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## "Love's Congruence": A Theological Account of Wisdom for Judges

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## **“LOVE’S CONGRUENCE”: A THEOLOGICAL ACCOUNT OF WISDOM FOR JUDGES**

Sarah M.R. Cravens\*

*This article explores what a theological account of wisdom offers to a judge whose faith informs both the fulfillment of obligations within the judicial role (conceived in terms of vocation) and the attempt to meaningfully integrate work with life off the bench. The day-to-day work of the judge is to a great extent about discernment, about seeking not just correct doctrinal answers, but the application of practical wisdom in context. Access to the resource of a theological account of wisdom offers the judge, among other things, a model of wisdom that the judge can seek to emulate. This turns out to be much more about how a judge can be wise in the role than about reaching specific wise outcomes. Access to such an account of wisdom may ultimately promote a greater flourishing of the judge in his or her vocation, as it not only provides constructive content in the model, but a point of congruence between personal and professional. And love, as it comes to the fore as a theme in the construction of these various theological accounts of wisdom, provides this helpful point of congruence for the seeking of wisdom and the doing of justice.*

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## I. INTRODUCTION

This article explores some of what a theological account of wisdom might offer to those judges whose faith informs both the fulfillment of their obligations within the judicial role, and the attempt to meaningfully integrate that work into the rest of their lives off the bench. In particular, it takes the example of Christian judges, and explores a view of the judicial role through the lens of wisdom in the context of the Christian theological concept of “vocation,” specifically meaning work to which one is called by God.<sup>1</sup> This word, vocation, is not lightly chosen. Those of other faiths or traditions may perhaps view it similarly for different reasons or in different terms, but here the language of vocation is used consistently and with the intentionally specific meaning of work to which one is called, and called by God, rather than by some general inner sense of purpose, talent, or suitability. It is a starting point, for purposes of this article, that the faithful Christian who occupies the judicial role will not view the work as a mere occupation, but as a vocation; the sense that the call to faith and daily work has the same source provides meaningful integration of the two.<sup>2</sup> But this focus on vocation as a particular way into establishing an understanding of how wisdom might fit into the faithful judge's conception of the role is, of course, just one way of approaching the inquiry into wisdom. This article is in substantial part intended to establish a framework for asking some important questions about the role of theological wisdom for contemporary judicial decisionmaking. The basic framework should in turn be applicable for other faith backgrounds and other strands of theology as well.

The day-to-day work of the judge is to a great extent about discernment. It is about seeking not just correct doctrinal answers, but also practical wisdom to be applied in context, for the resolution of complex problems and in the exercise of discretion. To put this another way, much of what judges do is indeed as straightforward as “call[ing] balls and strikes” (to borrow from now-Chief Justice Roberts),<sup>3</sup> but not only are there some close

1. There are of course other ways of approaching the concept of vocation in a more metaphorical sense. Many will relate to the notion of “vocation” in that less specifically theological usage. And even within the theological use of the term, there is certainly room for variety of understanding. Those of other faith traditions, and those who subscribe to other strands of Christian theology might take these same questions about wisdom and the judicial role in different directions.

2. In addition, the *specifics* of the theological exploration offered here will likely be of primary practical benefit to those who share this starting point. The topic of vocation in the judicial role, more broadly, is the subject of an ongoing book project “The Judicial Role as Vocation: On Being a Faithful Christian and a Faithful Judge” (a draft is on file with the author).

3. *Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 56 (2005) (statement of John G. Roberts, Jr., C.J. of the U.S. Sup. Ct.).

calls at the edge of the strike zone, so to speak, which will require discernment, but there are also questions and situations that judges face that have nothing to do with "calling balls and strikes." These are situations in which they have to determine how to inhabit the role, how to deal with people, what information to convey, what kind of punishment to impose, how to shape a remedy, and so on.

A theological account of wisdom may offer the faithful judge insight and suggest approaches to the interpretation of texts and the discernment of connections to integrate different strands of consideration in a meaningful way toward the resolution of complex problems and the better ultimate exercise of discretion. The resource of such an account of wisdom provides the judge access to a model of wisdom that the judge can seek to emulate. Once fully examined, this ends up being a resource much more properly geared to process than to substance. That is, it is more about how to be wise, how to exercise wisdom in the role, than about wisdom in terms of a choice of particular substantive wise outcomes. Understood in terms of process, in terms of *how to be* and *how to do the work*, access to a theological account of wisdom may thus promote the greater flourishing of the judge in his or her vocation. And love, as it comes to the fore as a theme in various theological accounts of wisdom, provides a helpful point of congruence for the seeking of wisdom and, in turn, the doing of justice. This article offers a construction of theological accounts of wisdom from biblical texts as well as an exploration of accounts of wisdom from two modern theologians. Along the way, it also imparts some suggestions about how access to accounts such as these might inform and assist in the fuller flourishing of the Christian judge in his or her vocation, and in the more meaningful integration of work and life.

This article proceeds by offering first, in Part II, some grounding in a basic understanding of the judicial process. This includes the role that wisdom can play in judicial decisionmaking, using the work of Benjamin Cardozo as a central example.<sup>4</sup> The more theological aspects of the discussion begin in Part III, with a construction of a theological account of wisdom using a variety of biblical texts.<sup>5</sup> In Part IV, the theological account is expanded by means of exploration of the work of two modern theologians, Karl Barth and Daniel Hardy.<sup>6</sup> In both Parts III and IV, the aim is to work toward a better understanding of what a theological account of wisdom might look like and what it might offer. In other words, these parts look ultimately to how the judge might incorporate this resource of wisdom, or what access to it might mean as it is integrated into the day-to-day work of the judicial role. Part V offers a brief consideration of how this idea might be tested by concepts of access and alienation.<sup>7</sup> In all this, as the title suggests, the major theme that will

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4. See *infra* Part II.

5. See *infra* Part III.

6. See *infra* Part IV. Neither of these theologians speaks specifically to the role of judges in the passages of their work studied here. Neither is even, in the specific context of their writing relevant to wisdom, intentionally speaking to matters of vocation, yet there are aspects of both accounts that offer much to the discussion here. These theological accounts of wisdom are selected because in the one case, Barth helps to draw more deeply on the biblical texts in ways that connect them to aspects of the judicial role as it is lived out in practice, and, in the other case, while less directly tied to the specifics of the biblical texts, Hardy takes the broader theological concepts of wisdom and offers new ways of seeing and reading that present insights more directly applicable to the work and life of the common law judge.

7. See *infra* Part V.

come to the fore, and be intertwined throughout, is that of love. It is love as both the source and the outcome of wisdom, as well as the guiding force that brings wisdom and justice together in a way that provides structural integrity for the work of the judge. It is love as that which fills the gaps, that which harmonizes work and life. That, to borrow a phrase discussed at length further below, is “love’s congruence.”<sup>8</sup>

## II. THE ROLE OF WISDOM IN THE JUDICIAL PROCESS

### A. *Wisdom in the Gaps*

Judges are entrusted with significant responsibilities in the public roles they occupy. And yet, of course, they enter those public roles as human beings. So they must engage in significant acts of appropriate balancing when it comes to individual faithfulness to the obligations of the public role as judge along with faithfulness to any obligations external to that role (i.e., obligations to various private roles). At a most basic level, the obligation of faithfulness to the judicial role requires that the judge be guided, in making his or her decisions, by controlling substantive law. In the vast majority of cases, there will be little or no room for those decisions legitimately to come out in different ways depending on who the judge is or what that judge’s faith is. To use a helpful paradigm developed by Judge Harry Edwards, most cases are, to this extent, “easy” cases.<sup>9</sup> The judge will show his or her reasoning for the decision based on the law, and that will be open to examination for error. At the other end of the spectrum, in a small set of cases, of course, there is more play in the joints of the law, and more room for the personality or identity (and thus potentially the faith) of the judge to matter. For a variety of potential reasons—gaps in the substantive law yet to be filled, discretion purposefully permitted, fact-driven decisionmaking involving matters of perspective, etc.—more individualized “judgment” is called for. The judge is still expected to explain the decisions in these cases, but there may be somewhat more freedom. In these cases, the judge works within bounds less precisely defined. There it will matter who the judge is. The judge’s faith may well matter. The judge’s concept of faithfulness to other obligations may well matter. These closer calls would be what Judge Edwards describes as “very hard” cases.<sup>10</sup>

