Empire and Politics in the Eastern and Western Civilizations

Roma Sinica

Mutual Interactions between Ancient Roman and Eastern Thought

Volume 2

Empire and Politics in the Eastern and Western Civilizations

Searching for a *Respublica Romanosinica*

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Ermanno Malaspina

From ‘Zero Tolerance’ to ‘Turn the Other Cheek’ and Back: Lucius Annaeus Seneca and the Graeco-Roman Roots of a Modern Transcultural Dilemma

I observe with admiration my colleagues who, thanks to their transcultural skills, can afford to read Eastern and Western sources first-hand and, in addition, in the oldest languages of the East and the West respectively. More humbly, my purpose here is to focus on the Western World, and particularly on its Classical period – the only one I have studied in a professional way – and on Seneca, to propose an overall picture, necessarily partial and simplified, aimed at a transcultural political theme, which is pivotal both in the East and in the West *today* (but also *always*, I would say): the dilemma of power gradation, namely the use of either force or gentleness, determination or patience, severity or kindness towards political opponents and/or public enemies. In doing so, I will not introduce any major novelties for understanding Seneca, but I hope to offer an interpretive framework and to showcase some Western ideological constants and recurrences of some utility in building a cross-cultural perspective. This may help scholars with more expertise than mine make full use of these constants by comparing them to the East.

I will divide my paper into five parts: after a short introduction to explain my question and my odd title (“From ‘Zero Tolerance’ to ‘Turn the Other Cheek’”), I examine justice as the Golden Mean between four ethical extremes, taking up Seneca’s thought. In the three following sections, I deal with the ideological outcome of my four-quarter grid, firstly examining the interchange of morally acceptable attitudes, then the opposition of sternness versus cruelty, and in the fifth section the last pair of opposites: mercy and commiseration.

Note: I thank warmly my student Micol Jalla for her judicious remarks and Phillip Peterson for the linguistic revision.

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1 'Zero Tolerance' and 'Turn the Other Cheek'

I have deliberately chosen two mottos that belong to unrelated contexts but which easily convey in the social imaginary the two opposite behaviours that I mean to signify.

'Zero Tolerance' is a new slogan: the first use of it was recorded in 1972 in the context of US political language: it illustrates a policy that enforces a penalty for every violation of a law.[1] The criminological basis of this procedure is known as the 'broken windows theory', a formula coined in 1982 and based on the assumption that any sign of neglect and disinterest (the 'broken window') makes it easier for a crime to take place, because it gives the impression that attention is scarce and that, therefore, the repression of a possible crime is reduced or absent; hence the need always to punish, without ever turning a blind eye, even on the lightest of offences.[2] This method, a technique of administering justice and managing public order, became universally known, even beyond the borders of the United States, when it was officially adopted by Rudolph Giuliani as mayor of New York City (1994 – 2001), with apparent positive results.

On the other side, 'Turn the Other Cheek' originates from Jesus' 'Sermon on the Mount' or 'Sermon on the Plain' in the New Testament Gospels of Matthew and Luke respecticevly. These two variants of the saying in the Synoptic Gospels purportedly derive from a *logion* of Jesus present in the famous 'Q Source', therefore of very high antiquity and authority:

> *Matthew* 5.38 – 42 ('Sermon on the Mount'):[38] You have heard that it was said, "An eye for an eye and a tooth for a tooth." [39] But I say to you, Do not resist the one who is evil. But if anyone slaps you on the right cheek, turn to him the other also. [40] And if anyone would sue you and take your tunic, let him have your cloak as well. [41] And if anyone forces you to go one mile, go with him two miles. [42] Give to the one who begs from you, and do not refuse the one who would borrow from you.[3]

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1 There is even a Wikipedia page (https://en.wikipedia.org/wiki/Zero_tolerance) about 'zero tolerance', with the following description: "Zero-tolerance policies forbid people in positions of authority from exercising discretion or changing punishments to fit the circumstances subjectively; they are required to impose a pre-determined punishment regardless of individual culpability, extenuating circumstances, or history. This pre-determined punishment, whether mild or severe, is always meted out".

2 Kelling/Wilson (1982).

3 *English Standard Version* (*ESV*). The Greek text reads: ἀλλ'ὅστις σε ῥαπίζει εἰς τὴν δεξιὰν σιαγόνα [σου], στρέψον αὐτῷ καὶ τὴν ἄλλην; The Vulgate reads: *sed si quis te percusserit in dextera maxilla tua, praebe illi et alteram.*

> *Luke* 6.27–31, In the ‘Sermon on the Plain’: [27] But I say to you who hear, Love your enemies, do good to those who hate you, [28] bless those who curse you, pray for those who abuse you. [29] To one who strikes you on the cheek, offer the other also, and from one who takes away your cloak do not withhold your tunic either. [30] Give to everyone who begs from you, and from one who takes away your goods do not demand them back. [31] And as you wish that others would do to you, do so to them.[4]

Beyond historical context and theological interpretation, in which we are not interested here,[5] it is evident that we are no longer dealing at the level of public order management, but at the higher level of an ethical imperative, whose radicalism has always challenged the consciences of people, and not only of believers.[6] Moreover, while general ethical rules of two thousand years ago can also be of use today – and actually establish the creed of a part of our community – the policies for managing public order are historically determined and cannot take on an absolute value.[7]

Nevertheless, these two mottos can still be used (this is my intention here) to define, in an immediate and simple way, two extremes of behaviour. On the one hand, the behaviour of one who believes it is right and useful to implement an ethics or policy or action of complete repression (the context is not important now), without exception, and on the other hand of one who, also without exceptions, intends to implement a policy of forgiveness and patience.

Note that in this phase of our inquiry there is still no definitive ethical evaluation of ‘Zero Tolerance’ and ‘Turn the Other Cheek’ on the Evil-Good axis; in other words, these two choices do not yet oppose each other as one (always) correct and the other (always) wrong. Rather, one could hold that these two ex-

4 *ESV:* τῷ τύπτοντι σε ἐπὶ τὴν σιαγόνα πάρεχε καὶ τὴν ἄλλην; *ei, qui te percutit in maxillam, praebe et alteram.*

5 See Theißen (1979), Gnilka (1986) *ad loc.*, Hoffmann (1995) – I thank Edoardo Bona for these references.

6 The quotation of Paul, *1. Cor.* 23 is apt here: “but we proclaim Christ crucified, a stumbling block to Jews and foolishness to Gentiles”.

