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“Justly Shall You Pursue Justice”: Theological Approaches to Evaluative Injustice

1. Introduction: The Problem of Evaluative Injustice

In September 2020 a defence lawyer arrived at work at a law court in England, ready to meet with a client and argue a case. The lawyer was repeatedly challenged by court staff, and during the ensuing confrontations it became clear that the lawyer was being repeatedly mistaken for an accused person— not, that is, for a specific accused person, but for *some* accused person. The lawyer was a young black woman, Alexandra Wilson, whose tweets about her experience drew attention to persistent racism and sexism within the English legal system (BBC News 2020a). Wilson’s experience in the law court – being positioned as a suspected wrongdoer, and not as a participant in debate or an interpretive authority, simply by virtue of her perceived characteristics – is both a concrete example of, and a metonym for, the phenomenon that I examine in this article, and to which I provide a critical theological response. *Evaluative injustice*, as I describe it here, is the inequitable positioning of persons in relation to the activity of moral judgement, or the inequitable configuration of the space of moral judgement.¹ Its two main, closely interconnected, aspects are the disproportionate exposure of certain groups to moral judgement, and the disproportionate exclusion of certain groups from agency in moral judgement. I argue, in what follows, that evaluative injustice precedes and shapes debate on specific issues in “ethics” or “morality” – as the positioning of the actors in a law court, with all the issues Wilson’s story brings out, precedes and shapes the hearing of the case.²

I use the terminology of “evaluative injustice” in a deliberate reference to the extensive and important literature on epistemic injustice and its various specific forms, arising from the work of Miranda Fricker (2007). Evaluative injustice, as I present it here, is structurally similar to epistemic injustice, without being a species thereof. Epistemic injustice names the ways in which a person can be wronged in and by the process of establishing truth or establishing what counts as knowledge – as Fricker puts it, wronged in her capacity as a knower. Evaluative injustice, similarly, names the ways in which a person can be wronged in and by the process of moral reasoning, in her capacity as agent or subject-matter of moral reasoning. Like epistemic injustice, evaluative injustice is closely linked to, and a consequence of, wider patterns of social injustice, and follows similar social fault lines. Fricker’s detailed account, in fact, often moves into areas where establishing the truth, or establishing what counts as knowledge, is a process weighted with moral evaluation – an obvious example being her discussion of women’s socially-constrained ability, or lack of it, to interpret and name their experiences of sexual harassment. However, there are significant dimensions of evaluative injustice that are not adequately captured within the framework of epistemic injustice.

Evaluative injustice has a troubling and deliberate circularity in its definition and indeed in its name; the practice of justice or moral evaluation is itself *ab initio* unjust or immoral, and we are not pursuing justice justly.³ This circularity should, I suggest, prompt ethical reasoners to think critically,

¹ In a previous article I referred to a related phenomenon as ‘moral asymmetry’ – see Muers 2021.

² I am grateful to the colleagues who have encouraged me to develop the idea of evaluative injustice, in particular Ian James Kidd, Tasia Scrutton, and members of the Centre for Philosophy of Religion at the University of Leeds. I also acknowledge with gratitude the valuable comments and suggestions received from anonymous reviewers.

³ The reference is to the Septuagint version of Deuteronomy 16:20 (which in Hebrew reads ‘Justice, justice you shall pursue’); the Septuagint, and indeed the Vulgate, renders the repeated word *tzedek* as an adverb and a noun. In discussion of an earlier version of this paper, Robin le Poidevin suggested the alternative name

as ethical reasoners, about the social and cultural conditioning of their own activity. In this article I seek, first, to demonstrate that theology plays a role in the misconfiguration of the ethical space, that is, in the creation of evaluative injustice; and, second, to explore how theology can promote or provoke the *reconfiguration* of the ethical space, addressing and to some extent *redressing* evaluative injustice. In the first section, I present three examples that both illustrate the phenomenon and its importance, and also indicate how theology might be implicated in the framing of ethical debates in a way that contributes to evaluative injustice. In subsequent sections, I examine the interpretation and significance of biblical texts on divine and human impartiality in judgement and their relevance to evaluative injustice, arguing that the core focus should be, not the abstract ideal of impartiality but rather the role of “judges” and moral reasoners in recognising and addressing pervasive social injustice.⁴

2. Evaluative Injustice and Theology: Three Examples

My first example is taken from the history of debates in the Anglo-American context (in particular) about welfare and poverty. It is widely recognised in contemporary scholarship on poverty that these debates have frequently been shaped by the categorisation of the poor as “deserving” or “undeserving” – by a moralisation of poverty that both deflects attention from the structural factors affecting poverty and, most importantly for our purposes, subjects “the poor” to forms of moral or quasi-moral scrutiny and judgement on the part of the state or of elite actors (see Katz 2013; Applebaum 2001; Will 1993). The problem here is not simply that some or all of “the poor” are *mischaracterised* or *misjudged* as a result of this moral evaluation; the problem is that they are subject to the evaluation in the first place. Over the history of the “undeserving poor” (dating back, in some form, at least to the introduction of the poor laws in Elizabethan England), the reproductive patterns and family structures, the leisure activities, the spending habits and the dietary choices, *inter alia*, of the poor have been subject to moral or quasi-moral evaluation – as part of a judgement of “desert” – while the same aspects of the lives of the nonpoor have gone largely unchallenged.⁵ At the same time, for related reasons, the poor have been underrepresented or unrepresented among those responsible for the evaluations in question – for example, among policymakers, media commentators, leaders of charitable organisations – and have been accorded few opportunities to shape the discourse about poverty.

As numerous specific historical studies have demonstrated, the discourse that framed and frames the poor as “deserving” or “undeserving” – and in either case as the victims of evaluative injustice – emerged in close relation to Christian institutions and Christian theology (Humphreys 1995; Pullan 2000). It emerged, moreover, in a context where (specific kinds of) Protestant Christianity exercised decisive influence, not only over public moral reasoning, but also over the social imaginary, both in Britain and in the USA. An earlier – and also theologically-framed – emphasis on indiscriminate charity that brought spiritual benefits to the giver was replaced by an emphasis on the virtues of

‘second-order injustice’; I have chosen to keep ‘evaluative injustice’ in order to maintain a link with aesthetic ‘evaluation’, but ‘second-order injustice’ is likely to prove a valuable alternative, particularly in contexts where careful distinctions have to be made between this and other forms of injustice suffered by the same person or group in respect of the same incident.