Wisdom may play a role in different ways in the very hard and the easy cases. It is not that determinacy or indeterminacy governs the role or use of wisdom.<sup>11</sup> Wisdom may well come into play (indeed, I would argue that it *should* come into play) in *both* the so-called “easy” (i.e., more determined) cases and “very hard” (less determined) cases. So, for example, where the law is less determined, a judge might call on a theological account of wisdom for personal confidence that there are ultimately no hopeless cases, that God

8. See *infra* Part IV.B.

9. Harry T. Edwards, *The Role of a Judge in Modern Society: Some Reflections on Current Practice in Federal Appellate Adjudication*, 32 CLEV. ST. L. REV. 385, 390 (1983-84). Judge Edwards indicates that in only a small subset of cases, the use of discretion is appropriate (5-15%), and that roughly 35-45% of cases per year are neither easy nor very hard. *Id.* See also BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 129 (1921) (“In countless litigations, the law is so clear that judges have no discretion. They have the right to legislate within gaps, but often there are no gaps.”). *Cf. id.* at 112, 164 and discussion *infra* Part II.

10. Edwards, *supra* note 9, at 390. See also CARDOZO, *supra* note 9, at 113, 165.

11. I am grateful to Prof. Russell Pearce for asking a key question that helped to clarify my articulation of this point.

takes care of things in God's time (such that the judge can to a certain extent find peace, be relieved of the heavy burden that comes with a difficult decision, etc.). On the other hand, where the law is fully determined, it might be that although an outcome is perfectly clear and the judge is not in particular need of help with wisdom to find an answer or get peace with anything, the judge calls on a theological account of wisdom as a resource for modeling attributes of wisdom to those in the courtroom. So, for example, she conveys a judgment with clarity, shows love in acting with patience in reading everything before her, fully explaining the law and the outcome transparently, and so on. Thus wisdom may be manifest in all sorts of different ways for different contexts.

B. *Cardozo's Canvas*

Benjamin Cardozo's *The Nature of the Judicial Process* provides a helpful map, or canvas, onto which many of the points in the discussion that follows may be plotted or sketched. Cardozo does not himself provide an example of a judge making an appeal to a theological account of wisdom along the lines suggested here. Cardozo was, in the first place, of a Jewish rather than Christian background, and he was not particularly devout.<sup>12</sup> It is therefore *not* an example of an explicit appeal to theology (and indeed perhaps somewhat ironic in the context of this article), when one finds in his work quite relevant *literary* use of theological language to good effect, as for example here:

The most that [the judge] can hope for is that with long thought and study, with years of practice at the bar or on the bench, and with the aid of that *inward grace* which comes now and again to the *elect* of any *calling*, the analysis may help a little to make the synthesis a true one.<sup>13</sup>

However, the task Cardozo set himself was to unfold or reveal the inner workings of the judicial process, which provides the reader a kind of access to understand where the seeking of wisdom might come into play for the judge who is so inclined, and to see how it might help such a judge to flourish. It is in this respect, this candid unfolding of the judge's mind and process, that Cardozo's account is so valuable here.

Cardozo says at the outset that it will be difficult to say how decisions are made, what the nature of the process is.<sup>14</sup> However, as he then goes about describing that process, he addresses many of the same issues and themes which will emerge especially in the discussion below of the work of the theologian Daniel Hardy, on the seeking of wisdom, albeit in different terms.<sup>15</sup> The two pictures (Hardy's and Cardozo's) share qualities in terms of the intertwining, trans-substantive natures of their inquiries, as they seek for true fit and full expression. Cardozo offers a portrait of interstitial legislation due to the gaps to be filled. He writes of "a stream of tendency, whether you choose to call it philosophy

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12. See, e.g., RICHARD POLENBERG, *THE WORLD OF BENJAMIN CARDOZO: PERSONAL VALUES AND THE JUDICIAL PROCESS* 166 (1997).

13. CARDOZO, *supra* note 9, at 163 (emphasis added).

14. *Id.* at 9-11, 13.

15. See *infra* Part IV.B.

or not, which gives coherence and direction to thought and action;<sup>16</sup> of the slow evolution and convergence of the common law in the rule of *stare decisis*, and of a coherence that emerges from individualism in moments.<sup>17</sup> Cardozo writes about the fact that though the *mores* of the day may factor in,<sup>18</sup> “[t]he tide rises and falls, but the sands of error crumble.”<sup>19</sup>

In Cardozo’s portrait, standard judicial virtues such as flexibility, fit, and transparent reasoning come to the fore. As they meet with a theological account, these judicial virtues are reflected back in theological themes such as equity, reconciliation, and revelation, as a part of a full expression of wisdom. This is about doing justice. However, for the judge who is attempting to fully integrate faith with work, it is not about the judge doing justice standing alone, or outside the context of God doing God’s will. That is why God’s wisdom must enter into it. And God’s wisdom may or may not be co-extensive with what human beings think of as “justice.”

For Cardozo, “[i]t is when the colors do not match, when the references in the index fail, when there is no decisive precedent, that the serious business of the judge begins.”<sup>20</sup> He goes on: “[f]or every tendency, one seems to see a counter-tendency; for every rule its antimony. Nothing is stable. Nothing absolute. All is fluid and changeable. There is an endless ‘becoming.’”<sup>21</sup> He proceeds to acknowledge the potential criticism of “intolerable vagueness” in all that he has described, but goes on to suggest that “[m]uch must be left to that deftness in the use of tools which the practice of an art develops. A few hints, a few suggestions, the rest much be trusted to the feeling of the artist.”<sup>22</sup> Cardozo lays out the distinction between the majority of cases in which the law truly will make the outcome clear, and that much smaller category of cases he is really addressing in which the work of the judge is challenging, in which true decisionmaking, discretion, and judgment are required.<sup>23</sup> This is where he speaks of wisdom. “None the less [sic], within the confines of these open spaces and those of precedent and tradition, choice moves with a freedom which stamps its action as creative. The law which is the resulting product is not found, but made. The process, being legislative, demands the legislator’s wisdom.”<sup>24</sup>

In these moments of seeking wisdom, he points out the human inclination to picture things, or want to find things, more definite than they really are:

[T]he whole subject-matter [sic] of jurisprudence is more plastic, more malleable, the moulds less definitively cast, the bounds of right and wrong less preordained and constant, than most of us, without the aid of some such analysis, have been accustomed to believe. We like to picture to ourselves the field of the law as accurately mapped and plotted. We

16. CARDOZO, *supra* note 9, at 12.

17. *Id.* at 176. These themes persist throughout. *See, e.g., id.* at 12, 28, 36, 115, 141, 168-69, 174, 176, 178.

18. *Id.* at 104-05, 151-52.

19. *Id.* at 177.

20. *Id.* at 21.

21. CARDOZO, *supra* note 9, at 28.

22. *Id.* at 36.

23. *Id.* at 112-13, 129, 164-65.

24. *Id.* at 115.

draw our little lines, and they are hardly down before we blur them. As in time and space, so here. Divisions are working hypotheses, adopted for our convenience. We are tending more and more toward an appreciation of the truth that, after all, there are few rules; there are chiefly standards and degrees.<sup>25</sup>

On a point of special congruence with one of the theological accounts of wisdom which will follow in the discussion below, concerning the reading of texts and the role of love, Cardozo writes of the judge's work:

We may figure the task of the judge, if we please, as the task of a translator, the reading of signs and symbols given from without. None the less [sic], we will not set men to such a task, unless they have absorbed the spirit, and have filled themselves with a love, of the language they must read.<sup>26</sup>

This reference to "love" is in just the tone and spirit one would expect to see from a judge who is passionate about the role. And that is, indeed, where the passion picks up with further understandings from the theological accounts, where all the unpacking of "love" as compassion, mercy, patience, and so on, comes into the picture for the judge who seeks access to a deeper understanding of wisdom in the context of judgment and justice.

