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Scott's *The Two Drovers*: The Judge's Charge

Sir Walter Scott's *The Two Drovers* consistently receives high praise. Walter Allen speaks of it and *The Highland Widow* as the two works in which Scott achieved tragedy and as "two great short stories," and J. T. Christie, writing on *Chronicles of the Canongate*, to which they belong, declares that *The Two Drovers* is far superior to *The Highland Widow* and "might well claim a place among the best dozen English short stories of the century."* Adapting a phrase from the charge of the Judge at the end of the story, Kurt Wittig sees the tragedy as arising from men's acting "in ignorance of each other's prejudices," and along the same lines, Christie states the central theme:

The contrast between the wild Highland heart and the genial shortlived pugnacity of the Southerner is a common theme in Scott: reason versus romanticism, the Hanoverian against the Highlander. He could do justice to both sides, and in his own heart they were never fully reconciled. Hence much of his greatness as a chronicler of Scotland; nowhere has he put the matter more boldly and briefly than in *The Two Drovers*.

Such summary treatments of the story are the rule. Only Lord David Cecil has faced what I believe to be the important critical question to ask of this story: what is the function and effect of the Judge's charge to the jury? In due course, I shall dissent from his answer, but first I wish to place the charge in context.

The action of the story reaches a climax in the murder of Harry Wakefield by Robin Oig and the arrest of Robin. Then follows a paragraph of transition, introducing the charge of the Judge to the jury at Robin's trial in Carlisle. Here, with the words "my story is nearly ended," the narrator first becomes visible in the story, a spectator at the trial:


*Christie, p. 68.
I was myself present, and as a young Scottish lawyer, or barrister at least, and reputed a man of some quality, the politeness of the Sheriff of Cumberland offered me a place on the bench.

After affirming that the facts were proved at the trial as he has already narrated them, he describes the reaction of the onlookers:

. . . the generosity of the English audience was inclined to regard his crime as the wayward aberration of a false idea of honour rather than as flowing from a heart naturally savage, or perverted by habitual vice.

At this point, the reader is surely in accord with the trial audience in its sympathy with Robin. Perhaps unlike the trial audience, however, the reader can have little expectation that Robin will be acquitted. The last sentence of the paragraph is somewhat enigmatic:

I shall never forget the charge of the venerable Judge to the jury, although not at that time liable to be much affected either by that which was eloquent or pathetic. (345).a

With the promise of eloquence and pathos, a note of suspense is introduced—eloquence and pathos on which side, guilt or innocence?—and this draws the reader's close attention to the following charge. He knows there are extenuating circumstances—are they sufficient to overrule the current of fate that runs so strongly through the story? The phrase "although not at that time" may be ambiguous. It might mean that despite his relative insusceptibility to the eloquent or pathetic when he was young, the eloquence and pathos of the charge moved the young Scottish lawyer. On the other hand, it may mean that these are the qualities which most affect the narrator at present, while some other qualities made the charge memorable at that time in the past when he was a young Scottish lawyer.

The Judge's charge is indeed "eloquent or pathetic" and at the end it is described as "what, to judge by his apparent emotion, and by the tears which filled his eyes, was really a painful task" (349). The story ends swiftly: having heard out the Judge, the jury retires, returns a verdict of guilty "according to his instructions," Robin is sentenced to death, and meets his execution with dignity.

Lord David Cecil has provided a rationale for the Judge's charge:

Some comment on the action is needed beyond that implicit in its facts, if we are to realize the deeper significance of that brawl between two farmers, which is the ostensible subject of the story. But if the writer makes it himself, if the puppet-master appears

a All quotations from The Two Drovers are taken from the Centenary Edition, v. 20 (Edinburgh, 1871), pp. 324-349.
in person behind his puppets at the crisis of their fortunes, he will weaken the dramatic illusion, at the moment at which it is most important that it should be preserved. To meet this difficulty, Scott hits upon the bold and original course of putting the comment in the mouth of the Judge presiding at Robin's trial; the last four pages of the story consist of a verbally reported judicial summing up. He is amply justified. The comment comes to the reader enforced by all the added gravity that adheres to a considered pronouncement of official justice; while the objective reality of the drama is not diminished for us by the introduction of an external commentator.8

But I maintain that if the reader looks at the "comment in the mouth of the Judge" he does not find the "deeper significance" of the story formulated for him. Instead, the charge—for all its careful reasoning and lawbook justice—forces the reader back to the tale itself from a new perspective. And from this new perspective emerges the "deeper significance."

