

Charles Areskine's Library: Lawyers and their Books at the Dawn of the Scottish Enlightenment

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Karen Baston's book is more than a revision of her Ph.D. It moves significantly beyond her thesis to open up fascinating new perspectives on the neglected subject of the place of the Scottish legal profession in Scottish public culture during the European Enlightenment of the 18th century. Thus a focused study of the surviving catalogue of the library of Charles Areskine, a senior Scottish judge in the middle of the 18th century, has become an analysis of his books, extending its concerns to the question of what these books can tell us in addition to what we know of his career. John Ramsay of Ochtertyre, the Scottish memorialist, noted in a footnote to his account of Areskine (who he referred to using Areskine's Scottish judicial title as 'Lord Tinwald') that 'the wags used to give him the denomination of Sweet-lips', 'as his sentences had the appearance of being carefully culled, and marshalled in proper order, so they were uttered with such suavity, and in such a winning manner, that he often extorted the assent of those that heard him to his propositions'. Ramsay also praised Areskine's 'dignity, elegance, and decency' as a judge, but did concede that his involvement in politics diminished his legal stature.⁽¹⁾ This was because his last and highest appointment was as Lord Justice Clerk, senior judge in the Scottish criminal Court of Justiciary, a post he held in addition to his appointment as one of the 15 judges of the highest Scottish civil Court of Session.

Areskine acted as Lord Justice Clerk from 1748 (when his age was 68) until his death in office in 1763 at the age of 83. In the absence of a Scottish Privy Council abolished shortly after the Treaty of Union with England in 1707, the Scottish judiciary increasingly undertook roles that could be seen to blur the distinction between executive action and the administration of justice. Areskine's later career could be seen as an example of this. After 1748 he became a principal correspondent of the London-based Secretary of State for the Northern Department as well as the Lord Chancellor. He had a major role in the implementation of the legislation relating to Scotland passed at Westminster after the defeat of the Jacobite rebellion in Scotland in 1746. He reported to Lord Chancellor Hardwicke in 1750 (quoted by Baston on p. 18) that the 'law prohibiting the Highland dress has as universally been complied with as, in the beginning, could have been hoped for...', and in the same year wrote to the Duke of Newcastle as Secretary of State (quoted by Baston on p. 18) referring to 'the remoter highlands' and 'what is doing among the deluded animals there' (by which he meant Jacobite sympathisers).

Dr. Baston's monograph provides new insights into Areskine the intellectual, previously obscured by what is known about Areskine as a politician and judge. Her careful study of the surviving record we have of his books chronicles the development of Areskine's intellect as well as his library, from his time as an undergraduate at St Andrews aged 14 to 16, to that as a postgraduate there until the age of 19 pursuing advanced mathematical studies, to teaching as a 'regent' or tutor at the College of Edinburgh. Later he was promoted to be Professor of the Law of Nature and Nations in 1707 as part of Edinburgh's move from generalist tuition by 'regents' to more specialist courses on the model of the Dutch colleges and universities. He owed this appointment to his cousin John Erskine, Earl of Mar, at that time a prominent unionist Scottish statesman, although later more notorious as leader of the Scottish Jacobite rebellion of 1715 and a leading figure at the Jacobite Court in exile in France. Baston notes in a footnote on page 16 that she has chosen 'the spelling of his name that Areskine used as his signature and on his bookplates' for use in her study, but does not discuss whether her subject adopted this spelling as part of an attempt to distance himself from his prominent but controversial elder cousin.

Areskine requested leave of absence from his new post as soon as he was appointed as a professor, securing permission to absent himself from the college for three years to pursue postgraduate legal studies at the University of Leiden in the Netherlands, which was followed by travel in Italy and Germany before his return to Scotland. Baston states (p. 58) that 'when he returned three years later, it was as a legal virtuoso who had experienced the arts, sciences, and intellectual culture that were flourishing abroad', having also 'brought back the beginnings of his private library'. Areskine then qualified as an advocate in the Scottish College of Justice in 1711, allowing him to plead before the Scottish high courts.

One of the central concerns of this book is a careful case study of the close connection between law and lawyers with books and libraries. Dr. Baston discusses (p. 115) the claim that the history of the law is closely connected to the history of the book, of publishing, of bookselling, and of libraries. Her book thus draws upon recent monographs by Professor John Finlay on the Scottish legal profession in the 18th century and research by Dr. Esther Mijers on Scottish contacts with the Dutch colleges in the 17th and 18th centuries.⁽²⁾ Scottish law students in the Netherlands 'were exploring the relationship between Dutch and Roman law in a variety of ways' (p. 85), Baston claims, and when they became advocates cited work by their Dutch professors in their manuscript and printed pleadings submitted to the courts. Our knowledge of this is still at a relatively early stage because the vast archive of documentation generated by the Scottish courts in the 18th century has been difficult for researchers to access and analyse. This may change in the future as manuscripts and printed papers preserved in the National Records of Scotland and the Advocates Library in Edinburgh are digitised and indexed.

