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Equity: A Diachronic Assessment

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The International seminar "***Equity: A Diachronic Assessment***" was held in Verona on the 23rd-25th of November 2006 and represented an important part of the ongoing research of an international team of scholars on the challenging topic of equity. This highly interdisciplinary seminar was made possible by the funding of MIUR and was also sponsored by AIA and the Department of English Studies of the University of Verona. As **Prof. Gianpaolo Marchi** (Dean of the Faculty of Foreign Languages in Verona) and **Prof. Cesare Gagliardi** (Vice-Director of the Department of English Studies in Verona) affirmed, this seminar marked both the continuity and the timeless and self-renewing importance of this field of research, which has been pioneered in Italy by Prof. Daniela Carpi (Professor of English Studies in the University of Verona and Vice-President of AIA). The seminar assessed the meaning of equity through a diachronic analysis and demonstrated the ways in which contemporary perspectives on equity stem from classical times and how equity has, from its origins, always represented a challenging and fruitful subject.

The evolution of both the concepts and practices of law and equity in Pre-classical times was investigated by Piergiuseppe Monateri (University of Torino) in "***Equity in Pre-classical Times***". By taking into consideration some linguistic variables in the relationship between these two fundamental legal issues, Monateri explored the changing meaning of some key-terms and, then illustrated a clear and useful diachronic overview of the historical (and political) background against which this problematic relationship could be observed. In keeping with the inter-disciplinarity of the seminar the sources that Monateri availed of were both legal and literary. By focusing on central passages from legal literature (in primis, the Justinian Digest), Monateri drew the attention of the public to terms such as Bonum, Aequum, and Ius, which are all contained in Ulpian's definition of justice as "Jus est ars boni et aequi". Here, a kind of justice (aequum) and public interest (bonum) converge, and, as Monateri observed, define that which was the essence of law as "politics developed to produce both public interest and justice in a society". Consequently, Justice and Equity constitute the very essence of the Law whenever the latter is conceived as "reasonableness". In classical times, however, important works of juridical literature reveal a contrast between Law and Equity. Gaius, for example, observed how the law may contradict equity since a duty under the law can be contrary to what is equitable. Similarly, De Officiis by Cicero contains the famous maxim: "summum jus, summa injuria", which implies that the application of the law can lead to injustice, or malice, as stated in the Heautontimorumenos by Terentius. The second set of sources and references were literary authors (Ennius, Plautus, and Terentius) in which, as Monateri pointed out, traces of the emergence of equity as different from the law can be found,

inaugurating a deep distinction between the two terms. The historical, legal, and literary approaches all converged in another important source for Monateri's discussion of equity in Pre-classical times, that is, the account by Titus Livius of the birth of the Law in Rome, this is a story which revolves around the rape of Lucretia, her suicide, and the subsequent period of riots and political havoc. It was at this crucial and troubled time that, after Lucretius's interregnum, the Roman Republic was founded. Importantly, as Monateri observed, this rebellious act was totally lawful, demonstrating how the rightness of a legal decision can be separated from the law (an issue that is central to the concept of equity itself). This example was, then, pertinently put in relation to Carl Schmitt's theories on "the state of emergency" and "exceptions", as appropriate moments for stepping outside the rule of law in public interest. By making reference to contemporary legal theories, Monateri finally bridged the temporal gap between a "now" and a "then" by observing how the questions of decision making and legitimacy, "in judicio" and "in jure", judgement and decision have always constituted the essence of both the political and the legal realms and how any coupling of the terms law and equity is ultimately problematic.

