



### **Practising Equity, Addressing Law: Equity in Law and Literature (University of Verona, 23-26 May 2007)**

The international conference *Practising Equity, Addressing Law: Equity in Law and Literature* (University of Verona, 23-26 May 2007) was the final stage of a two-year research project funded by Miur (Italian Ministry for University and Research) and focused on the relationship and integration between the fields of law and literature. The conference saw an interdisciplinary dialogue between the interpretative stances of international scholars and an assessment of and critical reflection upon the previous results of the research team developed through several conferences (**The Concept of Equity in Law and Literature, University of Verona, 25-28 May 2005**; **Equity: A Diachronic Assessment, University of Verona, 23-25 November 2006**) and publications (among which, D. Carpi, ed., *The concept of Equity*, Heidelberg, Winter, 2006). The concept of equity, in particular its Aristotelian formulation, was set under analysis, questioned from different points of view and interpreted by means of multiple imagery as well as through the consideration of some specific literary renderings of it.

Richard Weisberg (Cardozo School of Law) opened the conference with specific issues for reflection: What is equity? What does it constitute? What does it add to or sometimes subtract from the workings of justice, to which it seems in certain ways opposed? Should it be opposed? Has it been traditionally opposed? Should it have its own self standing autonomous formal existence?

According to Jeanne Gaakeer (Erasmus University of Rotterdam), the relation of equity to law has its parallels in the relationship of law and literature to traditional doctrinal legal thought. Equity took its form as the genesis of a body of supplementary rules, therefore: is equity inside or outside law? Gaakeer sustained the unity of equity, literature and law founding it in Aristotle's formulation that in matters of human conduct the agents themselves must consider in each case what is appropriate to the occasion. Equity and literature are not to be regarded as supplementary, but as contexts that are encompassed in a view of law by nature. The same view was shared by Klaus Stierstorfer (University of Münster) who underlined how Adam Smith's work established for the first time in British history a systematic connection between literature and equity: the interpretation of good literature could help strengthen the ethical basis of each individual in society which then could fulfill its equitable function in a liberal economic context. By means of the concepts of 'striated space' and 'smooth space', indicating spaces which are constantly mixed with and transformed into each other, Leif Dahlberg (Royal Institute of Technology, Stockholm)

interpreted law and equity as different, though not necessarily opposed kinds of grounds or space on which to settle and decide legal conflicts.

However, as Eric Rabkin (Ann Arbor University) pointed out, the reflection on equity is problematic; what had began as a system whereby “reasonable” exceptions were considered by the monarch became a convoluted parallel legal system that could produce results far less just than the common law and could easily reflect a regal caprice. As a matter of fact, Cristina Costantini (University of Turin) argued that the mutual definition of independent spheres of jurisdiction and the consequent contraposition Common Law/Equity as alternative systems of substantial rules is inscribed in the political disputes that lead to the settlement of English Constitution. Her interpretation underlined how equity satisfied political needs more than an effective demand for justice. Moreover, Gary Watt (University of Warwick) starting from the reflection that the role of equity in English law has traditionally been conceived to soften and mollify the extremity of the law, referred to concrete cases in which it was surprising to discover that English Equity routinely acts *in extremis*, even *in terrore*. Equity portrays itself in contrast to the general common law as being especially concerned with justice between the parties in particular cases, but if English Equity is weighed in the scales of inter-partes justice it is found wanting.

In order to understand the contemporary role of equity other than its present, narrow, doctrinal forms, Adam Gearey (Birkbeck College, London) appealed to a peculiar English political sensibility expressing a theory of institutions and life that is marked by pragmatism, religious toleration and a distrust of the state; understanding equity is, in part, a tracing of the contours of this scholarship, and the political passions that underlie it.

The discussions about law and equity are informed by ethics, therefore Heinz Antor (University of Köln) widened the perspective and argued for a position of critical and dialogical cosmopolitanism, characterized by a differentiating universalism as the most promising attitude to deal in an ethical way with the diversity of human existence in the age of globalisation and trans cultural encounters. He advocated a neo humanist post postmodern attitude which acknowledges the common features of all humans as a basis for constructive conversation while at the same time accepting and even welcoming the differences that enrich our lives. Connected to these reflections is the context of colonial and postcolonial literature where, as highlighted by Rüdiger Ahrens (University of Würzburg), the equity principle permits the evaluation of cultural and military clashes from an outside point of view and it works as a criterion of judgment to transgress (in a foucauldian sense) the differences and conflicts between ethnic groups.

The concept of equity is strictly connected to the concept of justice. The paper by Daniela Carpi (University of Verona) focused on the novel by Tim Parks *Judge Savage* whose protagonist is tormented by the ontological doubt if to apply a legal or an equitable sentence, thus staging a debate between law and equity which takes on different aspects. On the one hand, law and equity at times seem to coincide: to apply the law is to apply equity. Every juridical judgment in order to be such must be an equitable judgment. On the other hand, equity appears to be at variance with law and take on different connotations: what is equitable involves both the sphere of morality but also the aesthetic sphere and the sphere of legality. Sidia Fiorato (University of Verona) reflected on the concept of justice and in particular its enactment in human institutions, such as law courts, through an analysis of P.D.James’ novel *A Certain Justice*. The moral dilemmas of the defense lawyer and the repercussions of a successful defense of a murderer by means of the principle of reasonable doubt led to an interrogation on the ethics of lawyers and the equity of their reconstruction and evaluation of the case towards both their client and the counterpart. Ballard’s *Millennium People* led Chiara Battisti (University of Verona) to reflect if equity, traditionally conceived as the flexibility of justice, can assume the same value in a state of emergency. Moreover, she investigated how we can reconfigure and redevelop the

principles of equity, of social fairness and the foundation of a legal system based on fairness and justice to suit changing conditions, and create an overarching set of rules and regulations free from the disadvantages of one-sidedness or arbitrariness.