7 Not to mention the fact that it is not possible to know precisely how in antiquity public order was managed: the administration of justice was radically different from today, because it was often left to private individuals and lacked legal guarantees (for foreigners, for slaves, for the *humiliores* in the Roman empire etc.). The skills that are today the preserve of professionals such as detectives, scientific investigators, special intervention teams and riot control units were in case of necessity entrusted to soldiers through procedures and with competences usually ruthlessly deployed against offenders. To quote only the most recent bibliography, see Ménard (2004), Rivière (2004), Kelly (2007), Brélaz/Ducrey (2009), Urso (2009), Flamérie (2013), Howe/Brice (2016), Riess-Fagan (2016), Davies (2019).

tremes could both be judged either way: positively by someone or in certain circumstances and negatively by others or in other circumstances.

2 Justice as an (Unreachable) Balance Centre

Exactly in the middle of these two extremes, equidistant from both and perfect in its essence, lies justice, which consists precisely in not exceeding the moral, political or legal retribution, either towards excess or towards lack. In fact, the Stoic tradition[8] has given to the West the principle that justice is basically *unicuique suum*, 'to each his own'. This *dictum* appears in Cicero, *Rep.* 3.24,[9] *Leg.* 1.19,[10] and in a more mature form in the *Corpus Iuris Civilis* (1.1.9 *praef.*):

> Ulpianus in the first book of the 'Rules': Justice is a constant and perpetual will to attribute to each what is due to him by right.[11]

In this sense, justice is like the sharp edge of a blade, extremely thin and therefore difficult to identify.[12] But the two sides of the knife – to continue with our metaphor – towards the opposites of 'Zero Tolerance' and 'Turn the Other Cheek' are much wider. It is therefore easy to understand why, in seeking to find where exactly the *unicuique suum* should lie depending on circumstances, people throughout history have preferred to lie down in a more comfortable position, on one side of the ideal of justice or the other: some have inclinded to-

8 The Greek wording is not identical to the Latin, stressing rather that justice is the science (or disposition) that makes it possible to allocate goods to each person in an equitable manner, i. e. according to merit (κατ' ἀξίαν): *SVF* 3.63, n. 262; 65, n. 266.

9 *Iustitia autem praecipit parcere omnibus, consulere generi hominum, suum cuique reddere, s<ac>ra, publica, alie<na> non tangere*, ('justice instructs us to spare everyone, to look after the interests of the human race, to render to each his own, to keep hands off things that are sacred or public or belong to someone else', transl. J. Zetzel).

10 *Itaque arbitrantur prudentiam esse legem, cuius ea vis sit, ut recte facere iubeat, vetet delinquere, eamque rem illi Graeco putant nomine* νόμον *<a> suum cuique tribuendo appellatam, ego nostro a legendo*, ('And therefore they think that law is judgment, the effect of which is such as to order people to behave rightly and forbid them to do wrong; they think that its name in Greek is derived from giving to each his own, while I think that in Latin it is derived from choosing', transl. J. Zetzel).

11 *Ulpianus libro primo Regularum. Iustitia est constans et perpetua voluntas ius suum cuique tribuendi.*

12 It is not the purpose of this article to examine the tautological aspect of this assertion, which brings *iustitia* back to a *ius suum*/ἀξία basis which is, however, no better specified and can be understood in many different ways (see Kelsen (1945) 1. 1. A c. 2).

wards 'Zero Tolerance', or, on the other hand, towards 'Turn the Other Cheek', depending upon convenience.

The positive evaluation of any moral, political or legal rule that aims at a median position and seeks to avoid extremes is a transcultural issue that deserves research *per se*.[13] It also finds an immediate and automatic echo in the Buddhist 'Middle Way' or in the Confucian 'Doctrine of the Mean'; however, I will limit myself to the Greco-Roman world, because I find it risky to build research on decontextualised parallels.[14] Moreover, in this particular case one of the three main components of the 'Doctrine of the Mean' (Chap. 13) is admittedly leniency[15] and the famous related Confucian principle 'What you do not like when done to yourself, do not do to others' (transl. J. Legge) decisively shifts the point of equilibrium from the abstract centre of the *unicuique suum* towards what we have called the 'Turn the Other Cheek' extreme.[16] This is also a transcultural constant and we will see it reappearing soon in Seneca.

It is now time to go further: our framework began with a bipolarity ('Zero Tolerance' vs. 'Turn the Other Cheek') and has been enriched by a precarious, central point of balance (justice), but it is destined to become even more complicated: as I said, since neither of the two sides of the knife of justice is good or bad in itself as a matter of principle, we can imagine having positive and negative variants on both sides, and therefore no longer two or three elements, but five elements – if not six, should we also add the opposite of justice, namely injustice, to all possible options of the plans that move away from the perfect centre represented by justice.

It is now certain that the knife that we have used so far can no longer work; we need a new visual model, which will be offered by a grid, even if the result is neither virtual reality nor abstract geometric projection, as it might seem, but concrete historical data, thanks to Seneca, an author who so far, at least to my knowledge, has never been called upon for transcultural research, unlike,

13 See e.g. Zeller (2007) and Chang (2008). Perhaps it is not entirely arbitrary to bring this view closer to Legalism/Fajia and Mohism, because of their interest in a political system governed by objective and impersonal rules, in open opposition to Confucianism (I thank Changxu Hu, Tokyo University of Foreign Studies, for directing me to this field of study, with which I was not familiar).

14 See e.g. Parkes (2019). I recommend the cautious approach of Takada (2019).

15 See e.g. Gardner (1998) and Qiubai (2006). It seems to me that the Rules of Property (*Li*) can also be evoked on this occasion, *sed videant doctiores*.

16 To remain within the scope of the *logia* attributed to Jesus, Confucius' sentence just quoted is easily comparable to the 'Golden Rule' in Matt 7.12 ('So whatever you wish that others would do to you, do also to them', *ESV:* Πάντα οὖν ὅσα ἐὰν θέλητε ἵνα ποιῶσιν ὑμῖν οἱ ἄνθρωποι, οὕτως καὶ ὑμεῖς ποιεῖτε αὐτοῖς) and Luke 6.31.

for example, Aristotle[17] or Cicero.[18] Although he knew nothing about 'Zero Tolerance' or the 'Sermon on the Mount', Seneca arrived at exactly this pattern with his treatise *On Mercy* (*Clem.* 2.3.1–4.4), dedicated to Nero and written in 55–56 CE, where he outlines a complex system of values to distinguish four concepts, *misericordia* ('commiseration'), *clementia* ('mercy'), *crudelitas* ('cruelty') and *severitas* ('sternness'):

> 2.3.1 Mercy means 'self-control by the mind when it has the power to take vengeance' or 'leniency on the part of a superior towards an inferior in imposing punishments'. [...] 2 The following definition will meet with objections, although it comes very close to the truth. We might speak of mercy as 'moderation that remits something of a deserved and due punishment'. [...] 2.4.1 Its opposite, or so the ill-informed think, is sternness. But no virtue is the opposite of a virtue. What, then, is the opposite of mercy? Cruelty, which is nothing other than grimness of mind in exacting punishment. [...] 4 Here it is relevant to ask what 'commiseration or pity' is. There are many who praise it as a virtue, and call the man of pity a good man. But this, too, is a mental failing. Not only in the area of sternness, but also in that of mercy, there are things which we should avoid. Under the guise of sternness we fall into cruelty, under that of mercy into pity.[19]

This is Seneca's outline, which simultaneously opposes two vices (*crudelitas* and *misericordia*) to two virtues (*severitas* and *clementia*) and two ways to overstep justice (*clementia* and *misericordia*) to two ways to lag behind it (*severitas* and *crudelitas*).

