

An Overview of Justice in Sir Walter Scott Waverley Novels: *The Heart of Mid-Lothian*

ENRIQUE GARCÍA DÍAZ*

García Díaz, E., 2014. An Overview of Justice in Sir Walter Scott Waverley Novels: *The Heart of Mid-Lothian*. *Oñati Socio-legal Series* [online], 4 (6), 1167-1172. Available from: <http://ssrn.com/abstract=2543538>



Abstract

Although Sir Walter Scott is a well-known writer most of his readers know that he became an advocate in 1792, when he was admitted to the bar. Since then Scott and other advocates walked the floor at Parliament House (home of the Faculty of Advocates and the Court of Session) waiting to be hired. Scott's own experiences as a fledgling advocate are echoed in those of Alain Fairford in his novel *Redgauntlet* (Scott 1824), which provides a vivid picture of Parliament House in the eighteenth century. During his life, Scott combined extensive writing and editing issues with his daily work as Clerk of Session and Sheriff-Depute of Selkirkshire. Walter Scott was not unaware of Justice and Law and *The Heart of Mid-Lothian* is the novel in which he introduces to the reader the Scottish Legal System during the eighteenth century. However, there are few more examples that I will explain.

Key words

Advocate; Law; Justice; Union; Sir Walter Scott

Resumen

Aunque Sir Walter Scott es un conocido escritor, la mayoría de sus lectores saben que en 1792 se hizo abogado, cuando fue admitido en el colegio de abogados. Desde entonces Scott y otros abogados rondaron el Parlamento con la esperanza de ser contratados. Las propias experiencias de Scott como un abogado novel se reflejan en las de Alain Fairford en su novela *Redgauntlet* (Scott 1824), lo que ofrece una vívida imagen del Parlamento (sede de la facultad de Derecho y Tribunal Supremo) en el siglo XVIII. Durante su vida, Scott compaginó una profusa actividad como escritor y editor con su trabajo diario como juez en Selkirk. Walter Scott conocía la justicia y el derecho y *El corazón de Mid-Lothian* es la novela en la

Article resulting from the paper presented at the workshop *Perspectives from Justice and Fundamental Rights in Literature: an Approach from Legal Culture in a European context* held in the International Institute for the Sociology of Law, Oñati, Spain, 20-21 May 2013, and coordinated by Joxerramon Bengoetxea (University of the Basque Country) and Iker Nabaskues (University of the Basque Country).

* Enrique García Díaz, Ph D in English (2007 Universidad de Salamanca). He has worked as teacher of foreign languages (1998-2008). Translator (2000-2010) and Local Language Editor in IBM (2009-2012). He was Member of the English Association the Journal of Sherlock Holmes, London, (2010-2012) and AEDEAN (Spanish Association for the Anglo American Studies) 2006-2008. Since 2004 he holds a Life Membership in the Edinburgh Sir Walter Scott Club in Edinburgh. He dedicates to write Romantic and Fantasy fiction and to collaborate in literary magazines and blogs. C/ Orégano 13 17, 2º D. 37005 Salamanca (Spain) cegr2000@yahoo.es



presenta al lector el régimen jurídico de Escocia durante el siglo XVIII. Sin embargo, se explicarán algunos otros ejemplos.

Palabras clave

Abogados; derecho; justicia; unión; Sir Walter Scott

Sir Walter Scott became an advocate in 1792 when he was admitted to the bar. Scott's experiences as a fledgling Advocate are echoed in those of Alain Fairford in his novel *Redgauntlet* (Scott 1824) which provides a vivid picture of Parliament House (home of the Faculty of Advocates and the Court of Session) during the eighteenth century. *Redgauntlet* offers many similarities with Scott's own life. It draws on Scott's training as a lawyer and preparing for the bar. During his life Scott combined extensive writing and editing issues with his daily work as Clerk of Session and Sheriff- Depute of Selkirkshire. So Scott was not unaware of Justice and Law. Maybe, *The Heart of Mid-Lothian* (Scott 1818) is the novel in which Scott focus on Law more than in other on introducing the reader the Scottish Legal System during the eighteenth century. But there are more examples of Law and Justice in the Waverley Novels.