⁴ An anonymous reviewer of an earlier version of this paper suggested that evaluative injustice should be thought of in terms of ‘injustice in the distribution of a certain kind of cultural power’. This is a useful approach to the *sources* of evaluative injustice and hence potentially also a route to redressing it – although it does not really serve to identify the wrong experienced by Alexandra Wilson at the point where she enters the court and is mistaken for a defendant, and an exclusive focus on ‘distribution of cultural power’ could risk diverting attention away from the everyday embodied experiences of a distorted moral space.

⁵ On the history of the ‘undeserving poor’, see Hindle 2004; Himmelfarb 1991; Pullan 2000.

personal responsibility and thrift, and by the promotion of categorisations of poverty that treated it either as the result of divine providence (to be borne with appropriate patience and humility) or as the consequence of moral and spiritual failure.⁶ The influence of Christianity over the emergence and persistence of the “undeserving poor” lay not only in institutional power – the long history, for example, of poor relief in England being managed through the parish system – but also in the power to influence what and who came to be seen as an object of moral scrutiny.

A second example of evaluative injustice, with recent and urgent relevance and already the subject of compelling theological analysis, was seen in the aftermath of the killings of unarmed Black men and women by police in the USA. Media reporting of, and certain official responses to, several such cases focused on questions around the behaviour and character of the victims – sometimes in relation to activities that were far removed from the incidents leading to their deaths. In one of the more notorious examples dating from 2000, the then mayor of New York City released the juvenile delinquency records of Patrick Dorismond, a security guard shot by undercover police, in an attempt to show (to quote the mayor) that Dorismond was “no altar boy”.⁷ Taking up the wider question of how violence against Black people is legitimised and excused, Kelly Brown Douglas, in *Stand Your Ground: Black Bodies and the Justice of God* (2015), presents a series of examples of Black murder victims being put “on trial for their own murders”.⁸ The cases of Jonathan Ferrell, Renisha McBride, Trayvon Martin and Jordan Davies, as Brown Douglas analyses them, demonstrate how Black bodies in a racist society are always already framed as *suspect* or *guilty* bodies, to the point where even Black victims of murder are placed in the dock rather than the witness stand.⁹ Meanwhile, and in parallel, the voices of moral evaluation and judgement from the Black community – the moral narratives, for example, of the families of the murder victims demanding justice – are delegitimised in advance through their association with the “suspect” bodies.¹⁰ As Brown Douglas shows, this evaluative injustice of framing the Black body as guilty or suspect has theological antecedents – notably in the theological justifications of chattel slavery that purported to establish a divinely-ordained racial hierarchy, naturalising the subjugation of Black people and hence establishing the free Black body as inherently transgressive.

A third example of evaluative injustice, again explored in recent theological work, is found in the framing of debates around abortion and reproductive health. Looking at examples of legislation and political rhetoric from the USA, Rebecca Todd Peters has shown how women making decisions about ending pregnancies are repeatedly positioned both as morally suspect – subject to external moral judgement for their actions – and morally incapable – without the authority or the capacity to make moral decisions on matters that decisively affect their lives (Peters 2018).¹¹ There have been

⁶On the history of tensions around attitudes to charity and the categorisation of the poor, see Ó Ciosáin 2014, 84-85. For a representative example of a sermon categorising the poor in moral and spiritual terms, see Katz 2013, 6. See also further discussion in Muers 2021.

⁷ In fact he was, literally, a former altar boy (Kolbert 2000).

⁸ See also the poetic theological reflection in Carter 2014 – ‘arrested (for) movement/ in de middle of de street speakin’ / Rinesha-ese on trial for her own murder’.

⁹ For a wider range of perspectives on the framing of Black bodies as morally suspect, and the complicity of theology in this process, see Lloyd and Prevot 2017. Of particular relevance to the present article is Elias Ortega-Aponte’s discussion of ‘lynching’ spectacles – historical and contemporary – as signs that in a racist society “[the] black body seems not to demand an ethical response.” (Ortega-Aponte 2017, 112). See also Eboni Marshall Turman’s intersectional analysis (2017) of the multifaceted “disrespect” affecting the bodies of Black girls.

¹⁰ For further discussion of the moral narratives surrounding the families of Black murder victims, see Morris 2019.

¹¹ I am grateful to Helena Yeadon for discussions of this book and related issues.

comparable feminist analyses of the abortion laws in the UK, looking for example at the view of women's moral agency and capability that is implied by the requirements for medical authorisation of abortion (Sheldon 1997; Amery 2015). The crucial point here for my purposes is not the specific debates about abortion law reform, but the broader insight that in the "abortion debate" women are subjected to intense moral scrutiny and judgement about life-affecting medical decisions – to an extent that applies to no medical decision taken by men – while in at least some cases being disempowered as moral reasoners and moral authorities. Noting the central role of Christian identities and communities in debates around abortion, Peters draws attention to the links between Christian ideological justifications of patriarchy – in particular the authority of men to establish laws and make judgements that direct women's lives – and the occlusion of women's moral agency.

This final example serves further to emphasise a crucial aspect of evaluative injustice, as I am presenting it here. The claim on which I am focusing is not that some specific policy on abortion is unjust towards women, nor that some specific aspect of Christian teaching *about abortion* or even *about how women should behave* is unjust towards women (although Peters in fact argues both of these points). I am focusing on a more general situation of injustice affecting the debate. Before any policy on abortion is agreed, and before any specific teaching is advanced for discussion, women have already been positioned as the – suspected or potentially guilty – objects, and not the agents, of this moral conversation; and this positioning of women, subject to moral scrutiny and deprived of the power to scrutinise, is the result of theologically-supported patriarchy.

The relationship between theology and evaluative injustice in the examples I have given here is not incidental. Theology, after all, claims to establish the context within which particular judgements about the good make sense, and within which any specific historical effort to establish the good is itself held up to judgement. Moreover, theology is concerned not only with the structure of ethical reasoning but with concrete institutions, practices and histories that form and express visions of a just society. Attention to evaluative injustice shows that there is some *vision* of justice and how to seek it, always already at work; there is an optics of the ethical space, a normative gaze, the gaze that looks at Alexandra Wilson and sees not a reasoner but a suspect. Theology, as Kelly Brown Douglas demonstrates in her analysis of the mutual implication of theology and white supremacy, advances and critiques such visions; theology is implicated in evaluative injustice and has the capacity to name and resist it.