Daniela Carpi (University of Verona) in "***What is Equity?***" provided an important introduction to the concept of equity by outlining the development of equity in the history of human ideas. What emerged from her analysis is the way in which equity has always been inseparable from justice. Equity can be considered as synonymous with ideal justice and fairness, and it intervenes whenever – due to a rigid and inflexible application of a norm – justice is impaired. As in the traditional allegory, justice could be seen as a balance between law and equity, as the resolution of the conflict between opposite claims (universality and singularity). In her analysis Carpi individuated the vital characteristics of equity, which would recur throughout the seminar, such as equity's creative flexibility, mercy, individuality, but also, elusiveness and ambiguity. Carpi successfully outlined the centrality of equity in legal, ethical, and literary thought from ancient to contemporary times. Judgement according to equity, as she observed, is at the root of different legal traditions: in civil law countries the law-equity divide focuses on the way judges should decide, whereas in common law countries it gave rise to separate courts and a gap between jurisdictions. A central feature Carpi focused on was equity's flexibility, its adaptability, which accounts for the diversity of social situations and the specificity of historical contexts and perceived justice. This transformative power, however, can also be the source of criticism since, as many detractors of equity have purported, it can be too discretionary and, therefore, unpredictable. Carpi examined the classical derivation of the concept by taking into consideration some key passages and works by the most representative ancient philosophers who, more than others, discussed the concept of justice: Seneca, Aristotle, and Plato. This philosophical background allowed Carpi to clarify some fundamental and problematic concepts and key-terms which later re-appeared in most of the contributions of the seminar, such as justice/injustice, mercy/cruelty, forgiveness, leniency, and reasonableness. Carpi demonstrated how equity can be considered, on the one hand, as a fundamental principle of justice, and, on the other hand, as a value judgement from the inside of the law. Its subjective and objective dimension put into question the universality of the law and make the relationships between legal knowledge and value judgements patent.

Cristina Costantini (University of Torino) in "***The Judicature Act and the con-fusion of Law and equity***" revisited some salient juridical and political "battlefields" upon which Common Law and Equity confronted each other before reaching a coherent appeasement of forces and principles with the Judicature Act. Within the political, juridical, and theological background outlined, Costantini identified the Judicature Act as the "con-fusion" between Law and Equity and as the epilogue of such polemical spirit of English Law. The origins of the Equity system are usually traced back to the necessity of mitigating the rigour and inadequacy of the Common Law. However, Costantini observed that such an explanation oversimplifies the relationship between Common law and Equity. A more grounded historical consciousness would identify the beginnings of Equity in the struggle

for the Dominium of (and on) the juridical sphere. In order to question the exclusive legitimacy of the Common Law it was necessary to individuate an autonomous and superior source of authority, which could be easily identified with the Law of nature and the Law of reason, the nearest to God's plan and will. Costantini argued that in a perspective of Political theology the origins of Common Law and Equity can be reconstructed in terms of a dispute between two different models of incarnation of the theological ascendancy of the Law: the Justice of Law, pronounced by the Court of Common Law, was settled in front of the Justice of Conscience, declared by the Chancellor in the Chancery Court. Costantini analysed the way in which in order for these two opposing juridical powers to prevail, Common Lawyers, for example, rediscovered the coessential inclusion of Equity in Common Law and demonstrated that Equity was something within the Law, a virtue inherent to it. Equity's stability was, however, undermined by the secularization of the Chancellor's functions and by the collapse of the theological foundation; as Costantini highlighted, in order to survive, Equity had to adopt the same rhetoric of its oppressor, losing its original characteristics. Consequently, the discretionary power of the Chancellor gave way to an observant application of more and more fixed rules. Another important stage of the process leading to the Judicature Act illustrated by Costantini was the fight between the Crown and Parliament in Tudor times, although it was only with the Stuarts' accession to the throne that the scene was modified. In the dispute over the juridical definition of sovereignty and kingship, Equity was used as a perfect instrumentum regni. James I, for example, grounded kingly authority over his subjects in the Holy Scripture and his power as directly bestowed by God, hence outside and above the Common Law. The Judicature Act represented the final political solution that pacified the different languages in which English Constitution found expression, acting as a normative act, external and superior to both the Common Law and Equity. This, however, as Costantini concluded, entailed a definitive betrayal of Equity's origins, dividing itself from the sphere of moral order and becoming yoked into a settled system of rights' allocation. In this way the juridical landscape was dominated by equivalent sets of fixed principles and predictable decisions and the patrons of Common Law and Equity had lost the meaning of the beginnings.