The first of these examples is in *Waverley of 'Tis Sixty Years Since* (Scott 1814) which the trial of Fergus and Evan Dhu rises to epic heights with Evan's moving plea to the Court. When the sentence is pronounced and the judge urges Evan to beg for Kings Grace, his behaviour and answer are defiant. This image of the highland clansman challenging the judge has been considered as a heroic behaviour by critics, and an example of rebellion against English Courts: "[...] loose my hands and gie me claymore, and bide you sitting where you are!" (Scott 1814) Scott shows the brave spirit of Highlanders against London and its courts after the Union in 1707. *Old Mortality* (Scott 1816) was criticised because of the image of the Covenanters. These were not agreeing with the Act of Rescissory passed by King Charles II in 1669 and the restoration of the "Privy Council" This body acted as a Court which appear Henry Morton of Milnwood, Cuddie and MacBriar. This Court practice torture what Scott was aware of as he depicts in MacBriar torture. The most important element in *Old Mortality* is the murder of Archbishop Sharp by a group of Covenanters as an act of justice. According to Scott, these rioters were looking for one Carmichel, sheriff-depute in Fife, who had been active in enforcing the penal measures against non-conformists, as Scott states in the novel. But they murdered Archbishop Sharp, head of the Episcopalian church. However, Scott justified this murder in Balfour's speech because Archbishop Sharp was a defender of the Church of Scotland in London. He returned to Scotland being Archbishop of Saint Andrews and defending a different doctrine. He is said to have accepted five thousand *merks* from King Charles II. In some quarters, Scott was accused of caricaturing the image of the Covenanters and whitewashing the Royalists. The distinguished Presbyterian Church historian, Tomas M'Crie sought to vindicate the character of the Covenanters in his review in the *Edinburgh Christian Instructor*. His views were echoed in the *British Review* and *Eclectic Review* but refuted by Scott himself, who anonymously reviewed his own novel in the *Quarterly Review* (Barnaby 2011). Although Scott did not seem affected by this critic it is true that he changed the image of Covenanters in *The Heart of Mid-Lothian* offering a different image.

In *Ivanhoe* (Scott 1819) one of his most famous novels, Scott depicts a trial for witchcraft against Rebecca of York. She managed to escape from an immediate execution by demanding a trial by combat. Wilfred of Ivanhoe appears as her champion to face a reluctant Bois-Guilbert who has been commanded to represent his order. This is the first time Scott introduces the trial by witchcraft and the combat in the name justice. During the Middle Age women were accused of witchcraft that Scott depicts it on the novel. Furthermore, Rebecca is a Jewess who Scott uses to show the situation of Jews in England during the Middle Age. *The Two Drovers*, a short story based on an account that Scott heard previously the trial and execution of Highland cattle drover accused of the murder of an English one. It astonishing how the Highland man is ready to give his own life for the one he took:

"I give a life for the life I took, he said, and what can I do more?" (Scott 1827, p. 89).

He accepts the verdict of the English court because he thinks it is the right one. In this short story Scott shows how Scottish people accept the English justice from London. This is a fair justice that Scott depicts here.

But it is important explain Justice at this moment before analysing his most legal novel. Scott believed that the Union of Scotland and England, which as he declared in *The Heart of Mid-Lothian*, had not yet acquired consistence. Scott was aware that London, as the centre of power, may still be influenced by the old prejudices and antagonisms between two countries. However Scott defends this Union and shows how Queen Caroline pretends to destroy Edinburgh because of the Porteous Riots; but then Scott decides to show her as a magnanimous person when deciding to forgive Effie and the capital of Scotland. Scott did not want to show an evil image of England and its Queen, because he was in favour of the Union. After this Union, it was agreed that Scottish Courts, the Kirk and the Scotch Parliament must no be ruled by London. Scott explains this issue of the Kirk and the General Assembly of Scotland.

