

judge in to deliver sentence, then we seek out the most worthy recipient for our goods; we prepare nothing with greater care than the things which don't matter to us.

In matters of practical reason, we are thought of as judges weighing the merits of various courses of action, our *officia*. Selfish considerations are the bribes which corrupt our moral judgement and the only way an ordinary man can be counted on to set aside such selfishness in his choices is to wait until he is so close to death that he cannot count on benefiting from the choice.<sup>10</sup> At 3.12.2–3 Seneca refers to comparable limitations on the good judgement of a moral judge; the values placed on various kinds of benefits are variable, *prout fuerit iudex aut huc aut illo inclinatus animo*. (Cf. *Ep.* 81.31.)

In a later book of the *De Beneficiis* there is another echo of the *iudex* model developed so far. In 6.6.1–2 Seneca is emphasizing the freedom of judgement of the moral judge. Unlike legally defined offences, favours are bound by no specific laws and the agent plays the role of an *arbiter*, free of the narrow constraints of interpreting specific bits of legislation. In those cases,

nothing is in our own power (*nostrae potestatis*), we must go where we are led. But in the case of favours I have full discretion (*tota potestas mea est*), I am the judge. And so I do not separate or distinguish favours and injuries, but I refer them to the same judge (*ad eundem iudicem mitto*).

The difficult task of weighing benefit and injury must be done in a coordinated way and demands a judge with full power to decide on the relevance of all factors. The *formula* and *leges* which bind an ordinary judge would be unreasonable constraints in such cases; though he refers to himself as an *arbiter* in such cases, it is clear that the *arbiter* is thought of as a judge with particular latitude, but still as a judge.<sup>11</sup>

This contrast between the freedom of the moral judge and the constraints binding the ordinary judge is a disanalogy, and

<sup>10</sup> One might compare this to the myth in Plato's *Gorgias*, which tells how the judges of men's lives appointed by Zeus did a poor job as long as they exercised their judgements while still alive.

<sup>11</sup> See Bellincioni, '*Clementia*', 123–4, and below n. 12.

Seneca uses the contrast to give sharper definition to his model of moral judgement. In book 3, sections 6–8, Seneca considers the question of whether it should be possible to bring legal actions for ingratitude.<sup>12</sup> His reply, in brief, is no: this is a job for moral not legal judgement. But in setting out this reply his use of the model of legal judgement gives clearer shape to the concept of moral judgement he has been developing.

It is not the case, Seneca argues, that ingratitude is not a very serious offence; yet the tradition at Rome as almost everywhere else is not to punish it (3.6). One explanation for this is that the assessments involved in such cases are extremely difficult (*cum difficilis esset incertae rei aestimatio*) so that we suspend our own judgements and refer the matter to divine *iudices*. Variable human inclinations cloud human assessments, just as they do the decisions of judges.

In 3.7 he outlines justifications for exempting ingratitude from actual legal judgement and reserving it for moral judgement. The first three do not bear closely on our theme of moral judgement, but at 3.7.5–8 the *iudex* model comes into play again. I translate:

Moreover, all the issues which are the basis for a legal action can be delimited and do not provide unbounded freedom for the judge. That is why a good case is in better shape if it is sent to a judge than to an arbitrator, because the *formula* constrains the judge and imposes fixed limits which he cannot violate; but an arbitrator has the freedom of his own integrity (*libera religio*) and is not restricted by any bounds. He can devalue one factor and play up another, regulating his verdict not by the arguments of law and justice but in accordance with the demands of humanity and pity (*misericordia*). A trial for ingratitude would not bind the judge but would put him in a position of complete freedom of decision (*sed regno liberrimo positura*). For there is no agreement on what a favour is, nor on how great it is. It makes a big difference how indulgently (*benigne*) the judge interprets it. No law shows us what an ungrateful man is: often even the man who returned what he received is ungrateful and the man who did not is grateful. There are some matters on which even an inexperienced judge can give a verdict, as when one must decide that someone did or did not do

<sup>12</sup> See Bellincioni, '*Clementia*', 116–18.