Ian Ward (University of Newcastle) in "***Princes, Puritans and Prostitutes***" reinforced the interdisciplinary nature of the seminar in his historical, legal, and literary analysis of the question of prostitution. While revisiting the particular historical setting of the late sixteenth and early seventeenth century and the various political, moral and theological debates around the 'oldest profession', Ward also individuated the literary sub-text within which much of these debates were cast, in primis, that of Shakespeare's Measure for Measure. The idea of prostitution arises from a peculiar gender imbalance and the 'prostitute-identity' itself seems to be the result of a process of condemnation of masculine design. This process of demonization and of ascription of 'otherness' is revealed in the prostitutes' special status as denigrated legal subjects, thus, such demonization was used to justify the presence of a legislation that is extremely repressive, indelibly textual, and predominantly male. If female prostitution is the oldest profession, then the second oldest is 'men writing about it' and this stigmatisation is, as Ward demonstrated, rooted in history and in (Puritan) religion. The textual treatment of prostitutes is pervaded by images of 'stigma' (the prostitute as dirty and disruptive, wanton and wasted) and a prostitute is commonly regarded as the antithesis of the good woman, the loyal wife, the doting mother, epitomising an unconstrained femininity. This demonic image was, and is – as Ward remarked – written by men and very often largely for men: pandars and priests, policemen and politicians are predominantly male and all are seeking to constrain the female body seen as a challenge to patriarchy. Ward provocatively suggested that in all writing about prostitution a bridge between the real experience and the virtual is created, and the (male) writer becomes the pandar, the man who lives off the virtual earnings of the literary prostitute. Pandars and bawds appear in various places in the Shakespearean canon and they acquire a provocative centrality as a necessary corollary of the sexual politics of Measure for Measure, a play that patently displays the doubts attached to the pending Stuart succession. If the principle

responsibility of the godly magistrate was to secure the commonwealth against the anarchy of moral depravity, few people were convinced that the new King James had a proper sense of this responsibility; so during the Puritan reformation of manners and morals, people seemed to be governed by the pulpit rather than by the sword. These women, residing outside the family unit, caused particular anxiety amongst the godly as it is witnessed by the Duke's words: a prostitute is 'nothing then: neither maid, widow nor wife'. The world depicted in Measure for Measure (Vienna, and at an implied remove, London) is a dark one but, as Mistress Overdone suggests, at the root of this confluence of disease and depravity lies the failure of magistracy and of law. Shakespeare's condemnation of Puritan hypocrisy is betrayed in the portrait of the purveyors of lax morality (Lucio or the pimp Pompey) which are the constant subjects of ridicule. Furthermore, the most Puritan voice, Angelo's, is also the most troubling of all (the others being the Duke and Isabella's). His magistracy, in fact, voices the hypocritical nature of laws and anxieties that seek to constrain sexuality. For lacking the substance of justice, Angelo's magistracy will be undone; he lacks compassion and the ability to 'measure' the distribution of justice, which constitutes the essence of equity.

Giuseppina Restivo (University of Trieste) in "***Debating Equity in Renaissance England: Two Different Outlooks***" argued that equity can be observed from two different outlooks: pragmatic and theoretical. These two separate perspectives not only defy any unified definition of both the concept and the practice of equity, but also have produced two different directions in specialised literature. On the one hand, equity is considered in its pragmatic and historical development, on the other hand, the focus is on its philosophical, theoretical, ethical and religious manifestation, as an ideal of justice. Restivo pertinently made simultaneous references to two important representatives of these two approaches (F.W. Maitland's Equity and Mark Fortier's The Culture of Equity in Early Modern England) since, as she argued, it is only by combining these two separate and opposing outlooks that we can understand what equity meant in Renaissance England. A significant example is provided, as Restivo observed, by the contrasting readings of the trial scene in Shakespeare's The Merchant of Venice within "law and literature" studies. Restivo began with a clear outline of the origins of the English legal system, providing the necessary historical coordinates for the development of the Common Law Court and of the Court of Equity in the Renaissance. One fundamental reason for the development of the Chancery into a successful equitable court lies in the limits of the common law procedures and of its remedies, which could prove insufficient. An equitable justice, moreover, was meant to be a 'merciful' one since it avoided unnecessary fierceness, in fact, the real problem of common law was its rigidity. Restivo then individuated the main functions and procedures of the Court of Chancery which brought about concrete innovations, thus integrating the legal system and expanding its range with its specific tools. A first an important feature is that while the common law court acted in rem (on the property of the litigants), the equity court acted in personam (on the person of the litigants). Then, equity allowed a consideration of all aspects at a time, solving all problems in the same trial, rather than in subsequent ones. This simultaneity favored the "balancing of the equities", which were forms of compensation between the parties and in the quality of remedies. Another innovative characteristic of the Court of Equity individuated by Restivo was its recourse to "uses" and "trusts" to dispose of patrimonial aspects. The Chancery, however, this "roguish thing", unleashed a legal and political debate and gave rise to the immediate opposition of many common lawyers. The centrality of equity at the time was betrayed, as Restivo observed, also in literary works, an exemplary text is Shakespeare's The Merchant of Venice, in which Shakespeare concretely enacted contemporary legal issues, staging those equitable proceedings he had in vain hoped to see applied in his family's twenty years' litigation over the loss for debts of inherited land.