The precise interpretation of this text would take too long and would not help us much in the analysis we are making here, which is not focused on Seneca himself.[20] What could be said here is that this arrangement is unique in the whole of Latin literature and perhaps also in the ancient world: unique in termi-

17 See n. 13.

18 Balbo/Ahn (2019).

19 Transl. J.M. Cooper and J.F. Procopé: *Clementia est temperantia animi in potestate ulciscendi vel lenitas superioris adversus inferiorem in constituendis poenis. [...] 2 Illa finitio contradictiones inveniet, quamvis maxime ad verum accedat, si dixerimus clementiam esse moderationem aliquid ex merita ac debita poena remittentem. [...]* 2.4.1 *Huic contrariam imperiti putant severitatem, sed nulla virtus virtuti contraria est. Quid ergo opponitur clementiae? Crudelitas, quae nihil aliud est quam atrocitas animi in exigendis poenis. [...]* 4 *Ad rem pertinet quaerere hoc loco quid sit misericordia: plerique enim ut virtutem eam laudant et bonum hominem vocant misericordem. Et haec vitium animi est; utraque circa severitatem circaque clementiam posita sunt quae vitare debemus: <per speciem enim severitatis in crudelitatem incidimus>, per speciem clementiae in misericordiam.*

20 I refer to my commentary in Italian (Malaspina (2004) 388–395) and to the most recent one in English (Braund (2009) 392–401); see also Braicovich (2019).

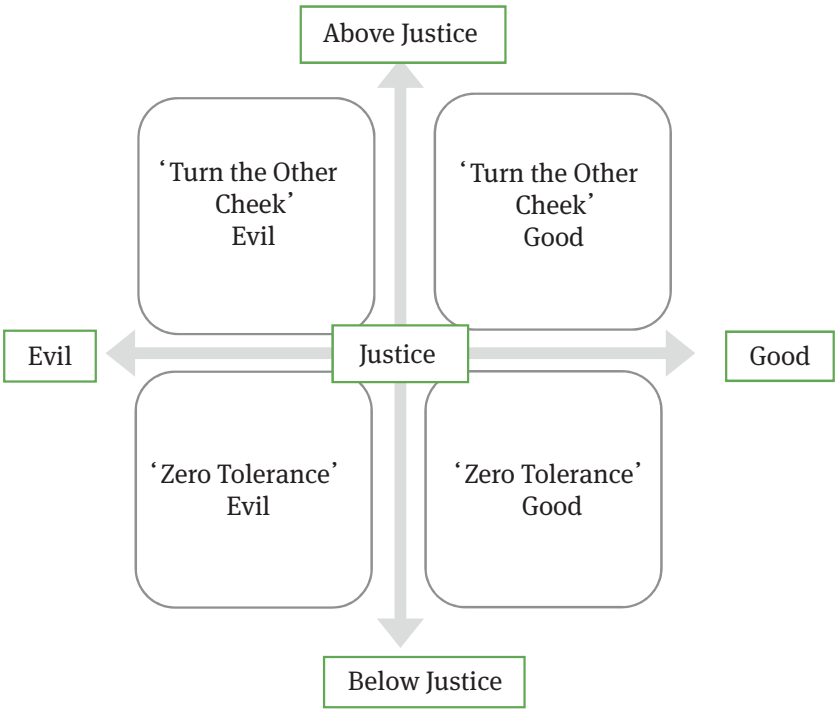

Figure 1: Seneca's system of values (© Malaspina).

nological choice,[21] but also in the distributive clarity with which the four functions are indicated, even beyond terminological issues.

We can now add the Latin *termini technici* to our grid.

Seneca knows that justice constitutes – or should constitute – the perfection of the righteous act and the centre of the scheme (or, using the previous image, the edge of the blade). However, he also believes that at least the prince and/or the wise man must go further in the direction of mercy and that this departure from justice does not constitute a worsening:[22]

21 Especially in the difference between *clementia*, presented for the first time as a Stoic virtue and radically separated from *misericordia* (which is a vice, consistently with Stoic doctrine: *SVF* 1.96, n. 434 = Cic. *Tusc.* 3.21; *SVF* 3.109, n. 451); Seneca was aware that this *differentia verborum* did not exist in the language of his time and he himself respects it only in book 2 of this treatise: see Malaspina (2009) 55–59; 67–74.

22 *Iustitia* is a rare word in *De clementia:* the most interesting occurrence is 1.20.2, 'There would be no point here in reminding him not to give easy credence, to sift out the truth, to side with innocence

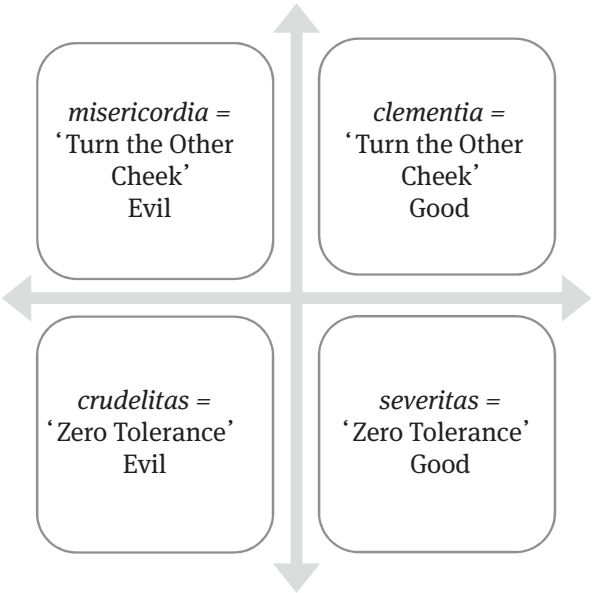

Figure 2: Seneca's system of values with Latin terms (© Malaspina).