In addition, it should be noted at this point that there are distinctive problems of "evaluative injustice" *within* Christian communities – over and above the implication of these communities in wider social dynamics – that are exacerbated by theology. The most obvious examples, as suggested above in the discussion of Peters' work, relate to the theological justification of elite male authority within church communities, of male authority within families and households, and of male domination of the interpretation of authoritative texts. Additionally, numerous well-publicised cases have drawn attention to the specific problems of evaluative injustice that arise when individuals acquire, along with institutional power, disproportionate levels of *moral* authority through their roles in church institutions. This is not only – although it is sometimes – about the identification of specific individuals as distinctively "saintly", and their consequent perceived immunity from moral reproach.¹² It is, rather, a more general problem within an institution whose core activities are taken to include teaching people to be good; the leaders and representatives of the institution will, just as such, be viewed as the teachers and judges in the space of moral debate, rather than as suspect

¹² Of which a recent example was the revelation that Jean Vanier, the founder of the L'Arche communities, had sexually abused several women (L'Arche International 2020).

persons subject to moral scrutiny.¹³ This asymmetry may be enshrined in institutional processes of accountability (or the lack of it), but it does not need to be thus enshrined to affect the shape of moral discourse; holding a position of authority within a “moral” institution, associated with the authoritative interpretation of divine teaching on moral matters *inter alia*, already confers power in the moral space. Moreover, theological ethics or moral theology, if it is positioned as “teaching the teachers” – deciding what the church or churches, in the voice of divine authority and through the voices of acknowledge leaders, will tell people to do – is in turn likely to reflect or reinforce the evaluative injustices within church communities.

In what follows, I discuss several interrelated ways in which Christian theology might approach the problem of evaluative injustice – both to critique the role played by theology in enabling evaluative injustice, and to support a critical response. The thread that connects all these sections is the recurring biblical theme – arguably underplayed in Christian theology but still giving rise to important reflections within the commentary tradition – of divine “impartiality” in judgement and its implications for human practices of judging.¹⁴

3. God’s Impartiality and the Call to Do Justice: (i) Imitation of God

In the discussion that follows, I focus on the interpretation of biblical texts that feature the Hebrew expression *nasa panim*, its Greek near-literal translation *prosopolempsia*, and closely related terms.¹⁵ *Prosopolempsia* / *nasa panim* is variously translated into English as “respect for persons”, “partiality” or “favouritism”. As we shall see, it is a term that is strongly associated in both Hebrew Bible and New Testament with the right administration of justice; it offers the opportunity for insights into the relationship between particular exercises of moral judgement under unjust conditions and a theologically-framed vision of justice in society.¹⁶ An investigation of the biblical uses and contexts of *prosopolempsia* and related terms quickly reveals one obvious connection between the critique of evaluative injustice and the theological context of moral deliberation. God is repeatedly identified as one who does not show partiality – who is impartial or is “no respecter of persons”. The *locus classicus* for divine impartiality in the Hebrew Bible is Deuteronomy 10:17-19 (echoed in 2 Chronicles 19:7):

For the LORD your God is God of gods and Lord of lords, the great God, mighty and awesome, who is not partial and takes no bribe, who executes justice for the orphan and the widow, and who loves the strangers, providing them with food and clothing. You shall also love the stranger, for you were strangers in the land of Egypt.

¹³ Examples and discussion of the interconnected phenomena of clericalism, the culture of deference, and the institutional tendency to protect perpetrators of abuses of power, can be found in the various documents produced by the independent inquiry into child sexual abuse (IICSA) as it related to UK churches; see for example IICSA 2020.

¹⁴ The most extensive study of divine impartiality, focusing on the Epistle to the Romans but with detailed coverage of the wider biblical context, is Bassler 1982. On the *theological* significance of divine impartiality, the contemporary resources are scant and are again mostly focused on issues arising from the interpretation of Romans; see for example the debate between Robert Jewett and John Barclay about the role of divine impartiality in the former’s commentary on Romans (Barclay 2008; Jewett 2008).

¹⁵ On *prosopolempsia* as ‘translation Greek’ in the New Testament – a non-idiomatic term, directly adopted from the Septuagint’s literal translation of *nasa panim* – see Bassler 1985, 548.

¹⁶ It is important to clarify that I am using ‘impartiality’ and ‘partiality’ here as translations of the biblical terms – picking up on their uses in commentaries – without intending to refer to the debates around ‘impartialism’ in ethics and political philosophy. For an overview of these see the introduction to Mendus 2002.

In Deuteronomy as consistently within the Hebrew Bible, and frequently within the New Testament, this attribute of God is linked to the fair administration of justice – or to use the terms discussed above, to the just configuration of the space of judgement. Already, however, although the focus is on the administration of justice, a broader picture of social inequality comes into view; thus a particular emphasis is placed on the equality of rich and poor before a just judge who “takes no bribe”. Indeed – with the reference to the orphan, the widow and the stranger – divine “impartiality” is connected here with what is more often, as in the tradition of liberation theology, described as a *partiality* or “preferential option” for the poor; to anticipate a later discussion, the divine reversal of “normal” conditions of justice might look radically unlike what is presently described as justice.¹⁷

What is the connection between, on the one hand, the claim that God is impartial and, on the other hand, the call to “do justice justly” - the formation of just spaces or processes of moral evaluation? To some commentators, both early and contemporary, it seems obvious; justice, or the just person, is supposed to imitate God by being free from partiality, and divine impartiality is a pattern to be followed. After all, the human judges appointed over Israel are exhorted to impartiality in terms closely reminiscent of the description of God’s impartiality (Deuteronomy 1:17; 16:19; Leviticus 19:15). On the face of it, a logic of imitation is at work here; judges should avoid partiality in order to resemble the divine judge (Enlow 2017). In a Christian context a similar conclusion might be reached from the injunction to love one’s enemies in order to “be children” of God who sends sun and rain on all alike (Matthew 5:44-45). In a commentary on Psalm 15 variously attributed to Augustine and Jerome, and quoting what appears to be an older Latin maxim, justice “knows no father or mother, it knows only the truth, it does not respect persons, *it imitates God* [my emphasis]” (Jerome 1964, 40).

