

confusion or deception. His innocence has been reached, none the less, through doing wrong.

The stern judge, then, is someone who judges others as harshly as the law permits, despite the fact that such judgement would, if exercised consistently, lead to his own condemnation under the same laws. And even if he is now morally perfect it remains the case that, at some point in his past, a stern judge could have brought his career, if not his life, to an end. A *severus iudex*, then, would be undermining his own credibility as a judge by implicitly relying on a double standard. (More on this below.) He would, then, be weakening his own authority and so compromising his effectiveness as well as behaving unreasonably. Further light on the propriety of passing judgement comes from the closing sections of this fragmentary work, in 2.7. Seneca is discussing the topic of forgiveness:

'But why will he not forgive?' Come now, let us make up our minds as to what pardon is, and we shall realize that a wise man ought not to grant it. Pardon is the remission of deserved punishment. The reason why the wise man ought not to grant this is given at greater length by those whose theme it is. [Here Seneca refers to Stoic philosophers acting in their doctrinally official capacity.] I for my part, as though to summarize a case that is not my own,<sup>6</sup> would say: a person can only be forgiven if he deserves to be punished. But the wise man does nothing that he ought not to do and omits nothing that he ought to do. So he will not excuse a punishment which he ought to exact. But what you want to achieve through pardon [*venia*] can be granted to you in a more honourable way. The wise man will spare men, take thought for them, and reform them—but without forgiving, since to forgive is to confess that one has left undone something which ought to have been done. In one case, he may simply administer a verbal admonition without any punishment, seeing the man to be at an age still capable of correction. In another, where the man is patently labouring under an invidious accusation, he will order him to go scot-free, since he may have been misled or under the influence of alcohol. Enemies he will release unharmed, sometimes even commended, if they had an honourable

<sup>6</sup> *tamquam in alieno iudicio dicam*—I think that Procopé's translation is wrong here. I would prefer to translate 'as though I were speaking at someone else's trial'—which he is not really doing, since this issue affects us all.

reason—loyalty, a treaty, their freedom—to drive them to war. All these are works of mercy [*clementia*], not pardon. Mercy has a freedom of decision. It judges not by legal formula, but by what is equitable and good. It can acquit or set the damages as high as it wishes. All these things it does with the idea not of doing something less than what is just but that what it decides should be the justest possible. (tr. Procopé)

The wise man is here envisaged as a judge acting in pursuit of the just outcome in every case. Mercy is a factor internal to the determination of the just decision, whereas pardon is external to that decision. The wise man judges with freedom of decision (*liberum arbitrium*), not constrained by the *formula* which would guide a judge in the court room.<sup>7</sup> This is the latitude which makes it possible for his consideration of relevant factors to be based *ex aequo et bono* rather than on more mechanical considerations. The reformatory goal of punishment remains paramount.

Evidently the wise man does not play the role of a *severus iudex* in his dealings with others, whether or not he is an actual judge presiding at a tribunal, and we may infer that the stern judge neglects the broad range of relevant factors because he fails to acknowledge his own human fallibility and its relevance for his own judgements. The wise man of *De Clementia* 2 will have become wise after having erred, and awareness of that personal history will enter into his subsequent judgements. This is in itself an interesting insight into moral judgement, and one which militates vigorously against some models of moral decision-making. One thing of special note, though, is that the insight—which applies to actual judges as much as it does to anyone called upon to condemn or to forgive—is developed and expressed in quite explicitly legal language. For we have not merely the language of the *iudex*, but also other

<sup>7</sup> Bellincioni, *Potere ed etica in Seneca*, 95, comments on the legal metaphor here: '*Liberum arbitrium* is in fact the freedom of judgement of the *arbiter*, who in the Roman legal system is contrasted with the normal *iudex*, who by contrast delivered his verdict for the case in question on the basis of the praetor's *formula* furnished to him on each occasion'. See below on the *arbiter*. Ch. 2 of Bellincioni, *Potere e etica*, 'La clemenza del giudice', is useful background for my treatment of the metaphor. See too Bellincioni '*Clementia*', esp. 120–2.