Mercy is a virtue equivalent to sternness and justice on the ethical level (as are all virtues), but it is preferable to sternness and justice on a practical and political level, because it alone guarantees the ruler's security (*utile*), reputation (*honestum*) and humanity:

> (*Clem*. 1.2.2) We should keep a mean. The balance, however, is hard to maintain, and any departure from parity should tip the scale to the side of human kindness.[23]

and be seen to do so [following Lipsius' emendation *et appareat ut non minorem agi rem*], to realize that the interests of the accused are no less important than those of the judge. All this is a matter of justice, not mercy. What I now urge on him is that he respond to damage openly inflicted on himself by keeping his mind under control, by remitting the punishment if he can safely do so or, if he cannot, by moderating it, and that he should be far easier to placate when wronged himself than when others are wronged', transl. Cooper/Procopé (*Supervacuum est hoc loco admonere ne facile credat, ut verum excutiat, ut innocentiae faveat †et, ut appareat, non† minorem agi rem periclitantis quam iudicis sciat: hoc enim ad iustitiam, non ad clementiam pertinet. Nunc illum hortamur ut manifeste laesus animum in potestate habeat et poenam, si tuto poterit, donet, si minus, temperet longeque sit in suis quam in alienis iniuriis exorabilior*, text Teubner 2016).

23 Transl. Cooper/Procopé (*Modum tenere debemus, sed, quia difficile est temperamentum, quidquid aequo plus futurum est in partem humaniorem praeponderet*).

Seneca uses the whole of book 1 of the treatise to explain this concept to Nero, which is echoed outside Seneca by the well-known brocard *in dubio pro reo*,[24] which in turn has been incorporated into the positive legislation by the countries of Western tradition.[25]

The first transcultural spin-off of this scheme lies in the apparent contradiction Seneca imposes between justice and mercy (mercy is more 'just' than justice itself!), which reminds me of the role of leniency within the system of the 'Doctrine of the Mean'.[26] It is legitimate to object that this simplification does not take into account the difference in contexts (political for Seneca, jurisprudential for the brocard quoted above, moral-didactic for the *Zhongyong*) and the motivations behind the same behaviour, but I believe that at a transcultural level it is already an achievement to identify constants or recurrences without losing awareness of the difference between contexts so as not to fall into the simplifications already mentioned.[27] We are also tracing the footsteps of a long transcultural tradition, according to which the two morally acceptable choices (the quarters on the right in our grid) are not equivalent, but mercy is always preferable.

The main obstacle I see in making my analysis completely transcultural (and which comforts me in remaining anchored to my Western focus) is of a terminological nature: the English translation of our Latin terms is already questionable: except for the obliged pair *crudelitas*/cruelty, I have preferred 'sternness', 'mercy' and 'commiseration' (Cooper/Procopé) to 'strictness', 'clemency' and 'pity' (Braund), but I am well aware that this has no absolute value. *A fortiori*, finding a precise correspondent for these terms in Oriental languages is a difficult task for experts and impossible for me.[28]

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24 The origin of the concept, albeit in a different form, is found in *Digest*, 50.17.125: *Gaius libro quinto ad edictum provinciale: favorabiliores rei potius quam actores habentur* ('the accused are treated more favourably than the prosecutors'; I thank Pierangelo Buongiorno for his help).
25 E.g. in article 527 of the Italian Code of Criminal Procedure: "qualora vi sia parità di voti, prevale la soluzione più favorevole all'imputato" ('in the event of a tie, the solution most favourable to the accused shall prevail').
26 See above n. 15.
27 See above n. 14.
28 To limit myself to a few considerations about the possible Eastern conceptual counterpart of *clementia*, there is for instance a Japanese word, *kan-yo*, which connotes clemency as well, but it is a neologism invented as a translation of Western concepts at the beginning of Modern Japan in the late 19th century (I am indebted for this terminological clarification to Yasunari Takada, whom I thank). As for China, the term most likely to match is the famous *ren* (Benedikt (1948): "China postulates an overriding virtue which is a condition of loyalty and piety. It is usually translated 'benevolence' (*jen*) but it means almost everything Occidentals mean by good interpersonal relations"). *Ren* is however more often translated as 'humanity' (Mercier (2019) 141):

Thus remaining within the framework of Western culture, we could now examine our four concepts either in their horizontal opposition or in their vertical connection: I mean that one can pass from the virtue of sternness to the vice of cruelty while remaining in the semi-plane of 'Zero Tolerance' (and the same for mercy and commiseration); or, vertically, that we can investigate the relationships between the two opposite vices of commiseration and cruelty or between the two corresponding virtues. A comprehensive analysis of all these possibilities, however, multiplied by centuries of classicism, would take much more space than allowed, nor do I imagine being able to master all of this.

I will consequently focus in more detail on some aspects of the horizontal opposition, Evil vs. Good, a bit later, while for the vertical connection I will limit myself to a few notes in the following section.

3 Shifting Paradigms While Remaining Morally Correct

Firstly, the coexistence of the two opposing vices of cruelty and commiseration distinguishes the foolish figure of the *stultus* in the Stoic sense, due to the absolute irrationality of the resulting behaviour, while the tyrant follows the more common pattern that would have him always and only be cruel (and lustful),[29] as we will soon see.

On the reverse side of *clementia-severitas*, I recall here that our framework fits perfectly into one of the best-known texts of Latin poetry, *Aeneid* 6.851–853:

> Remember thou, o Roman, to rule the nations with thy sway – these shall be thine arts – to crown Peace with Law, to spare the humbled, and to tame in war the proud![30]

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the (partial) overlap between the idea of 'mercy' and 'humanity' is, as we have said, also present in the Latin world *clementia* (see above n. 23).

29 See e.g. *Clem.* 2.5.1, "mercy and gentleness are qualities displayed by all good men, while pity is something that they will avoid", transl. Cooper/Procopé (*clementiam mansuetudinemque omnes boni viri praestabunt, misericordiam autem vitabunt: est enim vitium pusilli animi ad speciem alienorum malorum succidentis*). For the *topos* of the cruel tyrant, I refer to the proverbial utterance of Accius' *Atreus*, *Oderint dum metuant* (*Trag.* 203, 'They may hate me, provided they fear me'): see in general Tabacco (1985).

30 Transl. H. Rushton Fairclough (*tu regere imperio populos, Romane, memento / (hae tibi erunt artes), pacique imponere morem, / parcere subiectis et debellare superbos.)*

Anchises' address precisely indicates the ability to shift from the positive extreme that we named 'Zero Tolerance' to 'Turn the Other Cheek'. And this ability is the quality that allowed Rome to establish its empire, with strength when necessary but also with forgiveness and integration. The correspondence between 'to spare' (*parcere*) in Virgil and mercy (*clementia*) in our grid and between 'to tame' (*debellare*) and sternness (*severitas*) is clear and is not necessary to stress further. Here, however, the coexistence of these two opposing virtues cancels the prominent position offered by Seneca to mercy and re-establishes the balance in the middle of the right semi-plane of our scheme: according to Virgil, albeit implicitly, the Romans follow *iustitia* in alternating reward and punishment, so as to establish *unicuique suum* as it should be.