Returning to Cardozo's comments on the love of reading texts and the work of translation, and how this applies to the greater work of the judge itself, one sees a broader understanding of the task as an ongoing one. This approach to texts is important as it has bearing on how the judge will approach the seeking of the wisdom with which he or she may feel it necessary to be equipped for the task, the way in which he or she approaches the search for *order* in understanding, how he or she engages with others in the task over time, and so on.

The work of a judge is in one sense enduring and in another sense

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25. *Id.* at 161. He writes even more personally of this as follows:

These are the cases where the creative element in the judicial process finds its opportunity and power. . . . I was much troubled in spirit, in my first years upon the bench, to find how trackless was the ocean on which I had embarked. I sought for certainty. I was oppressed and disheartened when I found that the quest for it was futile. I was trying to reach land, the solid land of fixed and settled rules, the paradise of a justice that would declare itself by tokens plainer and more commanding than its pale and glimmering reflections in my own vacillating mind and conscience. . . . As the years have gone by, and as I have reflected more and more upon the nature of the judicial process, I have become reconciled to the uncertainty, because I have grown to see it as inevitable. I have grown to see that the process in its highest reaches is not discovery, but creation; and that the doubts and misgivings, the hopes and fears, are part of the travail of mind, the pangs of death and the pangs of birth, in which principles that have served their day expire, and new principles are born.

*Id.* at 165-67.

26. CARDOZO, *supra* note 9, at 174. *See also infra* discussion of Hardy at Part IV.B.



ephemeral. What is good in it endures. What is erroneous is pretty sure to perish. The good remains the foundation on which new structures will be built. The bad will be rejected and cast off in the laboratory of the years. Little by little the old doctrine is undermined. Often the encroachments are so gradual that their significance is at first obscured. Finally we discover that the contour of the landscape has been changed, that the old maps must be cast aside, and the ground charted anew.<sup>27</sup>

All this is only a taste of what Cardozo offers, but it provides at least a starting point for understanding the judicial role, and, generally speaking, where the faithful judge will be coming from in the effort to integrate work and life in the concept of vocation.

### C. *Flourishing with Wisdom*

The effort by the faithful judge to reach for and apply some theological understanding of wisdom, in the context of faithful interpretation and application of law, brings with it the potential for a steadying direction to the work. And the specific point of congruence to which a theological account of wisdom is likely to lead the judge in these instances, whether as a matter of simple understanding or as a matter of concrete action, is love.<sup>28</sup>

To flourish, a judge needs to live fully into the role and needs the freedom to be appropriately faithful to the obligations of both work and other aspects of his or her private life. That means, to the extent it can be done within proper bounds (keeping integrity and fit with substantive law and ethical codes and so on), that a judge should not have to cut off her access to those things that have called her into the role in the first place, to those resources that have shaped her to become who she is, or that have been a part of bringing her to fulfill the calling in which she works on a daily basis. The judge who feels cabined or stifled or falsely fractured in her identities by being asked to separate herself from her faith at the chambers door, may tend to reason awkwardly. By contrast, the more integrated the understanding of her vocations is, the better she will fully flourish in both (as long as there is not such a clash with the controlling law that she is unable to fulfill her obligations to the judicial role).

In large part, what the resource of a theological account of wisdom offers to the judge is access to a model of wisdom that the judge can seek to emulate. Thus it is not so much, necessarily, about seeking substantive wisdom as to a specific *outcome*.<sup>29</sup> Instead it is much more about seeking wisdom in terms of how to fulfill the role itself, how to live out the vocation of the judge, how to *be* wise in the role. Being able to explore fully what

27. *Id.* at 178. See also *infra* discussion of Hardy at Part IV.B (specifically, reference to and discussion of Hardy's concept of a "community of dialogue in difference").

28. This love—divine love, the love bound up in theological wisdom—is of course different from romantic love. A full definition is beyond the scope of this article, but at a threshold level, this love implicates grace, mercy, patience, wisdom, and so on. See KARL BARTH, CHURCH DOGMATICS VOL. II/1 § 30 ("The Perfections of the Divine Loving") 351 (G.W. Bromiley & T.F. Torrance, eds., Parker, Johnston, Knight, & Haire trans., 2004); see also *infra* Part IV.A.

29. One might think, for example, about substantive assumptions or expectations, in terms of outcomes on contentious issues such as abortion, the death penalty, or same-sex marriage. But the idea presented here is that seeking wisdom as to substantive outcomes, in terms of which conclusions to reach on these or any other issues, is really not the point.

a theological account looks like, and how it might apply in a particular set of circumstances, will help the judge to do the best job at fulfilling the expectations and obligations of the role. This is, again, why the connection with the concept of vocation is important, and why that approach makes a difference. In the concept of vocation, it is about who the role occupant is and how he or she comes into the role. The work is not just a job that person does, but rather it is about how that person lives life as a whole and *who* is calling that person to *be* what he or she is, and to *do* what he or she does. Thus, the source of the reasons for what that person does and the content of the example set for that person are all bound up in an essential way with the vocation. Thus, again, emphasis ultimately lies more on process than on substance.

### III. CONSTRUCTING A SCRIPTURAL ACCOUNT OF WISDOM FOR JUDGES

We turn now to the work of constructing a theological account of wisdom from various sources to see how this might be of practical use for guiding the Christian judge within his or her vocation.<sup>30</sup> This discussion begins with some biblical texts, looking at three passages (really clusters of passages) that illustrate an array of different points useful in constructing a basic framework for what a theological account of wisdom may offer, particularly for this perspective of the Christian judge who seeks to live fully into her vocation. One way of building up a theological account of wisdom, indeed an indispensable one in Christian theology, is to look directly to scriptural accounts of wisdom. The Christian judge, in embracing this appellation—wherever he or she may fall on a continuum of belief, from considering the Bible to be inerrant, to authoritative, to indicative of certain truths, to generally being a good moral teacher, and so on—will embrace at least some version of the belief that these scriptural accounts provide the best common starting point from which to try to understand the shape of divine wisdom.

Thus this section takes up a few important biblical passages that shed light on wisdom, as it is relevant for the role of the judge and in the broader context of the exercise of judgment. First, an exploration of *1 Kings* 3 addresses the wisdom of Solomon as an example played out in the specific context of a portrait of the judicial role. Next, *Proverbs* 8-9 provides the basis for further illustration of general qualities of wisdom relevant to the role of the judge. Finally, more specifically Christological wisdom is drawn out through a discussion of a cluster of passages exemplifying the wisdom of the Gospel.<sup>31</sup>

#### A. *The Wisdom of King Solomon*

The individual judicial figure most readily associated with wisdom in the biblical context is King Solomon. To put Solomon in some historical context, his role was not only that of judge, but King of Israel. There is an aspect of ruler, beyond just decisionmaker according to law, in the judicial role portrayed here. The dates conventionally attributed

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30. None of this will work well or be helpful unless it is specific, so the scope of the theological discussion is limited here to Christian theology, and even more so to protestant Christian theology, for purposes of time and space. (Even within that it is limited to only a very small slice of protestant Christian theology.) But the general framework, the topic, discussion, and questions addressed here, are certainly intended to be more broadly applicable to other faiths and perspectives for any judge who seeks to find that same sense of complete integrated wholeness.

31. The key passages examined here are found in *Luke* 24, *Colossians* 2, *1 Corinthians* 1-2, and *Luke* 11.

to his reign are c.961-922 BCE.<sup>32</sup> He was the son and successor of David, noted not only for his judicial wisdom, but also for building the First Temple in Jerusalem and for his later relationship with the Queen of Sheba.<sup>33</sup> He is also credited, according to Jewish tradition, with the writing of three books of the Bible: Proverbs, Ecclesiastes, and the Song of Songs.<sup>34</sup>

In the account found in *1 Kings* 3, wisdom is the leading characteristic of the human judge. From this biblical character whose foremost narrative event (or at least his best known) is a moment of exercising judgment, one can learn several things toward the development of a theological account of wisdom as it might be most directly applicable to the judicial role. This is not to suggest that it is an unproblematic account, but in spite of the potential complications, which will be addressed in due course, this is a tremendously vivid and instructive portrait.