Going backwards in history, Richard Cave (Royal Holloway, London) explored the balance of justice with equity in the context of Renaissance comedy. The theatrical works of the period are cynical and contain a very limited, circumscribed possibility of realising equity; in the end there is a prevalence of poetic justice, if not legal justice. Furthermore, Yvonne Bezrucka (University of Verona) reflected on Dickens' critique of the collective construct of violence within the law which people seem to accept unaware of their implications and which finds its apotheosis in institutions and sanctions. Forgiveness and mercy are not contemplated within this law logic and such absence undermines law's liceity as a vehicle for the unquantifiable values of life and the unquantifiable value of life itself.

Another concept strictly connected to equity is mercy. Paola Baseotto (University of Insubria) underlined how Spenser's *The Fairy Queen* illustrates the XVI century concept of mercy, which does not equal pity or compassion because the latter are incompatible with the ethical and political responsibility of rulers and magistrates to promote justice and protect the common good. Equity does not automatically ensure pardon of offences, but it requires the strict exigencies of justice to be tempered by reason and to be moderate in their application. Thus equity and mercy are reconciled with judicial severity. Focussing on the contemporary period, Mara Logaldo (IULM University, Milan) argued that the law, in Capote's novel *In Cold Blood* appears as a dimension that, by deliberately avoiding interpretation and any kind of "going behind" which would negotiate facts, can leave no room for mercy. Only New Journalism, with its painstaking exploration of chances and nuances, with its over-interpretation of facts, and with its unveiling of the sublime inside crime, can make mercy possible.

According to Regina Schwartz (Northwestern University) *The Merchant of Venice* explores the dangers of separating justice from law and both from love. Justice appears as a self-sufficient philosophy of measure that is not answerable to either mercy or an understanding of human relations that is under the horizon of economy. The work therefore explores the effects of reducing the world, life and love to an economic calculus. Richard Weisberg discussed about the unconscionability of Shylock's pound of flesh penalty provision in *The Merchant of Venice*. According to a legal doctrine which nevertheless possesses overtones of equity, in certain situations the judge's conscience is called on to hold certain provisions in contracts and wills unenforceable by common law courts because they are offensive to the judge's basic sense of morality. In the course of the play however, this does not happen. Giuseppina Restivo (University of Trieste) shows how the outcome of the trial in *The Merchant of Venice* is not discriminating against Shylock as a Jew. As happens also at the end of *As You Like It* the recourse to an equitable procedure and the use of trusts cover the would-be killers' whole estates in favour of the purposed victims, but sparing the offenders' hereditary lines.

Ian Ward (University of Newcastle) analysed the role of literature to advocate and sustain the need for reform in the Victorian matrimonial law by allowing the abused Victorian wife to become an articulate spokesperson in the public sphere. Ward highlights the parallel between the woman protagonist of Anne Brontë's *The Tenant of Wildfell Hall*, who flees from the injustices and the violence that the law declined to address, and the real life of Helen Huntington, who chose to become, quite literally, an outlaw because of the failure of common law and Chancery. She became an active promoter of the reform movement by writing essays defending the married women's condition in nineteenth century England, and condemning not just the society, but the culture and the jurisprudence which pretended to justify it.

Carla Sassi (University of Verona) argued that Ferrier's novel *Marriage* by representing 'marriage' within and across national and juridico-national practices stages a claim for equality at a time, the 19<sup>th</sup> century, when such institution legalised gender inequality both in Scotland or in England. Marriage or inter-marriage fosters acceptance of differences and therefore dialogue between conflicting cultures (in itself an equitable/equalising project), and hybrid characters in the novel display, more generally, a capacity for *epieikeia* (that is for "flexible, situational judgement" and "mercy").

In the context of human rights, Maria Migliazza (IULM University, Milan) analysed the possibility of and the problematics connected to the interpretation of a rule in accordance with equity which, when enforced with appropriate *ratione materiae* and *ratione personae* limits, can help in mediating and settling discussions emerging in this field. As far as animal rights are concerned, Alice Bendinelli (University of Verona) focusing on Coetzee's *Disgrace* and *Elizabeth Costello* argued that equity, as an expression of *sympathetic* understanding and of justice, could provide an important and useful frame of reference. The compassionate and sympathetic understanding of the other seems to offer a viable means for a subject to embody such otherness without erasing the difference between self and other.

Sergia Adamo (University of Trieste) considered the issues of equity not just as a literary theme or content, but as an active and dynamic form of reflection; in this context intertextuality can be considered the particular aspect which points to the singularity in a problematic way and permits to re-inscribe the ethical dimension.

From the perspective of linguistics studies, Paola Vettorel (University of Verona) went beyond the concept of politically correct language towards a development of the use of inclusive language in the context of the official documents and papers of American universities. Promoting equity and equality means recognising and valuing these differences, not least through a conscious use of the language we portray them with and constitutes a fundamental aspect in civility and acceptance in our more and more intercultural, multi-cultural and multilingual societies. Cristina Gatti (University of Verona) investigated how the principle of equity is enhanced in the European institutional documents concerning language policies. The analysis showed a relevant inequity in the implementation of the language policies defined by the community, with the prevalence of English. Marina Bondi and Davide Mazzi (University of Modena) analysed the language of chancery division judgment in order to identify the lexis of equity. They focused on the argumentative discourse through which equity judges construct their reasoning. What emerged was the centrality of words like 'reasonableness', which acted as the yard stick by which judges attempted to evaluate the application of the common law and thereby to preempt the danger of too strict adherence to rule. Reasonableness appears to be a real test through which to adopt or discard a common law principle.

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