A last point: are there any moral exhortations parallel to Seneca's but aimed at giving primacy to sternness over mercy? In the ancient world, such an attitude is usually negatively connoted, because of the close link between ethics and politics: a systematically exceeding severity is not a virtuous attitude, but the expression of the typical vice of the cruel and lustful tyrant just mentioned.[31] It therefore falls into the quarter of *crudelitas* in our grid, rather than *severitas*. In modern times, however, thanks to the definitive separation of morality and politics, this behaviour found famous supporters, who considered it no longer a vice, but a virtue. Here are just two of them, Machiavelli's *Prince* and Saint-Just:

> Upon this a question arises: whether it be better to be loved than feared or feared than loved? It may be answered that one should wish to be both, but, because it is difficult to unite them in one person, it is much safer to be feared than loved, when, of the two, either must be dispensed with. Because this is to be asserted in general of men, that they are ungrateful, fickle, false, cowardly, covetous, and as long as you succeed they are yours entirely; they will offer you their blood, property, life, and children, as is said above, when the need is far distant; but when it approaches they turn against you. And that prince who, relying entirely on their promises, has neglected other precautions, is ruined; because friendships that are obtained by payments, and not by greatness or nobility of mind, may indeed be earned, but they are not secured, and in time of need cannot be relied upon; and men have less scruple in offending one who is beloved than one who is feared, for love is preserved by the link of obligation which, owing to the baseness of men, is broken at every opportunity for their advantage; but fear preserves you by a dread of punishment which never fails. Nevertheless a prince ought to inspire fear in such a way that, if he does not win love, he avoids hatred; because he can endure very well being feared whilst he is not hated, which will always be as long as he abstains from the property of his citizens and subjects and from their women. But when it is necessary for him to proceed against the life of someone, he must do it on proper justification and for manifest cause, but above all things he must keep his hands off the property of others, because men more

31 See above n. 29.

quickly forget the death of their father than the loss of their patrimony. Besides, pretexts for taking away the property are never wanting; for he who has once begun to live by robbery will always find pretexts for seizing what belongs to others; but reasons for taking life, on the contrary, are more difficult to find and sooner lapse.[32]

Is there any mention of clemency among the kings of Europe? No: do not allow yourselves to be softened.
Justice is not mercy; it is sternness.
You have no right to be merciful, nor to be sensitive to treason; you are not working for yourselves, but for the people.[33]

4 The First Horizontal Opposition: Cruelty versus Sternness

Let us now address the first horizontal relationship, which is also the easiest: sternness versus cruelty. What makes a 'Zero Tolerance' action a virtue and what makes it a vice? Or, rightfully and politically, what makes it a lawful en-

32 Transl. W. K. Marriott ("Nasce da questo una disputa: s'egli è meglio essere amato che temuto, o e converso. Rispondesi, che si vorrebbe essere l'uno e l'altro; ma, perché egli è difficile accozzarli insieme, è molto più sicuro essere temuto che amato, quando si abbia a mancare dell'uno de' dua. Perché degli uomini si può dire questo generalmente: che sieno ingrati, volubili, simulatori e dissimulatori, fuggitori de' pericoli, cupidi di guadagno; e mentre fai loro bene, sono tutti tua, òfferonti el sangue, la roba, la vita, e' figliuoli, come di sopra dissi, quando il bisogno è discosto; ma, quando ti si appressa, e' si rivoltano. E quel principe, che si è tutto fondato in sulle parole loro, trovandosi nudo di altre preparazioni, rovina; perché le amicizie che si acquistano col prezzo e non con grandezza e nobiltà di animo, si meritano, ma elle non si hanno, e a' tempi non si possano spendere. E gli uomini hanno meno respetto a offendere uno che si facci amare che uno che si facci temere; perché l'amore è tenuto da uno vinculo di obligo, il quale, per essere gli uomini tristi, da ogni occasione di propria utilità è rotto; ma il timore è tenuto da una paura di pena che non abbandona mai. Debbe, nondimanco, il principe farsi temere in modo, che, se non acquista lo amore, che fugga l'odio; perché può molto bene stare insieme essere temuto e non odiato; il che farà sempre, quando si astenga dalla roba de' sua cittadini e de' sua sudditi, e dalle donne loro. E quando pure li bisognasse procedere contro al sangue di alcuno, farlo quando vi sia iustificazione conveniente e causa manifesta; ma, sopra tutto, astenersi dalla roba d'altri; perché gli uomini sdimenticano più presto la morte del padre che la perdita del patrimonio. Di poi, le cagioni del tòrre la roba non mancono mai; e sempre, colui che comincia a vivere con rapina, truova cagione di occupare quel d'altri; e per adverso, contro al sangue sono più rare, e mancono più presto".)
33 Translation mine ("Parle-t-on de clémence chez les rois d'Europe? Non: ne vous laissez point amollir") (Duval (2003) 700); ("La justice n'est pas clémence; elle est sévérité") (702); ("Vous n'avez le droit ni d'être cléments, ni d'être sensibles pour les trahisons; vous ne travaillez pas pour votre compte, mais pour le peuple") (704). See also Borchmeyer (1998) 13 – 14.

forcement and not an indictable crime? For Seneca, the answer was very simple: the 'Zero Tolerance' action performed by the wise man was based on a rational choice and therefore always virtuous.[34] On the contrary, the action of the foolish is based on passions and is therefore always vicious, an answer possible only within the Stoic moral system.[35] Outside of this, what could be the discriminating factor historically? It is certainly not to be sought in the war-peace opposition[36] and often the definition of what is *crudelitas* (to be punished) and *severitas* (to be respected) is recognized only after the end of the conflict by the law of the strongest, established by the winners and based on their own principles and interests, as simplistic and trivializing as this comment may sound.

The legitimacy of a harsh and even cruel retaliation towards a guilty party or a public enemy (i.e., in our grid, the respectability of *severitas*) was never challenged in antiquity, and the Romans themselves seem generally aware of the lawfulness of their behaviour against their enemies, as Livy often reports: usually, his sympathy for the sorrow of the losers is quite pronounced, but most of the time the Romans, from his point of view, act according to justice as victors.

Nevertheless, although less pronounced and clear than in Seneca, Livy also recognises the need for more humane and lenient behaviour, as in the case of the cruel execution of Mettius Fufetius (1.28.11), who was notoriously dismembered by horses running in opposite directions:[37]

> This was the first and last time that the Romans applied the kind of punishment that ignores the laws of humanity. In other cases, we can boast that no other nation has decreed more humane punishments.[38]

The polysemous richness of religious texts confronts us with a greater difficulty, because in the same sacred books in which we read 'Turn the Other Cheek' are present passages like 1 Sam. 15:

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34 Even if, as we have just seen above (sect. 2), *clementia* should for many reasons prevail.