There are reasons to be cautious, however, before assuming that the main anthropological or ethical significance of divine impartiality, and hence its main impact on how we address evaluative injustice, is found in through the imitation of God.¹⁸ For a start, the reasoning from divine character to human behaviour, insofar as it is expressed in the texts in question, is generally not one of imitation. Thus for example in the case given above – Deuteronomy 10:17-19 – the readers are exhorted to love the stranger, not because of their (the readers’) likeness to God but because of their likeness *to the stranger* – “for you were strangers in the land of Egypt”. Comparably, in what is arguably the New Testament passage closest in its thought-world to the Deuteronomy texts on divine impartiality – James 2:1-9 – partiality in judgement is condemned as an infringement of the command to love the neighbour “as yourself”. It is at least arguable that the key “driver” against evaluative injustice is not the likeness of the judge to God, but rather the likeness of the judge to those who are subject to judgement.

¹⁷ On the relationship between the ‘preferential option’ and impartiality in Catholic ethics – with a helpful extended discussion of ‘divine partiality’ in conversation with Gutiérrez – see Pope 1993. Pope argues for a balancing of divine ‘fairness’ (as impartiality) and ‘special concern’ or ‘care’ (as the preferential option for the poor). It seems to me more plausible to argue, as the liberation theology tradition would, that God’s preferential option for the poor is rightly conceptualised as an aspect of fairness or ‘doing justice’ – the righting of the pervasive wrongs of which evaluative injustice, as described in this article, is one.

¹⁸ There is of course an extensive debate on whether *imitatio Dei* is ever an appropriate route to ‘biblical’ ethics, particularly in the Hebrew Bible. See for an overview, and balanced appraisal, Houston 2007. Houston argues that Deuteronomy 10:17-19 is one of the clearest examples of a text that calls for *imitatio Dei*, specifically on the part of rulers; if this reading is correct, it plays into the concern expressed below. Emphasising *imitatio Dei* for those in power contributes to evaluative injustice, by reinforcing imbalances of moral authority that map onto other social imbalances of power.

There are particular problems with the idea of impartiality as “imitating God’s justice” insofar as it encourages the elision of the authority of human judges with the authority of the divine judge - and in doing so may in fact contribute to evaluative injustice, by placing the judging authority beyond reproach. Treating the practice of judgement as an imitation of divine justice widens the rhetorical gap between the agent of moral discourse – the one who articulates divinely-authorised judgements – and the object of moral discourse, the one who is judged. It encourages us to imagine the ideal judge, or the ideal voice of justice, as singular and unified (the voice of the one God); as powerful; and as morally unimpeachable. If judgement is a matter of speaking with the voice of God, it is this singular, powerful and morally unimpeachable voice that those claiming moral authority within Christian communities are expected to claim; and this will tend to exacerbate evaluative injustice. It is harder to ask critical questions about who has access to the voice of moral authority, the voice of the judge or the ethicist, if that voice has been framed as impartial and free from the constraints of social position. The personal characteristics of the judge *should not* matter, because justice imitates God; and therefore the personal characteristics of the judge *cannot be made to* matter, even when it is clear – as for example in the situations described in the first section of this article – that it matters a great deal who is permitted to speak authoritatively in moral or judicial debate.¹⁹

This recalls again the point made above that evaluative injustice is socially pervasive, and tracks with social and economic injustice more generally. The normal state of affairs, both in the biblical texts referred to here and in the contemporary examples given in my first section, is that economically or socially marginalised people (“the orphan and the widow” in Deuteronomy 10) have difficulty obtaining justice, and are subject to excessive moral scrutiny. Evaluative injustice – for example, the injustice of putting Black murder victims on trial for their own murders – is not the sporadic interruption of an otherwise well-functioning moral and social order; it is one of the ongoing effects of the pervasive malformation of a social order. In the next section, I examine how biblical texts on partiality and impartiality, and their interpretations, can engage with this feature of evaluative injustice.

4. God’s Impartiality and the Call to Do Justice (ii): Mediating Divine Justice in an Unjust World

The frequent references to real-world contexts suggest that injunctions against “partiality”, in both Hebrew Bible and New Testament, are located not in an idealised space of primordial or eschatological equality, but in lived contexts in which there are real power imbalances, individuals at persistent risk of suffering injustice because of their situation, and much for the judges to gain by favouring the wealthy. Thus for example in Deuteronomy 1:17 the instruction not to be partial in judging is issued by Moses to the newly-appointed judges, alongside the exhortation not to be intimidated and the reassurance that Moses will support them in managing hard cases; a very similar pattern is evident in Jehoshaphat’s charge to the judges in 2 Chronicles 19:6-7. In Leviticus 19:15 the injunction against favouritism draws attention to existing inequality (the rich and the poor).

¹⁹ Thus for example, returning to the examples discussed by Peters (2018), it is rare – although far from unheard-of – to see claims about male authority directly juxtaposed with arguments about abortion. What is much more common is to see abortion being spoken about *as if* it were obviously a matter to be adjudicated from the ‘detached’ perspective of people who are not and will not be pregnant, or *as if* women lacked the capacity or authority for moral deliberation.

A particularly clear New Testament example of this is, as already suggested, in the epistle of James – in an extended “scene” that speaks directly to many aspects of evaluative injustice.²⁰

My brothers and sisters, do you with your acts of favouritism [*prosopolempsia*] really believe in our glorious Lord Jesus Christ? (2) For if a man [*aner* – NRSV “person”] with gold rings and in fine clothes comes into your assembly, and if a poor person in dirty clothes also comes in, (3) and if you take notice of the one wearing the fine clothes and say, “Have a seat here, please”, while to the one who is poor you say “Stand there” or “Sit at my feet”, (4) have you not made distinctions among yourselves and become judges with evil thoughts? (James 2:1-4)