Paola Baseotto (University of Insubria) in "***To Pardon and to Punish: Strictum Ius and Equity in***

Spenser's 'Legend of Justice'" focused on a fundamental figure in Renaissance times which, as she suggested, could deservedly be considered as a patron of the "Law and Literature" movement. Edmund Spenser, in fact, was not only a famous poet but also an actively involved politician and administrator of justice in Elizabethan times. Spenser's major work, The Faerie Queene, clearly reflects this lifelong involvement in the body politic and in the administration of justice. Its aim was to "fashion a gentleman in vertuous discipline", that is, to offer moral and political instruction to people entrusted with the administration of the state. Baseotto's attention focused on Book 5 which is entirely devoted to a fundamental virtue, justice, highlighting the way in which the discourse of equity is central to the Spenserian treatment of justice. In her analysis of the figures embodying justice in Book 5 Baseotto individuated the centrality of both equity and of the principle of bona fides in the administration of this virtue, as it is demonstrated in Astraea's teaching to her deputy on earth, Artegall: "to weigh both right and wrong / In equal balance with due recompence, / And equity to measure out along, / According to the line of conscience, / When so it needs with rigour to dispence". The importance of equity is also confirmed by the presence of two shrines of justice in Spenser's work: the temple of Isis and Mercilla's palace. Baseotto's analysis focused on those key passages and moments in which the nature of justice and equity, as a form of mitigation of harshness, are considered. Attention was, therefore, paid to Britomart's vision in the temple of Isis, in which Britomart is instructed in the nature and applications of equity which can restrain the rigidity and cruelty of enforced laws. Spenser's appropriation of the Egyptian myth of Isis is interesting also considering that from the union between Isis and Osiris a lion was born which – as Baseotto maintained – can be taken as an emblem of natural law, that is, of the balance between equity and strictum ius. The second shrine of justice is queen Mercilla's palace that is dramatized as a Court of Equity in which the queen is portrayed in the act of adjudicating upon cases on the basis of equitable principles. Furthermore, as Baseotto observed, some of Mercilla's attributes – whose name clearly suggests mercy – dramatize the contemporary view of equity as a delicate balance between justice and mercy. Baseotto concluded by opening new venues of research for the topic of equity in Spenser by observing how equitable judgement sometimes requires, on the one hand, painful negotiations between a merciful disposition on the part of the monarch or judge and, on the other hand, the necessity to enforce harsh punishment in order to protect the commonweal. Spenser, Baseotto maintained, dramatized with great mastery the agony inherent in the negotiations between mercy and strictum ius, equity and the law in his narrative of Mercilla's painful resolution to put a wicked queen to death. As it was suggested, this allegory shadows the hesitation of Queen Elizabeth in signing the death warrant for the execution of Mary Queen of Scots who, as contemporary legal documents report, was tried by a court of equity.

Patrizia Nerozzi (IULM, University of Milano) in "***Equity on trial: judicial cases in the novels of Richardson and Fielding***" took into consideration some moral and ethical implications of legal issues and judicial cases in Eighteenth century literature. This period, Nerozzi suggested, marked a turning point in the diachronic development of equity's jurisdiction since it had particular relevance in some areas unprotected by common law, such as property, a topic which came to the fore in literature too. Drawing on some previous results from her research, Nerozzi demonstrated how Samuel Richardson's Clarissa can be read as a novel on the nature of justice and, therefore, should be considered as a landmark in the law-and-literature area. At the centre of Nerozzi's analysis there were also issues of property and of inheritance within the Harlowe family, issues which, although they are not directly raised in the text, are nonetheless implied, reflecting both a complicated social pattern of the day and the growing popularity of a form of inheritance arrangement, the "strict settlement". In order to ensure the continuity of the family estate a grandfather would settle his estate on the eldest son of his own eldest son, and would thus bypass the father, reducing his claim to the estate to a life tenancy. Therefore, this procedure represented a serious threat to family hierarchy: while strict settlement gradually undermined the authority of the father, the eldest son came to occupy a unique position. The 18th century is also a period of rapid social mobility and