35 See e.g. Graver (2007) 109–133.

36 I mean that it is simplistic to say that administering justice in peace towards the citizens by applying 'Zero Tolerance' is an action of severity, while applying it in war against enemies gives rise automatically to actions of cruelty, or vice versa.

37 It is therefore worth comparing 8.7 with 8.31–33, because Livy is quite explicit in approving the clemency towards Fabius Rullianus and in criticising Torquatus' inflexible behaviour. Livy then describes in dramatic tones, which also reflect his sense of moral disapproval, the massacre of the *dediti*, Aurunci (2.16.8–9) and Ligures Statellati (42.8.2–8): I thank Elisa Della Calce for her help in this point.

38 Transl. V. M. Warrior (*primum ultimumque illud supplicium apud Romanos exempli parum memoris legum humanarum fuit: in aliis gloriari licet nulli gentium mitiores placuisse poenas.)*

> And Samuel said to Saul, "The Lord sent me to anoint you king over his people Israel; now therefore hearken to the words of the Lord. [2] Thus says the Lord of hosts, 'I will punish what Amalek did to Israel in opposing them on the way, when they came up out of Egypt. [3] Now go and smite Amalek, and utterly destroy all that they have; do not spare them, but kill both man and woman, infant and suckling, ox and sheep, camel and ass". [4] So Saul summoned the people, and numbered them in Telaim, two hundred thousand men on foot, and ten thousand men of Judah. [5] And Saul came to the city of Amalek, and lay in wait in the valley. [6] And Saul said to the Kenites, "Go, depart, go down from among the Amalekites, lest I destroy you with them; for you showed kindness to all the people of Israel when they came up out of Egypt." So the Kenites departed from among the Amalekites. [7] And Saul defeated the Amalekites, from Havilah as far as Shur, which is east of Egypt. [8] And he took Agag the king of the Amalekites alive, and utterly destroyed all the people with the edge of the sword. [9] But Saul and the people spared Agag, and the best of the sheep and of the oxen and of the fatlings, and the lambs, and all that was good, and would not utterly destroy them; all that was despised and worthless they utterly destroyed. [10] The word of the Lord came to Samuel: [11] "I repent that I have made Saul king; for he has turned back from following me, and has not performed my commandments".[39]

These forms of *crudelitas*, which we catalogue today as crimes against humanity and genocide, have no boundaries of time or place:

> Mow down everyone universally, without discriminating between young and old, men and women, clergy and the laity – high ranking soldiers on the battlefield, that goes without saying, but also the hill folk, down to the poorest and meanest – and send the heads to Japan.[40]

The Japanese Buddhist monk Keinen described this scene of horror when Toyotomi Hideyoshi's[41] samurais put into practice his order to kill all those who resisted the Japanese troops, including women and children, and to cut off their

39 For brevity, I report only the translation (*ESV*), with the commentary of Alonso Schökel (1980) 2, 681: "Alla luce dell'insegnamento di Cristo, l'ordine di Samuele ci sconcerta, ci ripugna. Pur considerato come tappa superata della storia della rivelazione, ancora non ci è del tutto comprensibile [...] Non intendiamo dissimulare lo stupore né reprimere la protesta. Questo capitolo turba un cristiano, in più di un'occasione; e questo turbamento è una componente del suo significato, che ci obbliga a interrogarci". See also e. g. Josh 6. Religious traditions other than Christianity are no exception to this ambivalence: personally, I have always been shocked by Muhammad's behaviour during and after the Battle of Badr, as recounted in the *Tarikh-i Balami*.

40 See Elison (1988) 28 and Hawley (2005) 465 – 466.

41 Toyotomi (Nagoya 1536 – Kyoto 1598) is probably better known in Europe for the terrible affair of the *Twenty-six Martyrs of Nagasaki* (1597) and for interrupting the expansion of Christianity in Japan, leaving only the residue of the 'Hidden Christians' (*Kakure Kirishitan*) towards 1630.

noses[42] during the siege of Namwŏn in the second invasion of Korea (1596). I do not know if Hideyoshi would be passionate about the question of whether he exercised *severitas* or *crudelitas*, whereas today we would have no doubt about that (just as Keinen had no doubts),[43] even if we have not yet found an answer to our initial question ('What makes a "Zero Tolerance" action a virtue and what makes it a vice'). Even better, we have also discovered too many conflicting answers: the Senecan reason-passion opposition, Machiavelli's amoralism,[44] the divine will and often simply the law of the strongest. Theoretically, the Universal Declaration of Human Rights should define which punishment/retaliation violates inalienable rights (and thus in our scheme falls under *crudelitas*) and which is an acceptable form of sternness. However, we all know how far we still have to go in practice, precisely from a transcultural perspective; and even from a philosophical point of view, the more rights are multiplied, the less agreement there is on the natural law that should guarantee them: in so doing, of course, we move further away from the perspective of a collective transcultural recognition.

Let us end this chapter with a less bloody corollary: Seneca testifies to the existence of a milder variant of 'Zero Tolerance', which is so widespread that it has become proverbial: even if its motto, *principiis obsta* ('fight the beginnings' of an evil), was coined by Ovid for the frivolous field of love skirmishes to cure the evil of sexual passion,[45] Seneca uses it to heal anger internally and to nip one's negative impulses in the bud:

> (*De ira* 1.8.17) It is best to beat back at once the first irritations, to resist the very germs of anger and take care not to succumb.[46]

42 Toyotomi collected thousands of noses in a large pile known today with the misleading name of the 'Ear Mound', located near his Mausoleum, the *Hokoku-byo* in the Hokoku temple in Kyōto (Turnbull (2008) 81; Affinati (2017) XVII).

43 "This chronicle details the horrors of war with a level of sympathy unrealized by the vainglorious accounts presented by samurai eager for rewards or the terse reports typically proffered by Chinese and Korean military censors. From the start of his journey as a physician and spiritual advisor to the Ōta Kazuyoshi, Keinen describes Korea as a veritable Hell, in which slavery, wanton slaughter and general human suffering play major roles. As a result, it is one of the few surviving Japanese accounts that does not glorify the war or the exploits of Hideyoshi's generals and it provides an excellent window through which we can glimpse the suffering experienced by ordinary Japanese soldiers and Korean and Japanese slaves, whose voices have largely gone unheard over the past four centuries, at least in Japan" (Swope (2008) 170–171).

44 See Alexander (2018).

45 Ov. *Rem. am.* 91–94; but the concept is obviously older: see also *e.g.* Lucr. 4.1068–1072.

46 Transl. Cooper/Procopé (*optimum est primum inritamentum irae protinus spernere ipsisque repugnare seminibus et dare operam ne incidamus in iram*).