As he enters the space of judgement, the rich man is “looked upon” favourably because of immediately striking visual features that are recognisable tokens of his social status – his clothes and his gold ring (a sign of his hoards of wealth, as an early commentator noted – Hilary of Arles, cited in Bray 2000, 22). In James the “favouritism” shown in the ethical space exactly reflects the inequitable distribution of economic and political power in wider society; evaluative injustice is not an isolated or random phenomenon, but reflects the social structure within which it occurs. There is a straightforward mapping of evaluative injustice onto economic inequality (Bauckham 1999, 185-191; Tamez 2011).²¹ James dramatizes, we might say, the process by which the values of the dominant class are confirmed and sustained as the dominant values.²² Moreover, this mapping of evaluative injustice onto wider inequalities is thematised as continuous with economic oppression and the abuse of power. The monopolisation and misuse of agency by the wealthy in the place of judgement – dragging people to court – is one among many manifestations of oppression (as another example, later in the epistle there is an extended condemnation of rich people who defraud labourers of their wages – 5:1-6). As Bauckham notes, the behaviour of the addressees of the epistle, the “you” who show favouritism, is exactly what would have been expected in their social context; they are not being exceptionally prejudiced, they are simply going with the social flow – and in fact to go against it might well have adverse consequences (Bauckham 1999, 189; see Tamez 2011, 383).²³ It is striking, in this connection, that some early commentators on James bridled at the apparent suggestion that *prosopolempsia* was equivalent to transgressing the entire law – some degree of “respect for persons”, they argued, was simply unavoidable.²⁴ For the author of James, however, the act of showing favouritism – the inequitable configuration of the space of reasoning and judgement – makes the whole process of judgement “evil”. Evaluative injustice is not just one among many injustices – it is something that makes right judgement impossible. Putting this together with the preceding discussion, however, the implication is that *ordinary* moral judgement

²⁰ In discussing evaluative injustice in relation to James 2:1-4, I assume with many contemporary commentators that the scene envisaged here involves the collective and public exercise of judgement – that the ‘assembly’ is one in which the rights and wrongs of a case will be determined through a process of reasoning (the *dialogismoi* of verse 4). See Harrington 2003, 118.

²¹ There may possibly be a reference to patriarchy, noting the use of *aner* in verse 2; the wealthy person is marked as male, while the poor person could be male or female. However, it should be noted that James does use *aner* in unexpected contexts, including some where it is not at all clear why only males should be included (1:12, 3:2).

²² On the relevance of which for theology see also Turner 2020.

²³ Alongside this it is worth noting the uses of *prosopolempsia* in Ephesians 6:9 and Colossians 3:25 that indicate ‘regard for’ the distinction between slave-masters and slaves (specifically to deny that God shows that regard); in other words, the term refers to an ‘everyday’ pervasive structural inequality of the social context.

²⁴ See Augustine, Letter 167 to Jerome (Augustine 1990, 103): ‘...who does not sin in this case, if he does in fact sin, when he so discriminates in his mind that he thinks that one person is better because he is richer?’

in the society is marked by “evil”; since, and to the extent that, evaluative injustice is in the background of any and every attempt to do justice, justice is not done.

Looking again at Deuteronomy 10:17-19 with this pervasiveness of social injustice in mind, we might note that divine impartiality is linked to God’s salvific action in history, to bring about justice for the orphan and the widow and to provide for strangers – which in turn is linked back to the election and deliverance of Israel (Glanville 2018, 611). This points, in turn, to readings of these texts (particularly in the Hebrew Bible) in which God’s impartiality is dynamically related to the historical process of addressing and redressing injustice within human societies – a reading in which, as Boyd argues, the processes of justice and the actions of just judges mediate the innerhistorical revelation of divine justice (Boyd 2018, 190). Judges who – going against the social grain – refuse to take bribes and who deal impartially with the powerful and the powerless alike are, on this account, akin to the prophet who speaks the effective word of God into a historical situation to transform it; and it is noteworthy that in Deuteronomy 1 the authority of the prophet (Moses) explicitly stands behind the authority of the impartial judges.

Given the earlier comments on *imitatio Dei*, it is important to note that this reading does not require the judges themselves to have the personal characteristic of impartiality; impartiality is, rather, a characteristic of God and of the divinely-instituted law, and the judges are enjoined to *act* impartially in accordance with the office they hold.²⁵ The observation of commentators on James 2, noted above, that some degree of “respect for persons” is inevitable or even natural, is countered by this alignment of impartial justice-making with the prophetic word. In a context in which everyday “respect for persons” results in manifest injustice or hardship, there is a call for conscious action to redress that injustice. Rather than a logic of imitation in which divine justice is held up as an eternal standard to which human judges approximate (unsuccessfully), the logic of mediation foregrounds divine justice as a dynamic within history.

The idea of just judges mediating God’s action against injustice does seem, on the face of it, to be open to some of the same problems as the idea that justice “imitates God”. In both cases, the authority of divine words or actions – and an authority linked to God’s impartiality – appears to be claimed for moral or judicial reasoners. Without denying this risk, I want to suggest that the model of mediation, particularly when brought into close association with prophetic action, can work to undo evaluative injustice even here, that is, even in relation to the question of claims to moral authority. Within the Hebrew Bible, the judges who are instructed to judge impartially are clearly positioned as vulnerable to error and intimidation (note the repeated instruction not to be intimidated in Deuteronomy 1:17), as a group who rely on the support of others (such as Moses, Deuteronomy 1:17), and as closely akin to the people who are most vulnerable to injustice or exclusion (the stranger/ resident alien, Deuteronomy 10:19) – in other words, as *nothing like* the reliable, single, powerful divine judge. If the judges do manage to act justly, it is despite, rather than because of, their own moral capacities – and it is because of, rather than despite, their embeddedness in particular institutional and social contexts.

This approach to evaluative injustice invites reflection on the use of legal process, and potentially other processes of moral reasoning, to advance the wider aims of justice – recognising the gap between divine and human justice, and indeed the pervasive corruption of the very conditions of justice, as the context in which the call to exercise just judgement must be heard. Asking questions

²⁵ There are a few examples in Christian history of the direct use of the claim that God is ‘no respecter of persons’ to advance arguments for equality of rights before the law – see Skwire 2015.

about who judges and who is judged, and on what basis – and asking questions about how this relates to the social and economic context – is not an optional prolegomenon to the task of theological ethics, it is part of the exercise. Besides the examples given in my first section, one recent example of what this looks like is found in Esther Reed’s discussion of responsibility and “answerability” in relation to global corporate responsibility and international law (Reed 2012; Reed 2018, 121-165). Reed considers how those in positions of privilege can act to bring about the recognition of the global poor as active participants in judicial and moral debates about their future – and, conversely but just as urgently, how global corporations can be made morally and legally accountable. She locates this imperative to extend “answerability”, and thus to the evaluative injustice that excludes the voices of the global poor from moral debate, in the gap between human and divine justice – the gap across which the call to “pursue justice justly”, is heard.

