

AIDEL REPORT

On the 16th and 17th November 2011, the annual meeting of AIDEL was held at the Museo Civico di Storia Naturale in Verona in conjunction with a two-day seminar on “Law, Literature and Culture” which included papers by several AIDEL members. The inaugural address by Professor Alessandra Tomaselli, Dean of the Faculty of Foreign Languages at the University of Verona, praised the interdisciplinary character of the Association and of its scientific expressions such as its journal *Polemos* and its new series “Law and Literature” edited by Daniela Carpi and Klaus Stierstorfer and published by De Gruyter in Berlin. The first seminar session, chaired by Prof. Daniela Carpi, included papers by Piergiuseppe Monateri (Università di Torino), Patrizia Nerozzi (Università IULM di Milano), Romana Zacchi (Università di Bologna), Koen Lemmens (Katholieke Universiteit Leuven) and Carla Dente (Università di Pisa).

Piergiuseppe Monateri reflected on how to apply the law to different cultural groups. The problem is linked to the evolution of the law and to the process of legal transplants. In his *Law, Legislation and Liberty*, Hayek postulated the possibility of a parallelism between spontaneous events such as language and the law; the law evolves, but its evolution cannot be imposed rationally. This is the difference between the Glorious Revolution and the French Revolution, as Burke also underlined. The Glorious Revolution took place in defense of the old constitution and old values, and it was a revolution of history for history, in which the law evolved according to the culture of society. On the contrary, the French Revolution based itself on reason and believed in the rational possibility to construct the world through the law. Monateri underlined the sublimity of the law, which escapes our rational control: it is the law that governs us, not us who govern through the law.

Patrizia Nerozzi showed how the characters’ attainment of happiness in Jane Austen’s novels seems to correspond to the progressive discovery of their social and personal role in the world with specific attention to the laws regulating the transmission of property. In the nineteenth century, women were excluded from property rights; property passed as inheritance to the male members of the family in confirmation of the social hierarchical order. Austen demonstrates that she possessed a deep knowledge of the laws on marriage, which aimed at consolidating the future family. In *Sense and Sensibility*, she expresses her own personal view that property which was not entailed could be divided in order to provide for the daughters of the family. Austen’s novels reveal that what is presented as objective and general is actually subjective and particular: state v. estate.

Romana Zacchi focussed on the theatre as a vehicle for political and social critique and the measures adopted against it by Sir Robert Walpole. The Licensing Act of 1737 exerted a preventive censure on the scripts of the plays, requiring that a copy be sent to the Lord Chamberlain fourteen days before the performance, along with the indication of the places where it would be performed. Such Act was fiercely opposed by Lord Chesterfield, who - fearing an extension of the theatrical restrictions on individual freedom - defended the intellectual abilities of playwrights and their rights to exercise them. Locke also intervened in defense of authors’ rights to intellectual property, as Zacchi underlined in her paper.

Koen Lemmens reflected on Leonardo Sciascia as a novelist and legal theorist. Sciascia warns the (continental) lawyer that traditional legal reasoning (based on the classical syllogism, that is, on deduction) may not allow us to understand reality: “*Non deduciamo niente (...), la realtà è sempre più ricca e imprevedibile delle nostre deduzioni.*” He considered literature an excellent tool for analyzing reality, including legal reality; moreover, he argued that juridical truth does not represent absolute truth or veridiction, but rather jurisdiction. In his detective stories (*A ciascuno il suo*, *Il giorno della civetta*, *Una storia semplice* and *Todo modo*) Sciascia illustrated the legal sociologist’s concept of “semi-autonomous social fields”: a person belongs to multiple social networks, which might collide. The reader is thus asked to

reconsider his role as a citizen, a family member, or a friend. How should he behave when different loyalties enter into conflict? Which role is left for private justice? Sciascia appeals to the citizen's civic sense and mental perception of institutions.

Carla Dente analyzed the relationship between juridical education and the theatre. Theatrical rehearsals resembled the juridical exercises (moots) of the Inns of Court students, thus testifying to the constant interchange between these two universes of discourse. The Inns of Court were considered the third university at the time and were attended by numerous representatives of the gentry; in turn, masques were considered forms of entertainment appealing to the people's civic and social sense. Dente mentioned a 1587 masque which took place at Gray's Inn and illustrated the relationship between theatre and the law; at first, linguistic and rhetorical abilities (characteristic of literature) are despised but at the end there is an acknowledgement that literature can pronounce itself on reality. Dente also underlined how *The Comedy of Errors* shows the role of theatre in the lives of students and reveals the binding power of promises in the context of market contracts.

The afternoon session, chaired by Prof. Paola Carbone, was opened by Raffaella Bertazzoli's paper (Università di Verona), followed by Francesco Palermo and Matteo Nicolini's (Università di Verona), Fulvio Cortese's (Università di Trento), Paolo Heritier's (Università di Torino) and Chiara Battisti's (Università di Verona).