De ira 3.10.17 The best thing, therefore, is to start curing oneself as soon as one is aware of the ailment, to allow oneself the minimum freedom of speech and inhibit the impulse.[47]

5 Mercy versus Commiseration

We can finally move on to the opposition between the good version of the 'Turn the Other Cheek' principle and the variant to be rejected. We already know that Seneca stresses the opposition between reason and passion: the forgiving behaviour dictated by *clementia* is positive, yet irrational *misericordia* must be rejected. Certainly, defining commiseration as a vice makes a very strong statement, which, as I have said, is unparalleled in any other author and to which, moreover, even Seneca does not adhere outside book 2 of *De clementia*.[48]

Despite the importance of *De clementia* in the modern history of the so-called genre of *Speculum principis* ('Mirror of Princes'),[49] what has been transmitted to Western political thought is not Senecan: the term *clementia* obviously remains, no longer as Seneca's unique virtue, but as one of the numerous qualities of the ruler (at each level, from the king to the abbot of a monastery). On the contrary, the implementation of *misericordia* towards persons in misfortune is not a flaw, but a merit in the Christian tradition of Western thought, since the radicality of 'Turn the Other Cheek' is a pillar of Jesus' teaching.[50]

Even in the pagan camp we hear early voices that challenge the Senecan position. One which remained quite unnoticed is Pliny the Younger, who harshly criticizes this Stoic position, knowing first-hand the underlying ethical discussion. His personal contribution is very specific (a case of *mors immatura*, the death of a young person, in *Ep.* 5.16.8–10) and concerns the notion of *mollitia*, with which his practical and anti-dogmatic mentality preaches the 'discovery of interiority' and anticipates on modern sensibility, understanding and sentimentality. Since life is not based for him on Stoic *autarkeia* but on the relationship of mutual dependence between people, Pliny maintains that death interrupts this connection and therefore that his own well-being (*Ep.* 1.12) and even the well-

47 Transl. Cooper/Procopé (*optimum est itaque ad primum mali sensum mederi sibi, tum verbis quoque suis minimum libertatis dare et inhibere impetum*); for a complete analysis of the issue see Malaspina (2021) 181–184.

48 See above nn. 20 and 21 for bibliographical references.

49 See Roskam/Schorn (2018).

50 The seminal paper on the subject is Pétré (1934), to which many other papers and books have been added up to the present: see lastly e. g. Harbsmeier/Möckel (2009), Franchi (2015) and Cavallini (2017).

being of the *sapientes* (*Ep*. 5.16.8) is severely affected by this absence, which in turn causes the *desiderium* (*Ep*. 1.12.10, 5.16.6).[51] To perceive this feeling and to share it with one's neighbour, in short to feel commiseration, even publicly, is thus an attitude that is not only excusable, but also necessary, without the need to resort to the Stoic justification of the *propatheiai*.[52]

> He is, indeed, a man of great learning and good sense, having applied himself from his earliest youth to the nobler arts and studies; but all those maxims which he has heard from others, and often inculcated himself, he now contemns, and every other virtue gives place to his absorbing parental devotion. You will excuse, you will even approve him, when you consider what he has lost. He has lost a daughter who resembled him as closely in manners as in person, and exactly copied out all ~~of~~ her father. If you shall think ~~it~~ proper to write to him upon the subject of so reasonable a grief, let me remind you not to use the rougher arguments of consolation, and such as seem to carry a sort of reproof with them, but those of kind and sympathizing humanity.[53]

The Plinian refusal of *apatheia* is not related to politics *stricto sensu*, but concerns human bonds, far away also from Aristotelian *metriopatheia:* this belief can be easily shared and broadened to other fields, first of all to politics.

Having come to the end of our research, we can say that Seneca's outline, despite its uniqueness, proves to be a useful tool for interpreting the ethics of politics also from a transcultural perspective. The only modification that needs to be made is that for the Western tradition the quarter assigned by Seneca to *misericordia* must be occupied by other terms, like 'feebleness', 'weakness' or 'irresolution', while *misericordia* itself, with all its emotional connotations, must be relocated to the quarter of *clementia*, in serene cohabitation with it.

To show this in a more blatant way, we must now make a leap in time, to briefly examine one of the texts – or perhaps *the* text – that more than all others depends on Seneca's *De clementia:* the *Clemenza di Tito*.

This work was primarily a *libretto* written by the Italian poet Pietro Metastasio (1698 – 1782), with music by Antonio Caldara (Vienna 1734): Metastasio's text

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51 I summarise here for convenience Malaspina (2019) 142 – 144.

52 For which see Cic. *Tusc*. 3.83, Sen. *Ep*. 99.14 – 16, 18 – 19 and Graver (2007) 85 – 108.

53 *Ep*. 5.16.8 – 10, transl. W. M. L. Hutchinson (*Est quidem ille [i. e. Fundanus] eruditus et sapiens, ut qui se ab ineunte aetate altioribus studiis artibusque dediderit; sed nunc omnia, quae audiit saepe quae dixit, aspernatur expulsisque virtutibus aliis pietatis est totus. Ignosces, laudabis etiam, si cogitaveris quid amiserit. Amisit enim filiam, quae non minus mores eius quam os vultumque referebat, totumque patrem mira similitudine exscripserat. Proinde si quas ad eum de dolore tam iusto litteras mittes, memento adhibere solacium non quasi castigatorium et nimis forte, sed molle et humanum*).

shows profound obligations to classical authors[54] and, through the *Cinna* by Pierre Corneille (1640), to Seneca's *De clementia* in particular, with surprising agreements and even *verbatim* quotations of the Latin text. His text did not remain always the same: it was the fate of all these *libretti* to be re-shaped, re-written, re-interpreted, following the evolution of the music, the ideas of the composer and often the tantrums of a *prima donna*. When Mozart decided to set *La clemenza di Tito* to music (Prague 1791) after dozens of other composers, he was helped by another Italian poet, Caterino Mazzolà (1745–1806).[55]

Collating Metastasio's and Mazzolà's outputs shows that almost 80% of the text that survived the cuts[56] is exactly the same, without changes, while in the remaining 20%, changes vary from the substitution of an *aria* with another to the deep re-shaping of sections of the plot itself, built around the betrayal and conspiracy engineered by Titus' best friend (Sesto) and promised bride (Vitellia). At the end, although the emperor had every possible reason to sentence both to death, he forgives and forgets everything. In the passage of the final pardon,[57] Titus is on stage with Annio, the best friend of Sesto, who is asking for forgiveness together with his lover, Servilia, the sister of the traitor. The moment is crucial, and this is confirmed by the fact that Mazzolà and Mozart decided to change the text of the aria sung by Annio.[58]