The placement of the Judge's charge to the jury—after the action of the story has culminated in the murder of Harry Wakefield—gives the story a structure we meet in a later, and better known, short work, Melville's Billy Budd; but whereas Captain Vere's speech to the drumhead court martial is grounded on a consciousness of the Nore mutiny and its effect on morale, and on the possible practical consequences of a verdict of innocent, the Judge makes only a passing reference to the effect of a precedent-setting acquittal of Robin:

"Englishmen have their angry passions as well as Scots; and should this man's action remain unpunished, you may unseath, under various pretences, a thousand daggers betwixt the Land's-end and the Orkneys" (349).

These are, it is true, the Judge's last words, but the predominant portion of the charge consists of a careful sifting and winnowing of the issues of the case in order to reach its heart. The Judge himself says of Robin:

"... as I would wish to make my words impressive, when I point his real crime, I must secure his opinion of my impartiality, by rebutting everything that seems to me a false accusation" (346).

The heart of the matter, or as the Judge says, "the pinch of the case," "lies in the interval of two hours interposed betwixt the reception of the injury and the fatal retaliation" (347-8). The Judge goes on to say

8Lord David Cecil, "Introduction" in Short Stories by Sir Walter Scott (London, 1934), xvii-xviii. Of course Cecil is quite inaccurate in calling Robin and Harry "farmers" in this quotation, and he is incorrect when he earlier calls Janet, the spinster, Robin's grandmother (xvii).
that the law makes allowances for what we would call today unpremeditated murder, but that the two hours between injury and retaliation "was an interval sufficient for the prisoner to have recollected himself" (348).

If, as I have suggested above, the "young Scottish lawyer" found the charge memorable for qualities other than pathos and eloquence, then it must surely have been the Judge's unerring discrimination in points of law, mixed with, but not basically influenced by, his recognition of the particular circumstances of this case. But it is precisely these particular circumstances, presented to the reader in the story up to the Judge's charge, that produce the emotional involvement of the reader in the story and prevent his acceding to the Judge's legal distinctions and his directed verdict of guilty. In short, the Judge's summing up may be judicial (i.e., legalistic), but it does not prove adequate to the reader's previous experience of the story.

Although in the transitional paragraph the narrator says that at the trial "the facts of the case were proved in the manner I have related them," they could not, of course, have been presented in their totality at a public trial as they have been presented in the story to the solitary reader up to this point. Take, for example, the descriptions of Robin and Harry, the visual images of them, which ought to be kept in mind as they clash at the inn later on; first, Robin:

Though small of stature, as the epithet Oig implies, and not very strongly limbed, he was as light and alert as one of the deer of his mountains. He had an elasticity of step, which, in the course of a long march, made many a stout fellow envy him . . . The ruddy cheek, red lips, and white teeth, set off a countenance which had gained by exposure to the weather a healthful and hardy rather than a rugged hue (325).

These are not facts which could have been proved at the trial (note, for example, the comparison with the deer), but the image of the main character in the story, presented by its author in such a way that it contributes to our attitude toward Robin. As for Harry Wakefield, he is described as "nearly six feet high, gallantly formed to keep the rounds at Smithfield, or maintain the ring at a wrestling match" (329). So much for externals, which could hardly be so presented in the court. Perhaps the most important element of Robin's character is his pride of birth, arising from his being the grandson of a close friend of Rob Roy. But, the narrative continues,

... his frequent visits to England and to the Lowlands had given him tact enough to know that pretensions, which still gave him a little right to distinction in his own lonely glen, might be
both obnoxious and ridiculous if preferred elsewhere. The pride of birth, therefore, was like the miser's treasure, the secret subject of his contemplation, but never exhibited to strangers as a subject of boasting (326).

Surely this miser's treasure, which is revealed to the world for only one split-second in the story, would not be a fact proved in court, and even if it had been, it could not bear for the English judge, for the jury, for the trial audience, the significance it does for the reader. After the brief physical description of Harry Wakefield, his pugilistic talents are enlarged upon, reinforcing the image of size and strength, and then his character is described:

In countenance and temper, Wakefield was the model of old England's merry yeomen . . . His mirth was readily excited; for, strong in limb and constitution, and fortunate in circumstances, he was disposed to be pleased with everything about him . . . With all the merits of a sanguine temper, our young English drover was not without his defects. He was irascible, sometimes to the verge of being quarrelsome; and perhaps not the less inclined to bring his disputes to a pugilistic decision, because he found few antagonists able to stand up to him in the boxing ring (330).

These somewhat static descriptions are dramatized in the two encounters between Harry and Robin at the end. In the first, Harry, backed by the other English yeomen, challenges Robin, physically slighter than he and unversed in fist-fighting; Robin's pride of birth flashes forth when Harry says:

"How would you fight then? . . . though I am thinking it would be hard to bring you to the scratch anyhow."

"I would fight with broadswords, and sink point on the first plood drawn—like a gentlemen" (338).

Such a proposal brings jeers from the onlookers, a "torrent of general ridicule" which causes Robin to attempt to leave; Harry, blocking the way, knocks him down and Robin suffers humiliation that can only be assuaged by revenge.