Raffaella Bertazzoli analysed Giovanni Verga's idea of justice as depicted in the short story "Un Processo", where he expresses his pessimism in relation to justice. In Verga's world, the principle according to which the law must conform to justice, i.e. to the truth revealed by God (*iustum quia iussum*), and not to the law of the strongest (*iussum quia iustum*), is not in force. Justice is an instrument for overwhelming the weak and punishing those who attempt to improve their quality of life. In this sense, the title of the novel analysed by Bertazzoli, "A Trial", is significant: the indeterminate article "A" alludes to the rituality and to the eternal and inevitable return of a legal and judicial paradigm by which the characters are victims of the law and judges are implacable executors. The novel's events are reconstructed through strongly colloquial narrations and people's testimonies, which are opposed to the bourgeois' disenchanting and stigmatizing presentation.

Matteo Nicolini and Francesco Palermo focussed on the concept of "cultural exception", which refers to the inadequacy of traditional juridical categories – political representation, formal equality, generality and abstraction – to govern contemporary pluralistic and multicultural societies. Such phenomenon affects literature as well, because the emergence of difference (be it the "rediscovery" of autochtony, or the consequence of the migratory fluxes) necessarily generates a new kind of language that is both normative and literary. The notion of cultural exception therefore represents the collapse of the traditional mythologies which constituted the basis for the law and literature of national states and also represents the starting point for a new normative and literary language capable of understanding the contemporary state's new juridical systems and new cultures .

Fulvio Cortese focussed on the relationship between juridical culture and Defoe's novel *Robinson Crusoe* as well as successive Robinsonades. Defoe seems to reject the effects of the law on everyday life as it implies an acceptance of a *modus vivendi* and a kind of society which does not correspond to the individual's personal inclinations. Therefore his novel, by portraying a state of exception, consisting in a mythical representation of the state of nature, fosters a reflection on the nature of law itself, on the relationship of the individual with the state, with things, and with other individuals, as well as on the fundamental characteristics of any juridical experience. Cortese analyzed in particular a popular 1792 Robinsonade, whose protagonists Robinson and Tadik were shipwrecked on a desert Island, the former on its fertile side and the latter on its barren one. Following Romagnosi, Cortese argued that the story shows how "De facto inequality is justified only in force of the equality of the law itself". As a matter of fact, equality in property and work relationships was ruled through equal contracts, therefore inequality is explained with the formal equality of law. The state is allotted the task of stating equality as measure and proportion; the limits imposed to power guarantee factual equality.

Paolo Heritier examined the normative anthropological sources, be them juridical, economical, technoscientific,

psychological, communicative, or religious. According to Legendre's concept of the nomogram, the potentiality of a revised theory of law should also include an aesthetic dimension. In this respect, the contemporary theory of law should aim at circumscribing nomograms, intended as plural forms of the inscription of the juridical. Legendre argued that the law is not only represented through written verbal texts, but also other "texts" such as iconic ones (cinema and painting), spatial and corporeal ones (sculpture and dance), or cultural ones (rites and myths). Nomograms are thus sources of law that include components which cannot be expressed through rational codes and invite a critical observation of social and legal changes.

Chiara Battisti considered the link between the Western as a genre – in particular in its metahistorical dimension of plural interrogation and self-deconstruction - and a "visual tradition" which has been a strong mytopoietic tool which came to represent a standardization and regulation of social reality. Westerns generally portray a dominant and solitary hero whose violent and conflictual actions are positively connoted as they aim at the elimination of the enemy, the restoration of order and the triumph of the law. It is precisely this monopoly of violence attributed by civil society to a solitary hero that represents the main legal issue of the Western, a genre which reflects not only social transformations but legal ones as well. Since the 1950s the traditional tenets of the Western, as well as its myths and values, have been challenged, and this has led to a problematization of the diegetic dimension of the Western genre, with new plots that reveal the fusion and confusion between evil and good, and between illegality and legality.

The second day of the conference hosted two sessions, chaired by Prof. Piergiuseppe Monateri and Prof. Daniela Carpi respectively, and included papers by Paola Carbone (Università IULM di Milano), Maurizio Ascari (Università di Bologna), Cristina Costantini (Università di Bergamo), Daniela Carpi (Università di Verona), Sidia Fiorato (Università di Verona), Mara Logaldo (Università IULM di Milano), Valentina Adami (Università di Verona) and Francesca Vitali (Università di Verona).

Paola Carbone analyzed Aravind Adiga's novel *The White Tiger* from the point of view of the relationship between the Constitution of the Indian Federation (1950) and *Dharmashastra*, the Sacred Law Books in Hindu tradition. The novel's protagonist opposes his Karmic destiny (duty) because he is convinced he is a modern entrepreneur who has the right to choose and act according to his own personal will of selfdetermination.

However, this will posits him outside of society rendering him a 'monster': "He who fights monsters must take care lest he become a monster" (Friedrich Nietzsche, *Beyond Good and Evil*). The law intended as *rightness* and *entitlement* was at the basis of her interpretation.