economic change, a period in which justice and its administration became matter of popular interest. In fact, novels and periodicals of the time were pervaded by legal issues (criminal law in particular) and this determined a certain familiarity with legal terminology among the public. In her investigation on the nature of justice and injustice within the literary world, Nerozzi took another key text into consideration, The History of the Adventures of Joseph Andrews, and of his friend Mr. Abraham Adams (1742) by Henry Fielding who, as a novelist and magistrate, journalist and playwright, had put his legal competence into literary use. In Joseph's picaresque journey on the dangerous roads of contemporary England, the law, or rather the administration of justice, appears as a pervasive, "natural" force, always ready to set be in motion according to the old motto: "Law is everywhere, justice is nowhere." Joseph, Champion of Chastity, and his fellow-traveller Parson Adams, Champion of Charity, are continuously confronted with the dangers of a society devoid of justice in both the legal and general sense, thus betraying Fielding's attack on the judicial system, a target of Fielding's satire. However, Nerozzi suggested that Fielding's perspective on justice is more varied and complex than it seems and that in Joseph Andrews a debate on the nature of man runs in parallel with a debate on the nature of justice, of education and of religion.

Adam Gearey (Birkbeck College, University of London) in "***Equity, Intimacy and Economy***" contended that equity must be understood in the context of a gendered economy of property ownership which is defined by tensions in English law related to the relative importance given to the protection of the intimate space of the family and the priorities of certain powerful economic actors. In his paper Gearey traced the complex sense in which both legal and equitable principles have been used in an attempt to produce a coherent juristic response to this agonistics and he maintained that in order to understand equity we require a general account of property law that can assist us in navigating the conflicts between familial intimacy and the universal in the form of capitalist economy. Gearey's analysis, therefore, engaged with three inter-related concepts: property, the family and the state, while taking into consideration Hegel's Philosophy of Right which provides useful terms to define the disjuncture between "intimacy" and "economy". With regards to property law, a central issue in the feminist scholarship recognises the construction of the property holder as essentially male. If property serves as a way of concretely individuating its owners as subjects who own objects and if the exchange of these objects allows mutual recognition, the law can be seen as arising from this need for a mediation between subjects who recognise each other as such. However, law and equity have traditionally resisted, or given begrudging concession, to the rights of a wife against her husband and this, according to Gearey, begs the question of equity's role in the construction of a gendered economy of property. In Hegel's Philosophy of Right, property and ethics are placed in relation to the notion of the family. In marriage an abstract bond is interiorised as a relationship of love, whereas selfishness, which characterises the ownership of property, is "transformed" into ethical common possession. The key concern in Gearey's analysis is an ethical form of property, family capital; he individuated tensions between those who assert the jurisdiction of the family over its assets (a form of emotional solidarity) and those who seek to speak for the universal, which manifests itself as the form of property rules representing an economic universal. Gearey argued that these tensions ultimately reflect a more profound struggle between the demands of a capitalist economy and principles that might represent alternative values, which he defined as "forms of emotional solidarity". According to Gearey it is possible to trace a tension through various doctrinal manifestations; from the imputed trust and the family home; through the debate on the precise nature of a wife's right to occupy, to the contemporary discourse on unjust enrichment and the law of restitution. Moreover, Gearey identified a form of 'quasi law' within a relationship between lovers, a "domestic code" that defines the home as a place apart, a "domain" where the "king's writ does not seek to run." The source of this "quasi law" is the intimate relationship itself, a form of emotional solidarity. In his analysis Gearey underlined how undue influence can be seen as one, most recent attempt, to make good the damage that has been caused by the failure to adopt a meaningful doctrine of communal property. However, the law has

not, as yet, provided a sufficiently precise articulation of a position for female legal subjectivity, nor is there any coherent, objective, institutional position to offer a space for the problems encountered by women as owners of property. How is the intimate space given recognition? In Gearey's view the intimate relationship is down played in relation to a legal/economic situation where the law must be stated in a form which is principled as certain as possible.