First, wisdom (and again here we are dealing with a wisdom that happens to be specifically relevant to the role of the judge) is a gift from God, not something a human being has innately.<sup>35</sup> It is, even more specifically, a gift for which one *asks*.<sup>36</sup> Solomon is portrayed as one who perceives his need for wisdom as a quality broadly desirable for good leadership of a people and more specifically desirable for good judgment in reaching those specific resolutions of matters that come before him in his role as judge. He asks it of God, knowing it to be in his gift.<sup>37</sup> God, in turn, gives Solomon the gift of wisdom in abundance, pleased that he asked for *that*, as opposed to other things.<sup>38</sup>

A second theme that emerges from this account has to do with the shape and content of wisdom as it is given. Wisdom is portrayed here as highly practical. It is a matter of an understanding mind, an ability to discern between good and evil, especially in terms of knowing people as they behave in their particular situations in life.<sup>39</sup> This wisdom that we see played out in the example of Solomon is not about the careful parsing of codes or case law—it is about equity and street smarts; it is incisive, clever, and consummately practical.<sup>40</sup> Solomon's wisdom allows him to do justice in practice as he distinguishes the rightful mother as between the two women before him through his clever ruse of threatening to cut the child in two, as if to apportion half to each. He achieves justice that restores a rightful relationship by means of careful attention to those seeking his judgment.<sup>41</sup> This is not only practical wisdom, but also highly situationally dependent. One might argue that it tends more toward the equitable rather than the legal.

A third practical point emerges from the story a few chapters further along. This wisdom—sought, given, and received—must also be *maintained*, because it may also be

32. BERNHARD W. ANDERSON, UNDERSTANDING THE OLD TESTAMENT 647 (1998).

33. *1 Kings* 6, 10.

34. JOSEPH BLENKINSOPP, WISDOM AND LAW IN THE OLD TESTAMENT: THE ORDERING OF LIFE IN ISRAEL AND EARLY JUDAISM 3 (1995).

35. *1 Kings* 3:12.

36. *1 Kings* 3:5-12.

37. *1 Kings* 3:7-9.

38. *1 Kings* 3:10-14.

39. *1 Kings* 3:9, 16-28.

40. *1 Kings* 3:24-25.

41. *1 Kings* 3:27.

*lost*. Indeed in the example of Solomon it *is* lost.<sup>42</sup> Solomon is ultimately human and flawed just like so many others God selects to play important roles in building things up.<sup>43</sup> Having nobly asked for the right things and not asked for the wrong ones, having done the right things and followed the right path for many years, and having built the House of the Lord and having shown all this good judgment, in the end, Solomon is unable to maintain all this. He turns away from the Lord and follows other gods.<sup>44</sup> This very humanity, which shows the flawed nature of his human wisdom and the judgment that flows from it, invites a deeper understanding, compassion, hope, and even love associated with the judicial role. This showing of Solomon's humanity somehow makes wisdom seem more achievable, more attainable, and more accessible to the contemporary judge seeking wisdom in the account today.

There is much as well to be found in terms of deepening the account of theological wisdom by looking at how God deals with Solomon over all this. God says that for David's sake, he will not punish Solomon in Solomon's own lifetime. Instead, God will take the kingdom out of the hands of Solomon's son and leave him one tribe, doing so for the sake of David and Jerusalem.<sup>45</sup> A great deal may be gleaned from this episode about divine wisdom, judgment, and justice, as an example for human judges. One of the major characteristics that emerges is a greater love that plays out as concern for the bigger picture of all the relationships involved—love manifest in compassion.<sup>46</sup> This is not just about Solomon and his failures as an individual. As God, in judgment, considers how to deal with Solomon, he considers all the broader ramifications for other relationships (broken, maintained, healed, or restored) in a way similar to what is seen in the portrayal of the height of the human wisdom-in-judgment exercised by Solomon. That is, where love—borne out in compassion, patience, mercy, and so on—flows together with wisdom, God's justice plays out with integrity. Solomon is the human, but ultimately flawed, example of this. Ultimately, this love, wisdom, and judgment flow together with the greatest wholeness and integrity in the person of Jesus, which is the subject of a later section.<sup>47</sup>

### B. *Lady Wisdom of Proverbs*

The account of wisdom in the Book of Proverbs, particularly in chapters eight and nine, says much that is relevant for the further development of a theological account of the characteristics of the substantive virtue as it pertains to the role of the judge. Here the portrait is different in nature from what was seen in *1 Kings*. For one thing, it is not the portrait of a specific human figure, or the story of a person in specific narrative or historical context, even though wisdom in this account is *personified*. Nonetheless, the account in these two chapters is applicable, and has a great deal to teach with regard to wisdom in the

42. *1 Kings* 11.

43. Examples of some other such flawed but still prominently chosen figures who move God's story forward, whether in matters of leadership writ large or matters of more individual interactions, would be, just to name a few, Moses, David, and the Samaritan woman at the well.

44. *1 Kings* 11.

45. *1 Kings* 11:12.

46. See discussion *infra* at Part III.C. (regarding relevant parallels in contemporary mediation theory).

47. See further discussion *infra* at Part III.C. See also the comparison drawn in two of the synoptic gospel accounts, in which Jesus is noted as the one "greater than" Solomon. *Matthew* 12:42; *Luke* 11:31.

role of the judge. It expands our view of the substance of wisdom; it broadens the picture of what is encompassed by a theological account of wisdom.

Wisdom, in the first place, “cries out.” She “calls.”<sup>48</sup> Wisdom here is a “she” for the simple fact that the word *hokmah* for wisdom in Hebrew is a feminine noun.<sup>49</sup> This action of crying out or calling indicates from the outset a will to be known—a desire for engagement. Wisdom is thus not obscure, not trying to stay in the shadows, but out in the open and taking her stand. She is there to be heard and seen. This opens the way for an understanding of wisdom both as a manifestation of divine love and as an exemplar of the judicial virtue of clear and open reasoning and explanation in the decisionmaking process. This crying out, this desire to be known and understood, manifests a concern for, even a compassion for, the other. This concern is not just consonant with, but serves to underscore the relevance of love. Understanding, life, and happiness are closely intertwined here.

And now, my children, listen to me:  
 happy are those who keep  
 my ways.  
 Hear instruction and be wise,  
 and do not neglect it.  
 Happy is the one who listens to me,  
 watching daily at my gates,  
 waiting beside my doors.  
 For whoever finds me finds life  
 and obtains favor from the LORD;  
 but those who miss me injure  
 themselves;  
 all who hate me love death.<sup>50</sup>

There are close connections drawn here between wisdom and “understanding,” just as there were in the wisdom embodied in the example of Solomon as a judge. An additional feature underscored here is prudence. The same description appears in Proverbs as in the book of Job and in the Psalms: “the fear of the Lord is the beginning of wisdom.”<sup>51</sup> It matters that wisdom is taken seriously—that it is understood correctly, that it is gotten right. This is why wisdom wants so badly to be known. Wisdom is where the action is. Wisdom has divine love behind it. She cries out to be known because life depends upon it.

So far, then, in the biblical accounts, there is the view of the wisdom of Solomon who seeks and obtains wisdom as the gift from God. The reader can see the shape of that gift as it is bestowed, and can see how it plays out in practice. There is also the view of wisdom herself, calling out and wishing to be known, in the context of this account which

48. *Proverbs* 8:1, 3.

49. R.N. WHYBRAY, THE CAMBRIDGE BIBLE COMMENTARY ON THE NEW ENGLISH BIBLE: THE BOOK OF PROVERBS 19 (1972).

50. *Proverbs* 8:32-36.

51. The same line appears at *Proverbs* 9:10 and *Job* 28:28. This follows after the earlier use of the phrase “the fear of the Lord” and after the phrase “I, wisdom, live with prudence, and I attain knowledge and discretion. The fear of the Lord is hatred of evil.” *Proverbs* 8:12-13. Cf. *Psalms* 111:10.

makes clearer the full picture of the critical importance of this understanding being conveyed. We can see here (all the better with the two accounts together), the importance of the mutuality, or congruence, of the seeking and being sought, the conveying and reception, how wisdom and love are coming together.