Maurizio Ascari illustrated how Renaissance revenge tragedies propose an investigation on the relationship between natural law and positive law from a wider perspective than the historical one, as they include the dimension of the divine, with its providential logic, as well as the dimension of the demonic, with its temptations and negations. The Prologue of *The Jew of Malta* spoken by the character of Machiavelli criticizes the psychological-surveillance apparatus in which the Church controls souls as well as the compulsory-punitive apparatus of the law and its application by the state. Ascari analyzed Kyd's *The Revenger's Tragedy* from the perspective of Derrida's *The Force of Law*, which considers violence as the funding element of the law and links such violence with the idea of the divine. The trial scene stages the complex relationship between law and power; the law is presented as an unpredictable entity whose impartiality is questioned, but whose presence endangers power itself ("the law is a wise serpent, and quickly can beguile thee of thy life).

Cristina Costantini invokes a specific ontological comprehension of the law as a concrete answer to the perceived intellectual need to reappropriate its aesthetic dimension in the re-reading and definition of the juridical. Such a procedure has two purposes: on the one hand, to readapt the theme/problem, which is the object of comparative considerations and legal traditions; on the other hand, to look to the law-literature sharing from a perspective that goes beyond the merely methodological level. In particular, in discussing what she defines the 'aesthetic ontology of the law', Costantini questions the original deferment of presence, i.e., the fracture between manifestation and delay as the law's constitutive feature from an ontological point of view. These premises provide intellectual arguments for a radical comprehension of the visible body of mediation of the law in its multiple and historical definitions. The topic enables the combination between

genealogic research of various legal traditions and the comprehension of the morphologies (i.e. of the forms of belonging and representation) of the experiences that have matured within Western Legal Tradition.

Daniela Carpi began her paper by analyzing a series of declarations concerning human rights that gradually brought us to our contemporary sensitization towards the necessity to protect human beings as such. It is generally agreed that the “Magna Charta Libertatum” (1215) is at the roots of all subsequent declarations of human rights. After that, the American Declaration of Independence (1776) reflected Locke's principle of the right to private property and was followed by the French *Declaration of the Rights of Man and the Citizen* (1789) and Tom Paine's *The Rights of Man* (1794). The second part of Carpi's paper focused in particular on the rights of children, which were assessed by the 1989 United Nations Convention on the Rights of the Child, and on the analysis of the novels *Sophie's Choice* by William Styron, *The Final Solution* by Michael Chabon, *The Boy in the Striped Pyjamas* by John Boyne, *Fragments* by Benjamin Wilkormirski and *Austerlitz* by W. G. Sebald.

Sidia Fiorato focused on the reworking of legal issues in Wilkie Collins' *The Woman in White*, thus demonstrating the pervasiveness of legal culture in Victorian society and its effects on the legal imagination both of the author and of the characters of his novel. In particular, the novel addresses the question of the exclusion of women from property rights and the attempt of the protagonists to rebel against this situation by claiming the right to legal personhood for married women and basing such claim on the right to property, thus following the tenets of the personality theory of property. The representative of this revolutionary position is Marian Halcombe, the propertied single woman who understands the need for her actions to be based on and acknowledged by documentary evidence; in this way she eventually manages to affect the status quo.

Mara Logaldo scrutinizes Henry Adam's concept of law in his third-person autobiography (*The Education of Henry Adams*, 1918). Moral law, the law of politics, the law of economics, natural law, etc. are all regarded as – however tentative - closely interconnected ways of organizing experience which can throw light, at once, on universal issues and on historically determined, distinct features of American culture and society. Henry Adam also explored therein the strict juridical meanings of Law, notwithstanding his paraleptic claims to ignorance on the subject, “outlawry as his peculiar birthright”, and “accidental education” acquired through direct experience rather than on law books and codes. Covering the period between 1838 and 1905, Adams presented the Law as a principle which was rapidly decaying, due to the abrupt changes brought about by the Civil War and, more generally, by the ground-breaking scientific and technological discoveries of the time. He concludes that “the law altogether, as path of education, vanished in April 1861, leaving a million young men planted in the mud of a lawless world,” struggles to catch up with the multiplicity, diversity and anarchy of the modern world.

Valentina Adami's paper on Helen Garner's *The Spare Room* dealt with the ethical and legal issues raised by the increased use of complementary and alternative medicine in the Western world. In her analysis of Garner's novel, Adami focused on the importance of patient-doctor communication to avoid dangerous

6

interactions between conventional and alternative therapies, as well as on risks brought about by the lack of regulation in alternative medicine, including the risk of health fraud. Finally, Adami asked whether alternative medicine requires alternative ethics and legislation, or whether it should instead be subjected to the same norms and standards as conventional medicine.

Francesca Vitali explored the interrelations between the concepts of law, culture and religion in John Wyndham's novel *The Chrysalids*. Law and religion are shown to be cultural codes which restlessly influence and nourish each other; on the one hand law is legitimized by religion, on the other hand religion is justified by its legal basis, thus unveiling the intrinsic sacredness of law and the pervasive legality of religion. Both concepts belong to the great category of culture and at the same time they are seen as the founding elements of culture itself.