Reed’s work is also, however, characterised by extreme caution – born of the Protestant side of her “Protestant Thomist” approach – about the prospects for just human action that adequately answers the divine call to justice; and the earlier discussion of the pervasiveness of evaluative injustice, and its links to deep-rooted social injustices, should limit our optimism about any attempt to address it through the activities of judges, ethicists or moral reasoners. In the next section, I consider at more length the implications of one of the most complex and controversial biblical accounts of divine impartiality in relation to human injustice – and how it might shape theological responses to evaluative injustice.

5. **“There Is None Righteous”: Divine Impartiality, Evaluative Injustice and the Gravity of Sin**

Jouette Bassler argues that the Second Temple period sees the extension of the theological and anthropological significance of divine impartiality, still within a primarily judicial framework, to develop universalistic claims about the applicability of God’s judgement to both Jews and Gentiles. For example, in the Psalms of Solomon (see 2:17) God’s impartiality, in conjunction with God’s universal kingship, is used to argue that Gentiles who defile the sanctuary will be punished; conversely, God’s impartiality means that Israel as historical recipient of God’s promise and favour will not escape punishment for transgression (2 Baruch 13:4) (Bassler 1985). This extension of divine impartiality to questions about the relationship between Jews and Gentiles – still within a judicial framework – is essential background for its much-debated use in Romans 2:11.

There will be anguish and distress for everyone who does evil, the Jew first and also the Greek, but glory and honour and peace for everyone who does good, the Jew first and also the Greek. For God shows no partiality. All who have sinned apart from the law will also perish apart from the law, and all who have sinned under the law will be judged by the law. (Romans 2:9-12)

Standard readings of Romans 2:11 allow us to bring together the idea that divine impartiality implies the judgement on equal terms of the whole human race, with the fact (noted above as the common background assumption of texts and commentaries) of the pervasiveness of injustice. The result of impartial divine judgement is equal-opportunity condemnation. Jews and Gentiles are judged on the same terms and found to be equally wanting. This is (on at least some plausible readings) a consequence of divine impartiality in Paul’s thought; it also has important implications for the theological diagnosis of, and response to, evaluative injustice. On the account of the human condition in which this “equal-opportunity condemnation” is embedded, sin – like evaluative injustice in the above example – is not an occasional transgression of boundaries, but rather a comprehensive corruption of the capacity, not only to do the good but also to perceive, reason about or judge the good. Its deforming power is manifested socially as well as individually; it appears

in and as societal norms and everyday practices. Since there is “none righteous”, the ordinary state of the judge (as in the James text discussed above) is to be an unrighteous or evil judge; the passage in which Paul refers to divine impartiality begins with the indictment of those who would condemn others for breaking the law while ignoring their own profound implication in sin.

By way of reinforcement of this reading, we might note that several texts in the Hebrew Bible suggest that God’s impartiality functions as a negative judgement on the ordinary practice of justice. God *does not* show respect for persons or take bribes – the strong implication being that, in a context of unequal power relations, most judges sometimes do. Calvin’s commentary on Deuteronomy 10:17 makes this explicit; in this verse, Calvin says, “God distinguishes Himself from men, who are carried away by outward appearance, to hold the rich in honour, and the poor in contempt; to favour the beautiful or the eloquent, and to despise the unseemly”. Similarly, on Deuteronomy 16:19, Calvin comments that judges must be repeatedly enjoined to pursue equity because “nothing is more likely to happen than that men’s minds should be clouded by favour or hatred.” (Calvin 1854, 138).

Will an emphasis on the universality of sin, as a state and not merely an act, and as a profound corruption of the capacity to perceive and judge the good, help to address evaluative injustice? At the very least, we might think, it will help with the critical work; it will sensitise us to the likelihood of finding injustice hidden, or perhaps hidden in plain sight, within even the most sincere attempt to reason well about justice and the good. It will also serve to head off some inadequate responses to the challenge of evaluative injustice – for example, an appeal to individual good intentions or to a problem of “bad apples”, or the attempt to reduce the problem to one ethical issue among others. It may also have specific and important applications in some particularly troubling cases of theologically-inflected evaluative injustice – where the position accorded to individual moral teachers or exemplars has placed them beyond reproach even in the face of clear evidence of their wrongdoing.²⁶

The risk is that an appeal to the universality of sin, as an equal across-the-board discount on *everybody’s* ethical credibility (or perhaps a comprehensive devaluation of everybody’s ethical currency), serves in practice to leave any existing unequal power-relations in the space of ethical reasoning untouched – and also to take away some of the urgency of any attempt to change them.²⁷ More than this, an emphasis on the universality of sin in “the world” can in fact reinforce the moral or juridical power of ecclesial authority figures insofar as they claim to offer a radically different moral framework from “the world”, and just as such become immune to the critiques that would normally be levelled at “the world”.²⁸ It might even reinforce the resistance of church communities to critiques of evaluative injustice that are constructed as “secular” – for example, to critiques that

²⁶ Thus for example in the aftermath of the revelation of Jean Vanier’s sexual abuse there were several critical responses exploring the dangers of treating an ‘ordinary’ sinner as if he were morally infallible.

²⁷ A similar risk with structurally similar appeals to the incompleteness or inadequacy of theological speech has been noted, in relation both to classic texts of apophatic theology and to contemporary systematic theology. See Rose 2019, 20-24; Tonstad 2020, 502.

²⁸ Arguably this was one of the contributing factors to the failure of church authorities to deal with John Howard Yoder’s sexual predation and abuse. Yoder was the advocate and architect of a radical vision of Christian ethics premised on a sharp distinction between the believing community and the ‘world’; both his abusive activities and the response to them were framed by the explicit or implicit assumptions that ordinary ethical rules and constraints (framed as ‘secular’) did not apply to him or to his relationships. See for further discussion of issues around Yoder’s theological and ethical ‘authority’, Guth 2018.

prioritise the language of human rights or equality; these critiques will themselves be seen as the products of unjust efforts to do justice.