### C. *The Wisdom of the Gospel*

A cluster of New Testament passages offers further insights into a somewhat more specifically *Christian* theological account of where wisdom is to be found, and particularly through whom it can be found. The wisdom of the Gospel, to put it most bluntly, *is* Jesus Christ. There is a great deal there to be unpacked, and indeed there are many pieces of the theological account of wisdom there that one might choose to take, short of taking all that it potentially means to accept Christ as God's wisdom incarnate, but the simple statement is the fullest and most open expression of the gospel account.

To begin to play this out in examples from the text, one might start with the narrative and go on to some of the discourse from the epistles. In the final chapter of Luke's gospel, in the account of the disciples conversing on the road to Emmaus, Jesus, at first unrecognized, interprets the scripture.<sup>52</sup> Later, having revealed to the disciples who he is, he says: "These are my words that I spoke to you while I was still with you – that everything written about me in the law of Moses, the prophets, and the psalms must be fulfilled,"<sup>53</sup> and he goes on to "open[] their minds to understand the scriptures."<sup>54</sup> He underscores the disciples' role as witnesses of all this, incorporating them thereby not just into the knowledge of it, but also into the spreading of the knowledge of what they have seen and understood to others. This close connection of wisdom with understanding made possible through careful explanation, and further, the personal transmission of that wisdom and understanding through the careful reading and explanation of texts together with others, and the passing along of that understanding down along the line has, of course, a long history in the field of law. It is immediately relatable for the common law judge.

But there is more to be unpacked from the New Testament account of wisdom. The particularly Christian perspective on wisdom, or what might be labeled "the wisdom of the gospel," encompasses Christ as the embodiment of wisdom.<sup>55</sup> That is: here, Christ *is* wisdom itself. Wisdom comes and walks among God's people as one of them, to show them then, as well as any contemporary observers reading the account now, what wisdom looks like or acts like, as a lived example.

Christ as the embodiment of wisdom is brought into particular relief in the letter of the apostle Paul to the Colossians.<sup>56</sup> Paul writes of his desire for those to whom he writes

52. *Luke* 24:16, 27.

53. *Luke* 24:44.

54. *Luke* 24:45.

55. *See, e.g., Colossians* 2; *1 Corinthians* 1-2.

56. My point in calling the author "Paul" here is not to wade into authorship debates or take a side in them. Scholars disagree about whether this epistle is genuinely by the apostle Paul or one of his disciples. *See, e.g.,* LUKE TIMOTHY JOHNSON, *THE WRITINGS OF THE NEW TESTAMENT: AN INTERPRETATION* 393 (1999); EDUARD SCHWEIZER, *THE LETTER TO THE COLOSSIANS: A COMMENTARY* 15 (1982); RALPH P. MARTIN, *COLOSSIANS: THE CHURCH'S LORD AND THE CHRISTIAN'S LIBERTY* 160-64 (1972). I use the common convention of calling the author "Paul" merely for the sake of ease of labeling here.

to be encouraged and united in love, so that they may have all the riches of assured understanding and have the knowledge of God's mystery—that is, Christ himself, in whom are hidden all the treasures of wisdom and knowledge.<sup>57</sup> He goes on a few verses later to warn them against those who might take them in with “philosophy and empty deceit according to human tradition, according to the elemental spirits of the universe, and not according to Christ.”<sup>58</sup> So, divine wisdom is set above human wisdom, but is accessible, and is indeed meant to be sought out and known.

Similarly, in the opening chapter of the first letter to the church at Corinth, Christ is held up as simultaneously “the power of God and the wisdom of God.”<sup>59</sup> In that letter, there is again a clear hierarchy. Not only is divine wisdom above human wisdom, but even God's foolishness is wiser than human wisdom; indeed, not many humans are even thought to be wise by human standards.<sup>60</sup> But Jesus Christ, fully divine and fully human, “became for us wisdom from God.”<sup>61</sup> Earlier in the gospel of Luke, and in a parallel fashion in Matthew, Christ's wisdom was noted as greater than Solomon's (although the point of those references is that Christ's wisdom is not, at that point, necessarily recognized as such).<sup>62</sup> Again, this puts what one might think of as a higher order of perfected theological wisdom as a lived practical example right in the midst of ordinary people. This personification of wisdom is walking around, talking, engaging, and ultimately providing an example to follow. Humans do not have this wisdom innately, but can (and are meant to) seek it out.

There are many ways in which this can play out. To take one example, one might think in terms of the wisdom of God embodied in Jesus Christ as mediator. N.T. Wright, preaching in an ordination context, offers a useful example.<sup>63</sup> Unpacking wisdom in *1 Corinthians*, Wright suggests that Christ (as the embodiment of wisdom) “is the ultimate interpreter, of God to the world and the world to God, of God to ourselves and ourselves to God, indeed of ourselves to ourselves, assuring us that while we may have meant it for evil, God meant it for good.”<sup>64</sup> The upshot of all this is that as human beings we will never understand fully, in this life, how it all hangs together.<sup>65</sup> (Here, Wright offers the advice to soon-to-be priests, but it seems perfectly apt counsel where the wisdom will apply *to* or be applied *by* judges.) But the wisdom of the Gospel (and Wright emphasizes it is “*loving* wisdom”) is that the Christian has, in Christ, access to that bit of deeper understanding of the very fact that, though humans are flawed, there is (has been) this great act of love that makes some further sense of it all, that there is more to come, and that however things look

57. *Colossians* 2:2-3.

58. *Colossians* 2:4, 8.

59. *1 Corinthians* 1:24.

60. *1 Corinthians* 1:26.

61. *1 Corinthians* 1:30.

62. *Luke* 11:31.

63. N.T. Wright, *Bishop's Charge to Ordination Candidates: Christ the Power of God and the Wisdom of God*, NTWRIGHTPAGE (July 2, 2005), [http://ntwrightpage.com/sermons/Christ\\_Power\\_Wisdom.htm](http://ntwrightpage.com/sermons/Christ_Power_Wisdom.htm).

64. *Id.* at 1. There are interesting relevant parallels here with contemporary mediation theory, which focuses on transformation for the parties in their relationships with each other the true goal in approaching conflict and dispute resolution. See generally ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT* (2005) (I am indebted to Prof. Tracy Thomas for pointing me in this direction.).

65. See generally Wright, *supra* note 63.

up ahead, there is reason to believe that there are no hopeless cases.<sup>66</sup> Instead, in Christ, in the wisdom of the Gospel, there is more that surpasses our understanding, and that is worth seeking. All of that and more is what makes Christ the one greater than Solomon in his wisdom.

Thus from this small collection of biblical passages, one can begin to build up a rich theological account of wisdom that offers much to the judge who would seek a deeper understanding or a meaningful model in scripture. It provides wisdom played out in fully human form, whether gloriously or flawed. It shows the congruence of wisdom calling out and being found. It makes clear the vital importance of wisdom, how it is central to God's love for his creatures, and in turn, to the very life and happiness of those creatures. But perhaps most importantly in the midst of all this is the very basic point that in the theological account, this wisdom (which is something set apart, something accessible, but markedly different) is something humans do not have without seeking it out.

#### IV. ACCOUNTS OF WISDOM FROM TWO MODERN THEOLOGIANS

In building up a theological account of wisdom, the other obvious approach, aside from looking directly to what scriptural sources say on the subject, is to look at the writings of theologians. The accounts of two modern theologians provide a couple of different perspectives on the subject to illuminate, in various ways, what a theological account of wisdom might offer to the faithful judge (and, here, to the Christian judge in particular).

##### A. *Karl Barth's Account of Theological Wisdom*

Karl Barth is widely considered to be the most prominent protestant theologian of the twentieth century.<sup>67</sup> He is unarguably one of the most prolific, having written over 600 published works in his lifetime.<sup>68</sup> Here we focus on one passage in particular—section 30.3 of his magnum opus the *Church Dogmatics*.<sup>69</sup> This passage falls within Barth's coverage of the Doctrine of God, in a subsection on the Perfections of the Divine Loving, in which he turns to "The Patience and Wisdom of God."<sup>70</sup> Here he unfolds much of what he has to say that is particularly relevant for purposes of this discussion of a theological account of wisdom for judges. Straightaway he makes clear that wisdom is an expression of the perfection of divine love.<sup>71</sup> "In God wisdom is related to patience as is holiness to grace and righteousness to mercy. All these ideas express and translate the love of God."<sup>72</sup>

Barth gives a theological account of wisdom that emphasizes the ways in which God has shown and continues to show what wisdom is, in a number of ways. God has, according to Barth, shown wisdom in his own actions, having revealed this for example in his

66. *Id.* at 1.