Here are both versions, with my *verbatim* translation:

Pietà signor di lui.	Pity, Sir, on him.
So che il rigore è giusto,	I know that rigor is right,
ma norma i falli altrui	but the errors of others
non son del tuo rigor.	are not the norm of your rigor.
Se a' prieghi miei non vuoi,	If you do not do it for my prayers,
se all'error suo non puoi,	if you cannot do it because of his mistake,
donalo al cor d'Augusto,	donate him to the heart of Augustus,
donalo a te, Signor.	give him to you, sir.
Tu fosti tradito;	You were betrayed;
ei degno è di morte,	he is worthy of death,

54 See Seidel (1987), Borchmeyer (1998), Buller (1998), Questa (1998) 191–203, Wunderlich *et al.* (2001), Pross (2011).

55 See Questa (1998) 193.

56 See Borchmeyer (1998) 11: "Mazzolà hat in Absprache mit Mozart Metastasios Drama auf ungefähr die Hälfte gekürzt, die Zahl der Arien (25) auf mehr als die Hälfte (11) reduziert und die Rezitative mit ihrem diskursiv-didaktischen Grundzug rigoros gestrafft".

57 Act III, scene 4 in Metastasio = II.7 Mazzolà = Number 17 in Mozart's score.

58 The score is for a 'castrate' voice and now it is normally played by a woman.

ma il core di Tito	but the heart of Titus
pur lascia sperar.	leaves us nevertheless hope.
Deh! prendi consiglio,	Come now! take advice,
Signor, dal tuo core:	Sir, from your heart:
il nostro dolore	deem to look
ti degna mirar.	at our sorrow.

Titus, the main character, is in both versions of the opera what Nero failed to be in Seneca's hope: a perfect prince with all virtues: exceptional nobility, self-control, patience – and clemency in the foreground. He is also aware of the burdens of his position, the *nobilis servitus* ('noble slavery')[59] that compels him to refuse pleasures, freedom and personal desires to devote his whole life to the well-being of his subjects. All these virtues stand out compared to the impulsive and incoherent behaviours of the two traitors, Sesto and Vitellia:[60] in synthesis, Titus is apparently a character with whom Seneca would have been pleased.

Nevertheless, when he has to make his final decision, life or death, to what does Annio appeal to urge him to forgive? Neither to his Stoic reason, nor to the *raison d'état* and the National Interest, but to his *core*, his heart, ~~i. e.~~ his *misericordia*, in Senecan terms:

> *Clem.* 2.5.1 Mercy and gentleness are qualities displayed by all good men, while pity is something that they will avoid. The fault of a petty mind succumbing to the signs of evils that affects others, it is a feature very familiar in the worst kind of person [...]. Pity looks at the plight, not at the cause of it. Mercy joins in with reason.[61]

And even if Metastasio's and Mazzolà's wording is completely different, this point remains identical in both versions[62]; in the final scenes, Titus fulfils Annio's prayers, in the sense not only of forgiving the diabolical couple, but also of doing so by appealing to his own *core*.[63]

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59 See Wunderlich *et al.* (2001) 7–8, and Malaspina (2009) 40; 181–182.

60 This difference of characters is admirably transposed in music by Mozart: see Questa (1998) 200–203.

61 Transl. Cooper/Procopé (*clementiam mansuetudinemque omnes boni viri praestabunt, misericordiam autem vitabunt: est enim vitium pusilli animi ad speciem alienorum malorum succidentis. Itaque pessimo cuique familiarissima est [...]. Misericordia non causam, sed fortunam spectat; clementia rationi accedit*).

62 Compare "donalo al cor d'Augusto" in Mazzolà with "il core di Tito pur lascia sperar" and "prendi consiglio dal tuo core". Even "il nostro dolore ti degna mirar" reminds Seneca's definition of *misericordia* quoted in the preceding note.

63 I quote an utterance of Titus added by Mazzolà (Act II, scene 11 = Mozart N. 19): "Does Titus' heart produce such senses?" ("Il cor di Tito tali sensi produce?"); some lines below, "But therefore

Since Cinna's Augustus still reacted in Senecan terms of *temperantia* and self-control,[64] the new role of *core* is due to Metastasio, and I do not think the experts on Classical *Fortleben* have yet paid enough attention to it.[65] I find this profound ideological change one of the miracles of our classical tradition, *semper idem, semper alter:* a deliberately Senecan text, whose nature is partly distorted in order to adopt elements that Seneca would never have accepted and which share in the modern emergence of the positive concept of 'emotion', which replaces 'passion', so execrable to Stoicism.[66]

I can only hope that our governors (also in Hong-Kong) draw useful lessons from Seneca (and Metastasio) and that readers have the heart of Titus towards my transcultural proposal.

I give such great violence to my heart. [...] Long live my friend! even if he is unfaithful. And if the world wants to accuse me of some error, let it accuse me of pity, not rigour" ("Ma dunque faccio sì gran forza al mio cor. [...] Viva l'amico! benché infedele. E se accusarmi il mondo vuol pur di qualche errore, m'accusi di pietà, non di rigore", quite identical in Metastasio, Act III, scene 7).

64 It is famous in Act V, scene 3 of *Cinna*, the *coup de théâtre* by which Augustus forgives all traitors appealing to his complete command over the world and over himself, but certainly not to his pitying heart: "I am master of myself as well as of the universe" ("Je suis maître de moi comme de l'univers"). It is very significant that this sentence is not forgotten by Metastasio/Mazzolà, but inserted at the beginning of the opera and in Annio's mouth, as a predictable requirement and not as the end result of a difficult inner conquest: "Tito has the control of the world and himself" ("Tito ha l'impero e del mondo e di sé", Act I, scene 2 Metastasio/Mazzolà = Number 1 Mozart).

65 No one doubts that Mazzolà/Mozart's reworking is influenced by Enlightenment ideas and that the different political climates in 1734 and in 1791 (during French Revolution!) explain many idiosyncrasies of the two versions, which have been duly highlighted (see Wunderlich *et al.* (2001), 11–17 and Pross (2011)), but not concerning the new role of the *core*, which predates Mazzolà/Mozart, the Enlightenment and the French Revolution. This is not the place for an argument about this, for which I have no competence, but I find that the collation of both texts shows that Borchmeyer (1998) is absolutely wrong when he wants to bring Metastasio closer to Corneille by distancing him from Mazzolà: "Im ursprünglichen Libretto von Metastasio ist die Herrschergüte [...] noch durch die Staatsräson ausbalanciert" (10); "wenn Corneilles Augustus oder Metastasios Titus sich im vorliegenden Fall für die Milde entscheiden, so deshalb, weil deren politische Vorzüge hier eindeutig die der Strenge überwiegen" (13).

66 See Dixon (2003).

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