One obvious response to this might be to state clearly that ecclesial institutions and the moral teaching they provide should be treated – as indeed the New Testament texts discussed here, directed as they are to church communities, suggest – as equally liable to become “unjust judges”. They are as such equally in need of the kind of comprehensive critique suggested above, the critique that refuses to attribute instances of evaluative injustice to a few individual aberrations, and that attends to the material conditions of judgement (who is in the room, who is given the position of honour) rather than to general prescriptions of impartiality. The distinctive character of ecclesial communities might be seen, not so much in their ability to form alternative and better spaces of judgement, as in their capacity *not* to judge – to mark, for example with the shared confession of guilt and other practices that disturb moral hierarchies, the persistent gap between divine and human judgement, and hence to maintain spaces where evaluative injustice can be challenged.²⁹ One action against evaluative injustice might, in fact, be for those regarded as holding positions of moral authority by virtue of their religious office publicly to cede those positions – as a starting point, by the public apology or confession of guilt in the wake of abuses of power. In the light of the examples cited at the beginning of this article, however, it is important to reiterate that church communities have frequently *not* done this; rather, as perceived guardians of moral values they have reinforced and re-performed evaluative injustice.

6. Who is Judged, Who Judges? Stigma, Evaluative Injustice and Love of Neighbour

We have seen that evaluative injustice begins, as it were, outside the courtroom, with (Fraserian) misrecognition – the culturally-determined denial of standing that impedes full social participation. There are questions about who can enter the space of judgement to raise a concern or bring a case, who can speak and deliberate as a member of the community. In this section I look more closely at the component of evaluative injustice that consists of marking some persons, not only as non-participants in moral deliberation, but also as morally suspect – as the objects of moral enquiry to whom guilt, or at least the possibility of guilt, attaches from the start. In the examples discussed in my first section, this place is held by the Black person attempting to exercise freedom and agency in white supremacist society; or the welfare claimant in a society shaped by the binary of the un/deserving poor; or the sexually active woman under patriarchy. In James 2:1-4 we find the figure of the poor person who is observed in “filthy” clothes – with aesthetic and (pre-)moral perceptions combining to render them not only marginal but also suspect before the deliberations begin.³⁰

Christian theological explorations of stigma, particularly those developed in the context of responses to HIV/AIDS, bring to the fore a useful interpretive framework for addressing this aspect of evaluative injustice. With stigmatisation, a person is marked out and responded to as morally problematic, in a process of “othering” that excludes them from the position of the subject or community that makes the moral judgement.³¹ Denise Ackermann’s account of stigma and/as sin in the context of HIV/AIDS (2005) allows her to connect the personal, the societal, the cultural and the global-political forces that converge on the body of the stigmatised person. Importantly for our purposes, her narrative of stigmatisation, grounded in the life experiences of African Christians living with HIV/AIDS, draws attention to *fear of being judged* as a determining feature of the life of the

²⁹ For the church as a community that does *not* judge, see O’Donovan 2017. 60.

³⁰ The word translated as ‘filthy’, *rupa*, has – like the word ‘filthy’ itself - both moral and aesthetic connotations; see its use in Revelation 22:11.

³¹ Contemporary use of the term originates with Goffman (1963).

stigmatised person. The stigmatised person expects to be judged - in the course of daily life, in contexts where non-stigmatised persons are not subject to any kind of judgement or scrutiny; and this fear of judgement is a key dimension of her social isolation. It is important to emphasise the “fear of being judged”, because in my account of evaluative injustice I have suggested that the “suspicion” – the differential level of moral scrutiny, the hypersurveillance – to which a person is subjected as a result of certain characteristics is itself an injustice, even if the result of the scrutiny is that the person is judged to be innocent, deserving, respectable or morally praiseworthy; even if, in Ackermann’s example, the HIV/AIDS sufferer is eventually labelled as an “innocent victim” by the community. The injustice has already been done by the asymmetric exposure to judgement. There is a particular problem where being placed under suspicion involves the risk of what Imogen Tyler terms social abjection – being expelled from the social body, becoming a life that does not matter.³² The person exposed to judgement is not yet socially abject, but she is at risk of becoming such, and the risk is itself a source of suffering.³³

Naming the act of stigmatisation as sin – as Ackermann does, and as seems to be suggested in James 2:9 with the treatment of the impoverished person – is more radical than might at first appear. It makes the “evil” thoughts of the unjust judges, or the systemic bias in moral reasoning, the *primary* problem – rather than a minor hiccup to be dealt with before getting on with the serious business of ethics. It indicates the deep roots of at least some cases of evaluative injustice – in a community based on exclusion and the fear of exclusion. It also clarifies the link, indicated in the James text (2:8), between evaluative injustice and love of neighbour. Stigmatisation is not only a specific act against the neighbour, it is a failure to recognise the neighbour as one “like yourself”, a failure rightly to perceive the shape of the moral community – which in turn leads to a failure to keep the law *as a whole* (following and developing Augustine’s interpretation of the puzzling text in 2.10).³⁴ The emphasis on inclusion also points us back to Deuteronomy 10 and recalls the association between divine impartiality and love for the “stranger” (the *ger*, the resident alien) - relating divine impartiality not merely to justice *within* a community, but also to an expansive vision of the community within which justice must be done. Mark Glanville argues that the Deuteronomy 10 text forms part of a wider picture within which the *ger* as a vulnerable person at the margins of the community is incorporated into kin relations.³⁵

³²On social abjection see Tyler 2013. A relevant example in the UK context, recently back in the news, was the police, media and courtroom categorisation of the women murdered by the so-called ‘Yorkshire Ripper’ in the 1970s as, on the one hand, ‘prostitutes’ and, on the other hand, ‘innocent’ women – with the strong suggestion that the latter group’s deaths were the ones that really mattered. As feminist activists noted, the categorisation not only stigmatised sex workers, but positioned *all* women’s lives and well-being as potentially dispensable – depending on the moralised evaluation of their behaviour by male-dominated institutions. See BBC News 2020b. I am grateful to Al McFadyen for discussions of this case.

³³ I am grateful to Tamanda Walker and Marika Rose, respectively, for drawing my attention to the relevance of hypersurveillance and of social abjection to this discussion.

³⁴ Augustine in his letter to Jerome on James 2:10 first advances what he takes to be an obvious, but obviously repugnant, reading – that favouritism as described in verses 1-4 renders one guilty of breaking every other specific commandment (including those against murder and adultery). His eventual resolution is that every infraction of a commandment is also a failure to love the neighbour, and since love of neighbour underpins all the commandments, infraction of one commandment is also failure in that which sustains them all. Augustine 1990, 102-103..