The Judge properly rebukes the lawyer for the Crown for scorning Robin's refusal to "submit to the laws of the ring" as he proceeds to get at Robin's "real crime," premeditated murder, and he rebukes Harry's drinking companions for inflaming passions on both sides, but his judicial summation up can never supplant in the reader's mind the dramatic immediacy of the scene itself.

One other instance of the inadequacy of the Judge's charge in view of the particularity of the preceding story touches on the current of
fate which runs through the story. After noting that the law might look more leniently on unpremeditated murder, the Judge says:

"But the time necessary to walk twelve miles, however speedily performed, was an interval sufficient for the prisoner to have recollected himself . . ." (348).

After he has been pummelled by Harry, Robin walks the twelve miles to retrieve his dirk from Hugh Morrison, then returns to the inn and murders Harry. If Robin had had his dirk with him and had plunged it into Harry's breast immediately, "in the heat of affray and chaude mêlée," the law would have made allowances.

But the reader is aware of the reason for Robin's not having his dirk, the circumstances which now become so ironic (is this one of the facts proved in court and could its complexity have been presented there as it is presented to the reader?). As he is about to leave Doune with his drove, Robin is stopped by his aunt, Janet, who is a spaewife. She insists that she must walk the daesil around him "that you may go safe out into the foreign land, and come safe home." Robin stops, "half embarrassed, half laughing"; he does not believe in the old superstitions (he asks Janet, "What auld-world fancy . . . has brought you so early from the ingle-side this morning, Muhme?") and he allows her to proceed only so that he may "sooth your humour" and leave as soon as possible. When she "sees" English blood on his dirk, he scoffs:

"Prust trutt . . . You cannot tell by the colour the difference berwixt the blood of a black bullock and a white one, and you speak of knowing Saxon from Gaelic blood. All men have their blood from Adam, Muhme. Give me my skene-dhu, and let me go on my road" (328).

In this attitude toward the spaewife's prophecy, Robin contrasts with his fellow villagers. As Janet urges him not to wear the dirk, "the women around him urged him also, saying few of his aunt's words fell to the ground. . . ." Robin compromises by giving the dirk to Hugh Morrison, a Lowlander whose drove will follow after Robin's down into England. Hugh scoffs at the superstitions of the Highlanders and their use of the dirk; but he accepts the dirk as a trust. Once again, as in the passage regarding his pride of birth quoted above, Robin's acquisition of tact and patience through his travels is emphasized:

Robin was not particularly pleased with some part of Hugh Morrison's speech; but he had learned in his travels more patience than belonged to his Highland constitution originally . . . (329).

As he leaves the inn after having been beaten by Harry, Robin regrets that he did not have his dirk, and:
The recollection of the fatal prophecy confirmed the deadly intention which instantly sprung up in his mind (340).

I might note here the other main occasion in which the reader's impression of the current of fate in the story is fostered, and this is made emphatic by the author's repetition of the word chance and by the word unhappily. In England, Harry and Robin, at this time good friends, separate to find pasturage for their droves:

Unhappily it chanced that both of them, unknown to the other, thought of bargaining for the ground they wanted on the property of a country gentleman of some fortune, whose estate lay in the neighbourhood. The English drover applied to the bailiff on the property, who was known to him. It chanced that the Cumbrian Squire, who had entangled some suspicions of his manager's honesty, was taking occasional measure to ascertain how far they were well founded . . . (italics mine, 332),

and he forbid his bailiff to make such arrangements; however, the squire being away, the bailiff considers the interdict suspended and makes arrangements with Harry, while Robin encounters the squire on the road and makes arrangements for pasturing his drove on the same ground. Since the Squire's permission has precedence over his bailiff's, Harry takes his drove away and comes to blame Robin for the inconvenience he then suffers.

Again, the particular circumstances which lie behind the events at the inn, on which the Judge focusses, are too vivid for the reader to disregard, and indeed, when the Judge simply mentions the twelve miles Robin walked to get his dirk, the cause of the journey and the interval of time it took is evoked afresh in the reader's mind, with all the irony it has assumed. Unerringly, the Judge correlates the "fact" of the interval of two hours with the legal distinction between premeditated and unpromised murder. The particular case is fitted into the abstract framework, or rather, those parts of the particular case which are relevant to the framework are fitted into it, and inexorably the wheels of justice turn, inexorably the sentence is produced. We see this process as readers; it defies our experience of the story, it defies our sympathy with Robin. As we have seen the spaewife's fatal prophecy come true, so we watch Robin become the victim of yet another kind of fate, human justice.7

What, then, is the "deeper significance" which Scott so cleverly

put into the Judge's mouth? It is not there. In fact, after making his distinction the Judge shows himself so culture-bound, his remarks run so counter to the reader's previous experience of the story, that he completely loses the reader's sympathy, the loss being restored only slightly by the narrator's reference to the Judge's tears at the end. The Judge accomplishes this alienation first by comparing Scottish society to that of the North American Indians:

"Amongst their mountains, as among the North American Indians, the various tribes were wont to make war upon each other, so that each man was obliged to go armed for his own protection... Revenge... must have been as familiar to their habits of society as to those of the Cherokees or Mohawks" (348).

