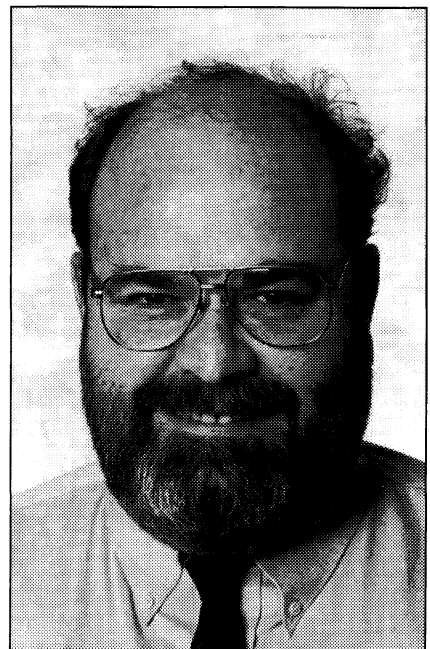
I drifted on in my thinking to consider how it was that the lesson of the story had been twisted into the antithesis of its object. The only conclusion that I could reach was that the mental image of a shinning scimitar slicing through a baby was probably more compelling than a lesson on the fine points of lateral thinking. That would certainly be so in the case of 12 year old boys bored out of their minds in a theology class.



**We are diverse group,  
with many different  
points of view but the  
importance to all of us  
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But what did trouble me was that this was probably one example of well thought out theories or propositions being twisted as time progressed. I suppose there are countless examples through shifts in meaning, through reinterpretation or partial and selective quotation.

One example, once again from the



*Ian Morris, President*

Bible. It is often said that “Money is the root of all evil”. This is in fact a misquotation, with a substantially different meaning from the original extended version: “The love of money is the root of all evil”. Commercial lawyers, perhaps, may take solace from the latter version, depending on their predilections.

Or, sticking to religion, most people remember Marx saying that religion was “the opium of the people”; the common understanding being that he was, as an atheist, disparaging religion. In fact the opposite was true. The full quotation praises religion as being “the sigh of the oppressed creature, the heart of a heartless world”.

And again. Who would have thought people such as “Methodists” or “Quakers” — very respectable types — started out as terms of abuse.

There were other examples closer to home (and more relevant to this article). I remember, in the middle of the mandatory sentencing debacle, trying to explain to a curious non-lawyer friend of mine what the fuss was all about. It was then I weakly said “separation of powers” and was met with a blank stare, in much the same way as I expect I had reacted to the first university lecturer who used the phrase first in my hearing.

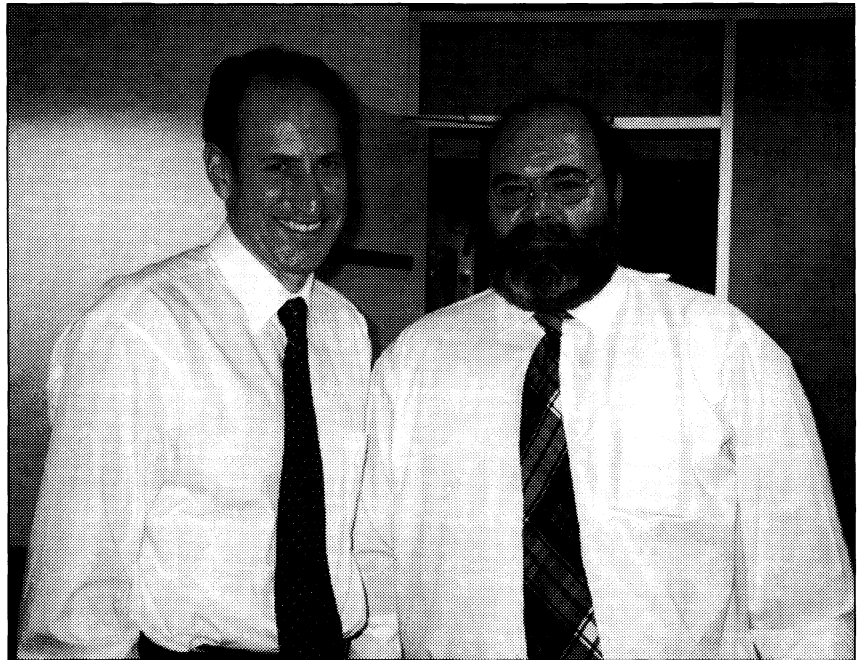
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# THE WISDOM OF KING SOLOMON Continued from page 3

That experience was repeated several times, and, on each occasion, I felt increasingly uncomfortable about the whole thing. It was only when I heard the address of Justice DeBelle that I was reminded of the complex history behind the phrase, and the great shift of thinking that it represented. By the time it was in common use in the Northern Territory, it had rather lost its direction. It had come to mean something apart from an essential foundation of our society, but became more and more an archaic legal ghost that interfered with an elected government's right to seek to legislate within its mandate. I could almost hear my friend think "what has this theory got to do with me?" And well may he ask, I concluded. When those of us who were supposed to protect the doctrine did not really understand its application, what chance did my friend have? There were few of us that felt as passionate about the phrase as we should have. This aspect explained the condemnation that the doctrine received, and also explained the demotion it had received.

**The relation between the courts and the profession is a symbiotic one, and where one of the two weakens, so does the other..**

There are several other examples in our profession. There seems to be a growing sense of dislocation from authority of the courts, especially amongst those of us who chose to be involved in purely commercial work. There have been suggestions from people of that ilk that they ought to be able to seek release from the strictures of Part X of the Supreme Court Act. The courts, they say, are not relevant to their profession. I asked one of them why it was they bothered writing down the agreements that their clients had struck? I was told it was to protect their client's rights. Well, there is no point in doing so unless there are the courts to enforce those rights.



*Law Society President Ian Morris welcomed the appointment of Stewart Brown FM to the Federal Magistrates Service at a swearing in ceremony held at the Federal Court on Monday 5 November 2001. A transcript of his speech can be found on page 13 of this edition of Balance*

The courts, and especially the Supreme Court, are essential to the proper operation of society. It is the courts that have the power to stop the abuses that might be visited on the public by those with executive power; it is the courts that can protect the rights of individuals. At the end of the day, without the courts, we are nothing more than the troublemakers we were made out to be in the recent unpleasantness.

But most of all, the courts depend upon a strong profession to protect them. This has increasingly become the case as politicians around Australia have withdrawn from their traditional role of supporting the judiciary. The relation between the courts and the profession is a symbiotic one, and where one of the two weakens, so does the other. When that happens it is frightening to see how thin is the tissue that connects us, and connects the relationship of the courts and the profession with the public.

Forgetting the importance of and the reason for our relationship with the courts is another of those errors that I spoke of above, as is forgetting the

importance of the relationship between each of us in the profession. Both the profession and the courts have been through a trying time over the past few years, and both of them need to regroup and recover.

In the profession's case, I hope that the bad times have resulted in a strengthening of our own sense of purpose, of operating as a cohesive unit and of respecting and supporting each other, and the views of each other.

The Hardest years, the darkest years...

Forsaking aching breaking years  
The time 'n' tested heartbreak years  
These should not be forgotten years  
The blinded years, the binded years  
The desperate and divided years  
These should not be forgotten years.\*

We are diverse group, with many different points of view but the importance to all of us of the rule of law should be paramount in our beliefs, or otherwise we may as well be, well, catfish.

\* *Forgotten Years, Hirst/Moginie, Midnight Oil*