67. *Biography*, CTR. BARTH STUD., <http://www.kbarth.org/biography> (last visited July 27, 2015).

68. *See Major Works*, CTR. BARTH STUD., <http://www.kbarth.org/major-works> (last visited July 27, 2015).

69. Barth died leaving the *CHURCH DOGMATICS* unfinished, but even allowing for the fact that typesetting and language of publication make for varying statistics as to its length, one source gives a figure of 9,300 pages and thirteen volumes as a measure of its length. Thus the term "passage" can fairly be applied to a stretch of 18 pages. *See Biography*, CTR. BARTH STUD., <http://www.kbarth.org/biography> (last visited July 27, 2015).

70. BARTH, *supra* note 28, at 406.

71. *Id.* at 406.

72. *Id.* at 422.



dealings with Israel,<sup>73</sup> as well as through individual human exemplars whom he has endowed with particular gifts of wisdom (e.g., Solomon<sup>74</sup>). And perhaps most notably, God has shown wisdom in the person of Jesus, in whose presence we have seen divine wisdom embodied among us.<sup>75</sup> In Section 30.3, Barth puts emphasis on light and clarity in opposition to darkness and obscurity.<sup>76</sup> With God there is knowledge and understanding in revelation. He is at pains to make clear that this is not, of course, what human beings always actually perceive, or perceive correctly.<sup>77</sup> One of the key points here is the distinction over against the common trope that faith, for example, is a leap into darkness. Barth underscores the opposite in writing about divine wisdom: “The Word of God shines as light in the darkness.”<sup>78</sup> Along similar lines, over against often-heard complaints about the capricious or incomprehensible or irrational nature of God nature or actions, Barth portrays one who is “intrinsically illuminating, intelligible, and purposeful.”<sup>79</sup> In illustrating this, he prioritizes an ordered wisdom that produces grace and mercy.<sup>80</sup> There can be confidence in God and in knowledge of him because of this ordered wisdom—without that knowledge, there would be no freedom, because there would be no confidence in that reason, meaning, and order.<sup>81</sup> But recognizing God to be and to convey that ordered wisdom, it is possible to rely on its pervading the whole of his activity in all that he wills.<sup>82</sup>

In the language of law professors, the picture here is one in which God is not “hiding the ball.” He is not arbitrary or capricious.<sup>83</sup> Instead, again, there is light, order, and revelation—all of which is ultimately closely connected with human freedom and the rationale, for Barth, behind human confidence in faith.<sup>84</sup> This is also an important point of potential connection with the importance, in the judicial role, of transparency and accountability. The open revelation of both reasoning and outcomes correlates somewhat with analogous behaviors and emphases on the part of judges, and the confidence they promote in their in courts. (This is not an exact parallel, of course; only an analogue between the human and the divine, a point of connection and place for potential modeling or emulation.) But the human judge can certainly look to a theological account of wisdom such as this one for guidance, and appreciate the value of openness, light, ordered reason, and so on.

In section 30.3, Barth pairs wisdom with patience as perfections of divine loving.<sup>85</sup> Even though these two are paired as part of divine *loving*, upon a close reading, patience also comes through as a characteristic of divine *wisdom*.<sup>86</sup> Patience is a characteristic of divine wisdom, particularly to be emulated in human wisdom, not just for how it results in

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73. *Id.* at 432.

74. *Id.* at 433-34.

75. BARTH, *supra* note 28, at 434-35.

76. *Id.* at 423-24.

77. *Id.*

78. *Id.* at 424.

79. *Id.*

80. BARTH, *supra* note 28, at 425.

81. *Id.*

82. *Id.* at 426-27.

83. *Id.* at 424.

84. *Id.* at 425.

85. BARTH, *supra* note 28, at 422.

86. *Id.*

what might be thought of as wiser results, but more compassionate ones.<sup>87</sup> This is where love is wrapped into it, and there is a connection as well with grace, mercy, and once more with self-revelation.<sup>88</sup> Barth joins together all of these virtues and shows how they come together in wisdom.

"Divine wisdom is obviously the meaning and ground of creation and therefore of the sphere in which man can live. The whole art of living and understanding life consists in heeding and accepting divine wisdom and in this way becoming wise."<sup>89</sup> Barth connects this in significant ways with both God's patience with man, and man's fear of God. But, rather than just discussing these concepts in abstract terms, he underscores God's long history of showing man what his wisdom looks like, and how it plays out in the lives of his people.

That Jesus Christ is the meaning of God's patience is the result at which we have really arrived in discussing the perfection of the divine patience. . . . The Old Testament has already in King Solomon a supremely wise man, endowed by God Himself with wisdom, and therefore made the image and exponent of God's own wisdom upon earth. . . . Human wisdom means the art of living. The wise man as distinct from the fool knows how to make a use of his life and of the whole universe which is in harmony with its creation and preservation by God and therefore meaningful, rich in promise and redemptive. . . . This is that human wisdom of this kind is not a possibility which man can intrinsically realise. It is a gift of God which has to be sought. It springs from a special divine grace and favour.<sup>90</sup>

Citing *Jeremiah* 9:23 and the verses that follow, Barth goes on to explain why it is that if we really "get" this—if as human beings, we properly grasp the relationship between divine and human wisdom—"boasting in the Lord" will elbow out any possibility of boasting in any thought of our own human wisdom.<sup>91</sup>

1. Since he boasts in this other, the real wisdom of God, he has no more room for his own, human wisdom. 2. By this wisdom in which he may now glory human wisdom is for him unmasked as unwisdom, as utter and contemptible folly in his eyes. 3. He cannot wish to withdraw from his solidarity with divine wisdom, even in regard to its supposed folly and the judgment to which it must be content to submit in this world.<sup>92</sup>

The human judge who takes these approaches or attitudes to wisdom potentially puts

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87. *Id.* at 422-24.

88. *Id.* at 422-23.

89. *Id.* at 430.

90. BARTH, *supra* note 28, at 432-33.

91. *Id.* at 436.

92. *Id.*

him or herself in an advantageous position. Judges must walk a tricky line between arrogance and humility. They must be decisive and move on, which takes something that at least bears some of the characteristics of arrogance, even if it may be fairly differentiated from the genuine article. They must, at the same time, be prepared to accept that their decisions will at times simply be the wrong ones (among other features of the role that counsel humility). If the judge can strike a fair balance here, it will mean letting go of the idea that the judge has an internal store of wisdom with all the answers in it. It will also mean letting some pressure off by encouraging the understanding that wisdom is there to be found in another source.

Although Barth himself is not playing all this out for the vocation of the judge, there are some important implications of doing so. The portrait of divine wisdom that Barth has drawn has decided implications for one who sits in judgment. A faithful human being, in Barth's theology, can rest assured that, having done his or her level best (but knowing that to be insufficient in many cases), he can count on the wisdom of God, which surpasses his own understanding and ability to act, but which is a perfection of divine love, and a playing out of God's patience.<sup>93</sup> This will fill the gaps and yield a better result. This is an ordered wisdom that produces grace and mercy.<sup>94</sup> In short, the judge can count on divine wisdom to act where the human judge's acts in pursuit of wisdom fall short of what divine wisdom requires. This has the potential to ease the great burden that many judges carry from the concerns of their work.<sup>95</sup>

Barth calls human wisdom the art of human living.<sup>96</sup> He portrays it as heeding, or at a minimum accepting, divine wisdom as the ground or the sphere in which man lives and becomes wise.<sup>97</sup> This makes possible, argues Barth, man making a real and full use of his life in meaningful harmony with God's will and purposes.<sup>98</sup> It is with that kind of harmony, made possible with the kind of true human wisdom Barth describes, that the judge might achieve the kind of integrity, or fit, of faith and work; both vocations finding not only their own ends, but a congruence of purposes as well. Human beings can achieve this wisdom in some measure *because* they can count on God's wisdom and will for God's people, God's patience, steadfastness, self-consistency, etc. This wisdom cannot come out of the human being independently—it depends on God. There is also an advantage in this, particularly when it comes to the judicial role. This dependence, properly appreciated, should provoke a proper humility. Judges need sufficient confidence in themselves to be decisive, but the humility that comes of this theological account of wisdom can be hugely helpful in finding balance when it comes to the perfection of compassion and mercy as manifestations of love in the judge's role as a decisionmaker.