But in the experience of reading the story, this is simply not the impression we have gained of Scotland, however brief the glimpses have been. The opening scene in the village of Doune and our impression of Robin Oig as a Scotsman make the comparison singularly inappropriate, although it may be effective in the context of the English judge directing the English jury to bring in a verdict of guilty (I shall not discuss the truth of the remark).

In my examination of the narrator's description of Robin and of his relation of how the dirk came to be in Hugh Morrison's possession instead of Robin's, I have pointed out several respects in which Robin is depicted as exceptional: he is skeptical of "auld-world fancy"; he is a cut above his fellow villagers in his birth; through his travels he has acquired "more patience than belonged to his Highland constitution originally." In other respects he is exceptional also, and the narrator emphasizes his distinctiveness. A small detail:

He was a topping person in his way, transacted considerable business on his own behalf, and was intrusted by the best farmers in the Highlands, in preference to any other drover in that district (326).

Again, he must surely be distinctive in having established such a close friendship with the Englishman Harry Wakefield, overcoming the English prejudice against the Scots which is so emphasized in the scenes at the inn. Finally, his exceptionality is most firmly established by his being the central character of the story. By this very fact, he becomes to the reader an exceptional person, and when joined with the qualities which are ascribed to him and those which he displays in the action of the story, these elements make Robin one who elicits the reader's sympathy and respect. Inevitably, then, certain phrases which the Judge uses to describe Robin will grate on the reader's nerves:
"I repeat, that this unhappy man ought personally to be the object rather of our pity than our abhorrence, for he failed in his ignorance, and from mistaken notions of honour" (349).

Robin's pride of birth, then, becomes in the Judge's mouth "mistaken notions of honour." Previously, the Judge has referred to Robin as "a man of resolution" and gone on to say: "—too much resolution—I wish to Heaven that he had less, or rather that he had had a better education to regulate it" (346). In the quotation above, the idea is reinforced by reference to "his ignorance." Such a characterization of Robin defies the image of him which has been so carefully built up throughout the story.8

It is not, then, through the Judge's charge that the "deeper significance" of the events of the story is brought home to the reader. I have argued that the charge is inadequate to the experience of the story on several grounds: particular circumstances which loom in the reader's mind are glossed over or ignored or could never have been facts proved in the court, as the Judge seeks to guide the jury to that one fact which, when correlated with the abstractions of the law, will issue in conviction. Less important are the Judge's culture-bound comparisons of Scottish society with that of the North American Indians and his description of Robin as poorly educated or ignorant, but they tend to increase the reader's dissatisfaction with the Judge's putting of the case. Such dissatisfaction increases the pathos of Robin's situation, and we come to see him all the more clearly as caught in an inexorable fate. But pathos is not allowed to become bathos, and in two places Robin speaks and acts in such a way that we are prevented from viewing him simply and comfortably as a pathetic figure. First, after stabbing Harry, he flings his dirk into the fire, saying, "There... take me who likes—and let fire cleanse blood if it can" (344), and the final two sentences of the story produce a similar effect:

He met his death with great firmness, and acknowledged the justice of his sentence. But he repelled indignantly the observations of those who accused him of attacking an unarmed man: "I give a life for the life I took," he said, "and what can I do more?" (349).

Robin is given a tragic nobility and dignity. Here, as in most tragedies, the reader will not find the "deeper significance" of the action expressed by any character within the work itself, but must search for that signifi-

8 Squire Irby surely finds Robin anything but ignorant; he refers to him as "my canny Scott," and enjoys conversing with him while Robin eats supper at the squire's "ancient hall" (335). See also the first paragraph of Scott's "Note to the Two Drovers" (pp. 414ff. in the Centenary Edition).
cance, or knowledge, or mystery which lies at the heart of tragedy within himself. The effect and function of the Judge's charge is to drive the reader to make that search.

It almost goes without saying that I believe Scott knew what he was doing in this story and did it very carefully and artistically. To return to that last enigmatic sentence of the transitional paragraph:

I shall never forget the charge of the venerable Judge to the jury, although not at that time liable to be much affected either by that which was eloquent or pathetic.

Now, some time later, he who was then "a young Scottish lawyer" tells the story with eloquence and pathos, seeing it whole—the Judge's charge only a part—and through his artistry moves the reader to ask those questions about human existence which only tragedy can evoke.

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