³⁵ Indeed, it is this emphasis on the inclusion of the *ger* – and the links drawn between this and the exodus, with Israel’s experience as strangers in Egypt – that enables Schaser (2018) to argue that the use of divine impartiality to explain the inclusion of Gentiles in the nascent Christian community (Acts 10:34) is simply applying the Deuteronomic vision.

Love for the stigmatised neighbour – the impoverished person in the “filthy” garment who is judged as soon as they walk into the room, the person on the verge of becoming socially abject – constitutes a radical challenge to the present configuration of the ethical space, which in turn will change how justice is done. Love for the neighbour, applied to the outsider or the stigmatised person, is not a principle *within* ethical reasoning (which would mean accepting an existing limited definition of who counts as a “neighbour”), but rather a move to transform the structures that form and deform that reasoning. In the situation described by Ackermann, for example, love for the stigmatised person living with HIV/AIDS also entails rejecting the moralisation of HIV/AIDS itself and the practices of evaluation, surveillance and condemnation that surround it.

Looking once more at James 2 alongside Ackermann’s work, a further possibility emerges for the theological development of this idea of the radical re-ordering of the ethical space – namely, through the recognition of Christ as a bearer of stigma (Ackermann 394). Indeed, the idea discussed earlier of the historical mediation of divine justice through the activities of just judges – with impartiality, or the active rejection of partiality, as a crucial dimension of those activities – already lends itself to a Christological reading, as the New Testament identifies Christ as the locus of God’s action to bring about justice in history *and* as himself the just judge.³⁶ At the end of the epistle of James, with the approach of the *parousia*, the judge is described as “standing” at the doors (5:9) – just as the poor person was earlier forced to “stand” in the courtroom. There is a dramatic inversion of the previous conditions of judgement, associated with the advent of divine justice – and with the advent of the stigmatised person as the one who passes judgement on the judges. Taking the hint from this text, a Christological rereading of the theme of partiality and impartiality in judgement – including, perhaps, discussion of the divine “preferential option” for the stigmatised poor, as the reversal and undoing of pervasive injustice – would be a further and an important contribution to the theological interrogation of evaluative injustice.

7. Conclusion: Evaluative Injustice as Point of Encounter for Theology and Ethics

I have attempted to demonstrate why theologians and scholars of religion should be interested in evaluative injustice as a problem – one that presents specific challenges for ethics, and that also has specific affinities with theology and with the study of religion more broadly. The examples discussed in my first section suggest that, because of the role of theology in configuring the moral space – particularly in establishing who plays the parts of judges and judged, morally uninteresting and morally suspect – theologians who are drawn into ethical debates also have some responsibility critically to interrogate the justice or injustice at work in the shaping of those debates. Even regardless of the history of theology as ideology supporting evaluative injustice, however, I have suggested that there are strong intra-traditional reasons for those engaged in Christian theological ethics to be concerned about evaluative injustice – to be alert to the likelihood of being “judges with evil thoughts” in contexts of social injustice, to attend to the imperative to pursue justice justly, and to perceive the connections between this and divine impartiality. This is particularly important given the continuing salience – for good or ill – of judgements about personal responsibility and “desert” in a range of practical and policy contexts.³⁷

³⁶ See for example Acts 10, where in Peter’s response to the conversion of Cornelius the claim that God is ‘no respecter of persons’ (10:34) leads on to the affirmation of the crucified Jesus as ‘judge of the living and the dead’ (10:42).

³⁷ Besides the complex issues around welfare and the ‘moralisation of poverty’ discussed above, we might consider as an example the significance attached to patients’ ‘lifestyle choices’ in decisions about the allocation of organs for transplant, or other resources in healthcare systems.

Moreover, one of the implications of this discussion is that a surprisingly wide range of theological *loci* and claims, even those that are not obviously “about” ethics, can make a difference to ethics – particularly as they enter and affect a social imaginary, within a church-community or in wider society. Thus, for example, as indicated in the previous section, Christology configures and reconfigures the ethical space through the “placing” of Christ as the stigmatised other and/or the impartial judge; and, as suggested in the examples at the beginning of this article, doctrines of providence or of creation or of election configure and reconfigure the ethical space by “placing” specific groups in moralised relationships of superiority and inferiority, or of authority and subordination. To develop theological responses to evaluative injustice, several themes that appear occasionally in accounts of the basic structures or foundations of ethics might need to be brought more to the fore in such accounts. Obvious examples include representation and authority in the making of moral judgements, and how this relates to theological accounts of representation; class, race, gender and other social hierarchies as factors that shape the moral and theological space; indexicality in moral deliberation (the difference it makes whether I am making judgements about myself, you, or somebody else) in relation to the indexicality of theological speech; and numerous aspects of ecclesiology, including the significance of claims about the holiness of the Church for how ethical deliberation is conducted.

Looking more widely, it should be noted that there is clearly considerable scope for philosophical work on evaluative injustice itself, not least to develop a more fine-grained characterisation of the issues; this might well be done in conversation with the literature on epistemic injustice, referred to in the introduction. It is also important to note a number of other theoretical frameworks, from various disciplines, that overlap with aspects of the account of evaluative injustice given here – not only stigmatisation and social abjection, referred to above, but also outgrouping, class-based analyses of morality, or moral self-licensing (as an account of how those framed as “good” come to exempt themselves from moral scrutiny). Victim-blaming and its associated attitudes would appear to constitute a significant and complex example of evaluative injustice – with religious as well as philosophical and psychological aspects.³⁸

Perhaps the most difficult set of questions that will need to be explored if we take evaluative injustice seriously concern the construction of the discipline of ethics itself, and in particular of theological ethics. Which voices are granted authority within ethics? Is the authoritative voice of the ethicist or the theologian mapped onto ecclesial or social hierarchies, thus reinforcing existing asymmetries of agency in moral discernment? How do curricula and research agendas work to position certain groups as morally suspect? The effort to “pursue justice justly” in ethics need not, I suggest, mean endless absorption in cycles of critical self-analysis – but it should involve awareness of, and attention to, the many factors that pre-form and deform the space of moral debate.

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³⁸ On moral self-licensing see Merritt 2010; and on victim-blaming and its various cultural props – including theological props – see most recently Taylor 2020.

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