“I canna understand this neighbour, answered Saddletree. “I am an honest Presbyterian of the Kirk of Scotland, and stand by her and the General Assembly, and the due Administration of Justice by the fifteen Lord o’ Session and the five Lords o’ Justiciary” (Scott 1818, p. 139).

In a novel like *Rob Roy* (Scott 1817), we see a pessimist feeling in Andrew Fairservice speech when he talks about consequences of the Union with England.

“Nae doubt things were strangely changed in his country sin’ the sad and sorrowful Union” (Scott 1817, p. 169).

There was to be a single Parliament of Great Britain in which Scotland would have sixteen representatives in the Lords and forty-five in the Commons (Smith 2000) So Justice would ruled by English Courts. But it was agreed that the Scots legal system would retain its independence. Scott opposed to the House of Lords sitting in London as a Supreme Court for Scotland, and predicted the downfall of the Scottish Bench, Bar and Law. This situation is depicted in his novel *The Heart of Mid-Lothian*. When Scottish Courts tried and sentenced to death to captain Porteous, it was Queen Caroline who rejected it and save Porteous. Scott here is showing the true about the Union between the two countries. Although at the very beginning the Union was shrewdly designed to preserve Scottish legal and ecclesiastical institutions, then the English Parliament did not respect the Scots institutions, as we see in *The Heart of Mid-Lothian* when the Queen rejects the sentence from the Scots Courts.

On seeing that behaviour, the citizens of Edinburgh rise up against the Queen’s decision. Queen’s reaction is to punish Edinburgh citizens and promised to make the city her hunting place and to destroy all. But here again Scott changes the discourse, although this is the Historical behaviour of the Queen. He wants to show readers, and mainly Scottish ones, that the English justice is not so bad. That’s why the Duke of Argyll and Jeannie Deans manage to oblige the Queen to change her first sentence. Finally, Edinburgh was only fined. Scott was a defender of the Union between the two nations because it will benefit Scotland. So it was not fair to show an awful image of England and its Justice. On the other hand, we see a Scott who is agree with public executions as in *The Heart of Mid-Lothian*. Is this a fair justice for Walter Scott? Or is it a way to protest against London? In the novel, we see the rioters want to hang captain Porteous to show England that they do not accept its rules. Which is the different between beating a man in the street until death, and hang on the gallows?

In the accordance to the Treaty of Union (1707), Scotland kept its own legal and judicial system which Scott had a particular charm. But the natural consequences of that Union would mean an integration of the English and the Scots Law in one. Scott opposed to it in the novel when describing the Scottish Courts and its Law.

Why? Scott did not know the English Law and its trials. However, it is not an excuse for Scott; he knows that Scottish Law was invalid since the Union. Scotland has become part ad portion of England by all means.

Many people think the Walter Scott was in favour of the independence of Scotland because we perceive this feeling in his works. However this idea is not true at all. Walter Scott was a moderate man who wished the best for his nation, Scotland, although he may not be agree with some decisions from London. His supposed independence was only in books. Perhaps we can consider Scott a jacobite and a pro-independence supporter when he was a child fascinated by the ballads and stories from the Borders and the Highlands. But he was attracted by tales of the proud and glorious past of Scotland. That's exactly what Scott writes in his novels: the glorious past of Scotland. He is doing justice to this past, and perhaps claiming a cultural nationalism. In all the Waverley Novels Scott introduces justice and law because he was an advocate, a profession he combined with literature. But his idea of Justice is always related to the relationship between England and Scotland, and the consequences of the Union. He offers a different version of that Union, as in *The Heart of Mid-Lothian* where the court tried captain Porteous and Effie Deans according to the Scottish Law and Justice. And as we have seen it was impossible after the Union in 1707. The idea of Justice in Scott is always related to the English Justice and how it affects Scotland. But he was not in favour of the English justice because it abolished the Scots one.