Yvonne Bezrucka (University of Verona) in "***Representation and Truth: Law and Equity in Robert Browning's The Ring and the Book***" analysed The Ring and the Book within the 19th-century law-literature tradition. This poem is based on an actual murder case in Rome in the 17th century (1693-98), the murder of Francesca Pompilia Comparini and her parents by Count Guido Franceschini and his accomplices. As Bezrucka argued, Browning, whilst making use of this historiographic setting – both temporally and geographically removed from Victorian England – actively engages himself with legal matters which became prominent during his times (such as the continuing debates about the limitations of Equity, issues about divorce, murder, and capital punishment). In her cross-temporal and cross-spatial analysis, Bezrucka established important parallels between the different, and often contrasting, jurisdictions which are either directly, or obliquely, referred to in the text. In so doing, Bezrucka successfully demonstrated how the civil law court and the canonic law court of Italy are reminiscent of the English distinction between the Common Law and Equity Courts. In particular, the Italian canonic court presided over by the supreme religious judge, the Pope, can be seen as a parallel of the English Court of Equity presided by the Lord Chancellor as they both rely on individual conscience and discretionary adjudicature and, consequently, discretionary justice. As it was pointed out, the conflict between these two jurisdictions was hotly debated in Browing's times and it involved important jurists and economists (including, Jeremy Bentham and J.S. Mill) who disputed Equity's right of adjudicature on the basis of its "arbitrariness" which can infringe any claim of objectivity in verdicts. The debate, eventually, led to the union of the two courts (Common Law and Equity Courts) ordered by the Judicature Acts of 1873 and 1875. As Bezrucka demonstrated Browning too engaged himself with these legal issues and took sides with the rational party. In this perspective, the complex narrative structure of the poem –nine monologues providing relativistic versions of the murder – rather than referring to a putative truth's essentialism, could be seen as a way of implicitly contending the plausibility of these provisional, cultural, gender, regional, and historically determined notions of truth, and consequently of justice. Furthermore, Bezrucka demonstrated how the issues of representation and truth arising from this structure make The Ring and the Book a prototype model work and an implicit statement for what has become a truism in much contemporary postmodernist fiction.

The awareness of the ambiguity underlying the concept of equity – in which tensions and conflicts become manifest – constituted the starting point of the paper by **Sergia Adamo** (University of Trieste), "***Equity, Justice and Human Rights in Coetzee's novels***". It is precisely this impossibility of a single definition of equity and the ambiguity of its status that Adamo wanted to sustain while highlighting the tensions between justice and the law, and, therefore, while placing the universality of the law against a background of humanity and of an ethical dimension of justice. What ultimately emerged from her analysis was the openness of the question of justice, its supplementary essence. Justice is caught between two drives: universality (of the law) and singularity (of works of literature), therefore, justice acts a medium term. While availing herself of an important critical tool and literary device, intertextuality, Adamo purported an idea of intertextuality as a means of creating a sense of dislocation and estrangement in which we come to terms with Otherness without reducing it to an easy object of knowledge. Adamo later identified this constant exercise of imagination with an ethics of reading and of re-reading. The discussion focused on two novels by Coetzee, Waiting for the Barbarians and Disgrace in which Adamo individuated a form of justice at the intersection between law and literature. Processes of "finding out the truth" are central to both these novels, revealing the ways in which both truth and justice can be considered as discursive

practices. Adamo, moreover, addressed some hotly debated issues such as Human Rights, Apartheid and a pervasively adopted truth-procedure in South Africa, torture. Literature and torture, Adamo suggested, could be considered as two competing discourses aiming at producing narrations, they are both instruments which produce stories that can be called truth. However, if the concept of truth points at universality, the indeterminacy of Coetzee's setting (both temporal and geographical) betrays the underlining tension between singularity and universality. Adamo, then, appropriated Derrida's reflections on justice in order to make some legal aporias evident, reaching the conclusion that justice is an "experience of the impossible". Both Coetzee and the magistrate in his fiction are confronted with an impossibility of justice, because Otherness is irreducible and the task of literature is, as it was suggested, that of pointing to this irreducibility. The analysis of the intertextual devices and references in Waiting for the Barbarians and Disgrace (which range from Victor Shlovsky to Franz Kafka and William Shakespeare) allowed Adamo to demonstrate how whenever an attempt of making justice is involved, some space for irreducible alterity must be left. After stressing the interconnection between justice and the past, that is, justice as "the tradition of the forgotten" (as defined by Agamben), Adamo concluded in a Derridean manner and succeeded in keeping those limits she had posited at the beginning of her paper productively open.