God's ordered wisdom in Barth's account produces grace and mercy, and one can

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93. *Id.* at 422-24.

94. *Id.* at 425.

95. Criminal sentencing would be a major example here. A broad range of family law issues can be heavily emotionally freighted as well. Beyond the potential emotional toll of concern for making "right" of "best" decisions for the parties and the relationships involved, there can be a heavy burden associated with the need to get the law itself "correct," with the idea that the ramifications of that precedent will have continuing effects well beyond the case at hand.

96. BARTH, *supra* note 28, at 433.

97. *Id.*

98. *Id.* at 433.

think of the many ways in which those would be applicable in judicial settings. Furthermore, the relationship between God's wisdom and human wisdom ultimately takes some of the pressure off of human judges if they have this freedom to trust God to enable them to fully flourish in their role. The freedom in Barth's account is a function of the ordered, measured, and connected reliability that flows from God's wisdom and his love for his creatures. This does not mean the elimination of difficult decisions for the judge. It does, however, suggest the freedom for judges to trust in an ordered wisdom beyond the judge's own perception, and beyond the judge's own power to do justice in the here and now. This may help the judge come to terms with exercising restraint in following controlling law where it does not seem to achieve the greater measure of justice that the judge would wish to see.<sup>99</sup> It may help the judge ultimately to find peace with difficult decisions that would otherwise weigh too heavily.<sup>100</sup>

#### B. Daniel Hardy's Theological Account of Wisdom

Much of Daniel Hardy's work addresses wisdom, and does so in a variety of ways.<sup>101</sup> This account, for the benefit of specificity, draws on material in three shorter pieces of Hardy's writing.<sup>102</sup> Hardy closely connects divine wisdom with divine love, and speaks to the mediation of that love that manifests in wisdom, through the church, for the broader world, and all this in terms that speak much of movement and interconnectedness. He offers a theological account of wisdom that puts less emphasis on order, *per se*, than one sees in Barth's account, but nonetheless maintains a high level of interconnectedness through wisdom. For Hardy, God himself as wisdom is at (or indeed *is*) the intersection of these interconnections—in other words, wisdom is at the convergences.<sup>103</sup> As one means of illustration and elaboration of the many interconnected facets of divine wisdom, and also their interconnectedness with other aspects of a complex theology, Hardy uses one stanza of a poem titled *Motet* by the Irish poet Michael O'Siadhail:

Infinities of space and time. Melody fragments;  
a music of compassion, noise of enchantment.  
Among the inner parts something open,

99. That is, as opposed to what some might imagine, which is the notion that, seeking an understanding of divine wisdom, the judge will pursue that end against the controlling law. The problem with the idea of pursuing divine wisdom against the controlling law will in most cases be rationalizing that without the legal support for the outcome. Certainly there will be exceptions to this, but the point here is primarily to see how the access to this resource may well have quite helpful benefits for the proper flourishing of the judge in the decisionmaking role.

100. That is, either too heavily for the judge to be able to decide at all, or else too heavily for the judge to be able to move on from one decision to the next.

101. Daniel Hardy (1930-2007) was an Episcopal/Anglican priest and academic theologian who served in posts in both the U.S. and the U.K., most prominently spending two decades at the University of Birmingham (U.K.) and later serving as the Director of the Center for Theological Inquiry in Princeton, among other posts.

102. Daniel W. Hardy, *Reason, Wisdom and the Interpretation of Scripture*, in *READING TEXTS, SEEKING WISDOM* (David F. Ford & Graham Stanton, eds., 2003) [hereinafter Hardy, *Reason & Wisdom*]; Daniel W. Hardy, *The Future of Theology in a Complex World*, in *GOD'S WAYS WITH THE WORLD: THINKING AND PRACTISING CHRISTIAN FAITH* (1996) [hereinafter Hardy, *Future of Theology*]; Daniel W. Hardy, *Rationality, the Sciences and Theology*, in *GOD'S WAYS WITH THE WORLD: THINKING AND PRACTISING CHRISTIAN FAITH* (1996) [hereinafter Hardy, *Rationality & Theology*].

103. Hardy, *Future of Theology*, *supra* note 102, at 44.

something wild, a long rumour of wisdom  
 keeps winding into each tune: *cantus firmus*,  
 fierce vigil of contingency, love's congruence.<sup>104</sup>

Students of the common law, and particularly those who are careful readers of the work of Benjamin Cardozo, such as that sketched and discussed above, will recognize in O'Siadhail's poetic language, an expression of much of what might also be said of the nature of the common law judicial process.<sup>105</sup>

The theological wisdom of which Hardy writes is one that may appear only in glimpses.<sup>106</sup> We see it often in or through movement. Hardy himself suggests that we are not necessarily that well attuned in the present time to the perception of such wisdom.<sup>107</sup> We no longer orient ourselves naturally to seek wisdom that presents itself in such ways.<sup>108</sup> His conception, and the O'Siadhail poem he uses, map well onto the canvas of Cardozo's conception of the common law judicial process as portrayed in the discussion above.<sup>109</sup> The intertwining, trans-substantive nature of wisdom in the O'Siadhail poem relates beautifully to the open nature of the reasoning, the broader project of being a trustee of the common law, and the ideal of integrity (in the true sense of that word) when it comes to independence and accountability, as those features characterize the role of the common law judge in its various aspects.

Turning to more specific aspects of Hardy's account of wisdom, here we find Christ portrayed very much as *the* central specific of divine wisdom in practice.<sup>110</sup> For Hardy, Jesus Christ is both the concentration and the imparting of divine wisdom.<sup>111</sup> He is these things because he is *present* as wisdom (with maximal information).<sup>112</sup> There is a materiality to that presence that re-proportions and transforms human responses by provoking praise in particular.<sup>113</sup> This is the richness of movement by which God's wisdom is present. It is not human wisdom, but God's wisdom received and returned, which allows the activity and results of human knowledge to move beyond themselves.<sup>114</sup> God's wisdom does re-constitutive work through what humans do—through participation in praise—by which humans participate in movement towards wisdom, humans participate in the wisdom of God through Jesus Christ, and thus heal, restore, and re-proportion.<sup>115</sup>

Thus, Hardy's account of wisdom is less directly about the interpretation and explanation of specific passages of scripture than Barth's account. It is less about things like

104. *Id.* at 42-43 (quoting MICHAEL O'SIADHAIL, *Motet*, in *THE CHOSEN GARDEN* 82 (1990)).

105. *See generally* CARDOZO, *supra* note 9.

106. Hardy, *Future of Theology*, *supra* note 102, at 43.

107. *Id.*

108. *Id.*

109. *See* discussion of CARDOZO, *supra* Part II.

110. Hardy, *Rationality & Theology*, *supra* note 102, at 250.

111. Hardy, *Reason & Wisdom*, *supra* note 102, at 72-88. In addition, throughout the chapter on reading texts, Hardy also uses the words "primal truth" for the form this divine wisdom takes, and speaks in terms of both "density" and "intensity."

112. Hardy, *Rationality & Theology*, *supra* note 102, at 248-55.

113. *Id.* at 252-55.

114. *Id.* at 253-54.

115. *Id.* at 254-55.

God's order and self-revelation. God himself is wisdom, but in this case specifically wisdom that may be seen as a dynamic or movement in the interpretation of texts.<sup>116</sup> Thus, says Hardy, we need to learn and relearn different ways of reading—different forms of reasoning informed and moved by the depth and movement of meaning in the density of the meaning of scripture.<sup>117</sup> For Hardy, this is possible in a "community of practice bound together by a 'performative logic' of careful textual reading and by the kind of life called forth by the deeper meaning of the texts that are read."<sup>118</sup> This is all a matter of *both* substance *and* process. Hardy is also a strong proponent, when it comes to the interpretation of texts and the seeking of wisdom, of what he terms a "community of dialogue in difference"—seeking deeper meaning through argument.<sup>119</sup> One cannot help but think, in reading this description, of an appellate judicial panel, and the nature of that decisionmaking process as it relates to this account of seeking wisdom.