Finally, we must bear in mind that Scott will always be known as the creator of the historical novel as well as the first writer to depict the glorious past and traditions of his nation: Scotland. And the he always looked for the best for Scotland.

References

- Barnaby, P., 2011. Old Mortality (Tales of My Landlord, First Series). *The Walter Scott Digital Archive* [online]. Available from: <http://www.walterscott.lib.ed.ac.uk/works/novels/mortality.html> [Accessed 29 December 2014].
- Brown, D., 1979. *Walter Scott and the Historical Imagination*. London: Routledge.
- Cusac, M.H., 1969. *Narrative structure in the novels of Sir Water Scott*. The Hague: Mouton & Co.
- Devlin, D.D., 1968. The Heart of Mid-Lothian: Scott as an artist. In: D.D. Devlin, ed. *Walter Scott*. London: Macmillan, 112-121.
- Fleishman, A., 1971. *The English Historical Novel. Walter Scott to Virginia Woolf*. London: Johns Hopkins Press.
- Harvie, C., 1983. Scott and The Image of Scotland. In: A. Bold, ed. *Sir Walter Scott: The Long Forgotten Melody*. USA: Vision Press, 17-42.
- Houston, R.A. and Whyte, I.D., ed., 1989. *Scottish Society 1500-1800*. Cambridge University Press.
- Houston, R.A., 1989. Women in the economy and society of Scotland 1500-1800. In: R.A. Houston, and I.D. Whyte, eds. *Scottish Society 1500-1800*. Cambridge University Press, 118-147.
- Johnson, E., 1970. *Sir Walter Scott: the Great Unknown*. London: Hamish Hamilton.
- Jones, J.R., 1989. *Country and Court: England 1658-1714*. London: Edward Arnold.
- Langford, P., 2001. The Eighteenth century (1688-1789). In: K.O. Morgan, ed. *The Oxford History of Britain*. Oxford University Press, 399-469.
- Marshall, R.K., 1983. *Virgins and viragos. A History of Women in Scotland from 1080 to 1980*. London: Collins.

- Moreno, L., 1995. *Escocia, nación y razón: Dos milenios de política y sociedad*. Madrid: Instituto de Estudios Sociales Avanzados.
- Plumb, J.H., 1963. *England in the Eighteenth century (1714-1815)*. Middlesex: Penguin.
- Ross, D., 2002. *History of Scotland*. Scotland: Geddes & Grosset.
- Scott, W., (1814) 1865. *Waverley; or 'Tis Sixty Years Since*. London: Caxton.
- Scott, W., (1816) 1999. *Old Mortality*. Oxford University Press.
- Scott, W., (1817) 1995. *Rob Roy*. London: Wordsworth Classics.
- Scott, W., (1818) 1998. *El corazón de Mid-Lothian*. Ed. de Román Álvarez. Trad. Fernando Toda. Madrid: Cátedra Letras Universales.
- Scott, W., (1818) *The Heart of Midlothian*. London: Collins Clear.
- Scott, W., (1819) 1994. *Ivanhoe*. London: Penguin Popular Classics.
- Scott, W., (1824) 1871. *Redgauntlet*. Edinburgh: Adam and Charles Black.
- Scott, W., (1827) 2001. *The Chronicles of Canongate. The Two Drovers*. Edinburgh: Canongate Pocket Classics.
- Smith, D., 2000. *A History of the modern British Isles: 1603 1707. The Double Crown*. Oxford: Blackwell.
- Toda, F., 1983. A Scots-Speaking Heroine: Jeanie Deans Meets the Queen in Walter Scott's *The Heart of Mid-Lothian*. In: Héroe y antihéroe en la literatura inglesa. Actas del V Congreso AEDEAN. Madrid: Alhambra, 348-360.
- Wormald, J., 1981. *Court, Kirk and community: Scotland 1470-1625*. London: Edward Arnold.