Maria Migliazza (IULM, University of Milano) in "***Equity as a Medium in International Law***" and **Roberta Bogni** (IULM, University of Milano) in "***Equity and International Law: Rule and Custom Through the Main Cases of International Courts***", explored the importance of equity within International Law, which represents a challenging area of research for both lawyers and legal scholars. International Law, in fact, is a legal system which is characterised by an extreme complexity, as it is constituted by several appellations: Customary International Law, General Principles of Law, Natural Law, jus cogens and, importantly, equity. Migliazza began by asserting that Equity in International Law can be considered as a means of communication since it introduces criteria of interpretation. One of the areas of International Law, illustrated by Migliazza, in which equity can be adopted is that of human rights and, in this respect, equity becomes a moral duty of every international subject. The main recourse to equity, as Migliazza observed, is within the settlement of disputes since equity enacts a form of justice which can be adapted to individual cases, thus, contrasting with the universalistic essence of the law. Similar remarks were made by Roberta Bogni who remarked that although codification represents the sole way to reach accurate and durable normative and jurisdictional schemes at international level, equity constitutes a non-consensual source used to supplement or modify the rules of International Law. By making reference to Article 38 of the Statute of the International Court of Justice, Bogni underlined the strong connections between principles of law and equity when deciding disputes. The negotiation and adoption of several international treaties in areas like environmental law, criminal law or economic law represent a great advance for International Law. From a procedural point of view, equity has ancient origins and – as Daniela Carpi pointed out – it goes back to the interpretation given by Aristotle, according to which in specific cases a judge can make exceptions and use equity as a "correction" of what is legally just. According to Bogni, the strict rule of International Law represents, however, the grounds upon which we can understand judges' behaviour and classify the use of equity in the settlement of disputes. Considering a wide range of international cases in the 20th century, Bogni classified equity into three different forms: intra legem, praeter legem and contra legem. Since the enforcement of equity is connected with the concept of distributive justice, equity allows the judge to modify or supplement the rules of International law and to find an equitable measure to use in each specific case. For this reason, the concept of «equity as justice» has become more and more relevant and has been frequently analysed in the context of the allocation among states of scarce resources, with specific reference to the maritime and the continental self delimitations. Expressions like equity, reasonableness, or ethics of the international community become the central theme of the doctrine, which use them to identify and define each single case and to search a genuine objectivity in adjudications. Treaties and conventions developed

in the first decades of the Twentieth century too include references to equitable principles which can be enforced in the settlement of disputes. “Equitable justice” has been particularly used in the field of Land and Maritime Boundary delimitations, causing debates on the risks related to the judge’s discretionary power. As Bogni demonstrated, the case-law of the International Courts can, therefore, offer an interesting range of disputes in which equity plays a fundamental role in the final decision of the judge and where the procedural and substantive aspects emerge clearly. In the cases considered by Bogni equity became synonymous with legitimacy and of distributive justice, capable of introducing new elements in its enforcement (such as economic factors and equitable calculations). In so doing, this instrument of justice can be adapted to the current society, taking into account the development of the world in the economic field, but also in the environmental context. Bogni concluded by saying that any legal system – beginning with International Law, which has a guiding role – should consider forms of equity and of proportionality which can solely guarantee the respect of a new and infinite number of factors, such as geographical, geological, topographical, economical, political, strategic, demographic, scientific, and environmental variables. The use of equity, therefore, determines a form of flexibility which otherwise could not be taken into account in a contemporary society which needs strict rules and fixed points of reference. For this reason a complete work of codification could represent the future of International law and a favourable solution also welcomed by states which do not officially recognize equity in their own legal system.

The animated debates following each session enriched this interdisciplinary seminar on Equity. Furthermore, the numerous questions which were posited and the issues which were raised during the sessions will find appropriate answers in the coming conference, “*Practising Equity, Addressing Law: Equity in law and literature*” which will be held between the **22nd and 26th of May 2007** in the University of Verona.