All of this, in the practice of interpretation of texts, or in the seeking of wisdom, Hardy sees as the embodiment of the movement or the dynamic of the divine in scripture.<sup>120</sup> That movement, for Hardy, is the *cantus firmus* that runs steadily throughout, affirming that "all things share one breath."<sup>121</sup> Here one may naturally think laterally of the development of the corpus of the common law itself, especially as Cardozo describes it. It—the movement of the divine, and the *cantus firmus*, returning to Hardy now—is the binding force or strength, and the order underlying what human beings may only manage to see in glimpses. Hardy describes a "braiding together of people, cultures and nature,"<sup>122</sup> not inclusion for the sake of inclusion, but a "fuller creative poesis," and all the "excess of life" this wisdom brings.<sup>123</sup> He describes how, in God's presence with his creatures, love shifts the boundaries of the creature's being<sup>124</sup> so that the dynamic of love not only transforms the way the creature is with God, but the ways in which creatures are with each other.<sup>125</sup> All of this Hardy does as he relates this understanding of divine wisdom to the language of O'Siadhail's poem, as "a music of compassion, . . . among the inner parts something open, something wild, . . . love's congruence."<sup>126</sup>

There is a caveat that Hardy is careful to put into play here. That is, as human beings in (necessarily) specific situations, subject to the real pressures of those situations, we are wont to simplify and we tend to try to build simplified frames of reference from which to draw further conclusions. In those situations, the risk of idolatry is great, particularly so when we think we are finding "true meanings."<sup>127</sup> This relates back to a contrast Hardy draws when he describes wisdom found in "hints and rumours" as opposed to the "compact, intense and accessible" wisdom that may be more "attractive and reassuring" that

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116. *Id.*

117. Hardy, *Reason & Wisdom*, *supra* note 102, at 74-75.

118. *Id.* at 80.

119. *Id.* at 81.

120. *Id.* at 81-82.

121. Hardy, *Future of Theology*, *supra* note 102, at 41.

122. *Id.* at 45.

123. *Id.*

124. *Id.* at 47; see also MICHAEL O'SIADHAIL, *Out of the Blue*, in *THE CHOSEN GARDEN* 71 (1990).

125. Hardy, *Future of Theology*, *supra* note 102, at 48-49.

126. *Id.* at 44-49.

127. Hardy, *Reason & Wisdom*, *supra* note 102, at 77.

human beings are perhaps presently more habituated to seek.<sup>128</sup>

Before leaving the discussion of theologians behind, one point must be made clear. Those well-steeped in the common law tradition are so accustomed to the picture of the common law judge engaging in all-things-considered reasoning and decisionmaking, in which it may seem quite unsurprising to find that love, patience, mercy, grace, compassion, order, clarity, transparency, and humility are finding their way in as considerations along with a host of other things in addition to the controlling law. One might thus be inclined to say at this point, “so what?” “What is particularly theological or religious about this?” For Barth, for Hardy, for countless faithful judges of a variety of religious traditions, the point that makes the difference is the source of those things. The source of the wisdom makes a difference in terms of its significance. Ultimately, the theological account(s) of wisdom built up here may well arguably look very much like, or be consonant with many of the most basic virtues of the judicial role. But the point about achieving and maintaining integrity and wholeness for the actual people who occupy these roles as judges requires that one not neglect the *source* of the account and *how* it is built up. It is not enough to say to the faithful Christian judge that the qualities and inputs are all the same in the end—the *reasons* for them matter.<sup>129</sup>

#### V. TESTING THIS IDEA

When it comes to testing the idea of access to the resource of a theological account of wisdom, one might raise the objection that any engagement with such an account in the context of the judicial process presents a significant obstacle in terms of access, given the private or individual nature of the inquiry. That is, this seeking and obtaining of wisdom is arguably too obscure if it is between an individual and God alone. It cannot be fairly relied upon, cannot be “fair” or “just,” if it occurs within or emerges out of such a black box without accountability or transparency. There is an initial appeal to this objection, and it would have a continuing hold, were it not for the fact that despite the conceptual legitimacy of the objection in principle, in practice there is simply no way of differentiating between this and any other of the countless ways in which judicial decisionmakers have regular recourse to belief or instinct or preference or other associations of a type that they cannot or do not or prefer not to explain openly in their decisions, but that nonetheless work their way into the mix. Where the lines get drawn cannot be as simple as saying, for example, “divine wisdom is a category that cannot be considered because it is inaccessible to others.” The same is true for so many other things on which judges regularly do rely, whether spoken or not. (This might be termed instinct, gut feeling, “knowing it when one sees it,” or any number of other things.) Thus, something more substantial must be said here for the objection to stand. Or else perhaps the problem may be reframed.

Perhaps the problem may be reframed as one not of access, but of alienation. One

128. Hardy, *Future of Theology*, *supra* note 102, at 44; *see also* CARDOZO, *supra* note 9, at 161.

129. It is for similar reasons that it is so problematic to suggest to any judge who takes the theological concept of vocation seriously (and certainly the same is true for many other judges simply as a matter of taking their faith as an intrinsic part of who they are and all that they do, whether it is specifically about the concept of “vocation” in their work or not), that they should take off the mantle of faith at the chambers door and leave those convictions to the purely personal realm. Where work is understood as a matter of vocation, faith cannot be fractured in such a way from the person who inhabits the judicial role.

might object that there are those who would feel a certain comfort level with judges who are asked to use their own "practical wisdom" on the bench when filling gaps in the law or using discretion, but who would lose that sense of comfort were the judge to inform them that he would seek not only to obtain or apply human wisdom, but divine wisdom, in reaching the right result. The problem here is in the focus on substance, or more specifically substantive outcomes. As discussed above, in the majority of cases, there will be no room for different outcomes. There is no room for discretion. So judges would have no proper recourse to "wisdom" outside of controlling law to reach a substantive outcome that could be alienating to anyone. However, in those cases in which there is room for discretion, by its very nature, there is room for judgment, and the sources judges draw on are in fact likely to be alienating to some. The main point at this juncture then, is two-fold. First, this is a small set of cases in which the *outcomes* are so uncertain. Second, wisdom is much more in play in the process, where it has so much overlap in practice with values that are sought after in the role anyway, that they should not be alienating at all. Qualities such as patience, compassion, mercy, and so on, as manifestations of loving wisdom in practice, deployed in the pursuit of justice, should ultimately be largely unobjectionable.

#### VI. CONCLUSIONS

Access to a theological account of wisdom offers the faithful judge a valuable resource for the meaningful integration of public and private vocational roles. This resource is of primary use to a judge for the purpose of achieving a better understanding about what wisdom *is*, how it can be deployed in exercise of judicial decisionmaking and in the broader fulfillment of the judicial role. All this proves to be much more about how to be wise than about what substantively "wise" conclusions or outcomes to reach in a given case.

From the exploration of theological accounts of wisdom in this article, emulation of divine wisdom on the bench proves to have many interrelated aspects that have substantial overlap with what many would think of as conventional virtues of the judicial role—craft, clarity, patience, compassion, humility, vision, grace, mercy, and so on—though certainly they find expression in different terms. There is a thematic emphasis, in all this, on the mutual desire to be known and understood, which is transformative of the relationships involved. At the center of all these many qualities and virtues, in the theological account, at the root and providing the connections, is the quality and motivation of love.

For the judge who thinks in terms of vocation, when approaching challenging situations on the bench, or perceived clashes between the demands of the personal and the professional, this source of wisdom which is common to both vocations—the vocation of faith and the vocation of the judicial role, will allow for a meaningful integration, in addition to providing a constructive model to emulate. All this will allow the individual to flourish more fully in both the personal and the professional. "Love's congruence," anchored in the controlling law, helps the faithful judge avoid the potential pitfall of living a falsely fractured life, as it provides a means of connecting the seeking of wisdom and the doing of justice.