While it has not yet been possible to trace every surviving manuscript or printed pleading submitted to the Scottish courts by particular lawyers, including Areskine, Dr. Baston has been able to consult and analyse the authorities cited by Areskine in his printed pleading for a Scottish Admiralty Court case of 1729. This concerned disputed ownership of goods salvaged from the shipwreck of a Dutch East India ship off the Scottish island of Barra in the Outer Hebrides with the loss of all hands. A remarkable number of works were cited by Areskine in his pleading composed just two years before the surviving manuscript catalogue of his library completed in 1731, and Dr. Baston is able to identify many of them as part of his personal library. Given that he was employed as an advocate by the Scottish agent for the East India Company of Holland, it is not surprising that Areskine cited many Dutch authorities whose published works he had acquired while studying and travelling in Europe or after his return to Scotland. He also cited many Scottish works by Sir George Mackenzie, Viscount Stair, and others, and referred to customary law in England and the Hanseatic towns in the Baltic as well as that of the Netherlands and Scotland. He concluded (p. 35 of the printed paper for the Admiralty Court) 'that the genius of our Law has ever been, at least, since the days of James I to comfort and cherish, to the Honour of the Nation, unhappy Sufferers by Sea, whose Case is hard, and much to be lamented, if, when their Friends, and those employed in their Service, have suffered Death from the Rage of the devouring Waves, which nevertheless had spared a Part of their Effects, the Misfortune was to be consummated, and their Case rendered the more deplorable, by sweeping the miserable Remains into the

Hands of the publick Officers, as Escheat: The Owners could not have suffered more, had the Ship fallen into the Hands of the cruellst Pyrate...'.[\(3\)](#)

Aerskine was a lawyer and judge, but as an intellectual his interests ranged much more widely than that. He was a professed Presbyterian (unlike his Episcopalian cousin the Earl of Mar), but owned books that related to the study of comparative religions and of religious toleration. Baston notes (p. 153) that the only two editions of collected sermons in Areskine's library were those of the Episcopalian bishops Robert Leighton and Gilbert Burnet, both of whom believed, according to Baston, in 'promoting personal spiritual development as a means of limiting the sectarianism caused by institutionalising belief'. Areskine also had bibles in Italian, Greek, and Spanish and at least one pro-Spinozan work which was clandestinely printed in the Netherlands: Lodewijk Meijers, *Philosophia S.Scripturae interpres* (1673). He also possessed a copy of Muhammad Rabadan, *Mahometism Fully Explained* (1723).

In one of the most original sections of the book, Dr. Baston analyses the poetical works in Areskine's library. Classical authors were represented by Horace, Homer, Virgil and Ovid in Latin or Greek, and in the case of Virgil in Italian translation as well as Latin. The strength of the influence of Classical culture on the culture of the Scottish elite in the early to mid-18th century is represented by the editions Areskine owned of works by George Buchanan, David Hume of Godscroft and others. His library also included editions of the poems of Hugo Grotius and the collected works of Nicholas Heinsius in Latin. Baston observes (p. 162), that 'Areskine's appreciation for Latin verse was well known enough for William Lauder to dedicate a collection of sacred poems by Scottish authors, *Poetarum Scotorum musae sacrae* ... to him in 1739'. By that time he was chief legal officer of the Crown in Scotland as Lord Advocate.

There is an intriguing discussion in the book (pp, 162–3) of Areskine's contact with the Italian jurist Gianvincenza Gravina, who he probably met in Rome as part of his European tour in 1710. Areskine owned copies of Gravina's books *Della ragion poetica* and *Della tragedia* as well as his *Origines iuris civilis*. Referring to Harold Samuel Stone's 1997 monograph, *Vico's Cultural History: The Production and Transmission of Ideas in Naples, 1685–1750*, and Susan Dixon's study published in 2006 of the *Academia degli Arcadi*, a learned club of which Gravina was a member, Baston explores the possibility of Gravina's influence on Aerskine's thought and his subsequent legal career. Gravina believed that poets and artists could communicate more widely than scholars and thus perform a vital role in promoting the virtues of civil society. He also believed that jurists could not only improve the law but by doing so act as 'the administrators of good government'. Areskine was 31 when he became an Advocate, although he continued to hold his professorship at Edinburgh until 1734, despite his appointment to Scottish crown legal practice as an advocate-depute from 1714 and as Solicitor General from 1725.

Areskine's involvement in politics grew after his return to Westminster as MP for Dumfriesshire in 1727. He was re-elected in 1734, when he resigned his academic appointment, and was by that time associated with the promotion of British government policies in Scotland at a time when they attracted growing levels of opposition. He lost his seat in Parliament in 1741 and his post as Lord Advocate in 1742 following the end of Sir Robert Walpole's long years as leader of the UK government. In 1744 he was appointed by the Crown as a judge of both the Court of Session and the Court of Justiciary, with his promotion as Lord Justice Clerk and thus head of the Court of Justiciary following four years later in 1748, but not without some political infighting amongst government ministers. The influential third Duke of Argyll, legally trained and active in hearing appeals from the Scottish courts in the House of Lords at Westminster, had argued strongly for Areskine to be appointed as Lord President of the Scottish Court of Session, but had to content himself with brokering a compromise to make it possible for Areskine to receive promotion to the less prestigious but more onerous post in the criminal court.[\(4\)](#)

This book is about much more than one man and his books. It is a profoundly scholarly study of the intellectual context of Areskine's library that reflects the impact of Enlightenment culture on the life of a busy lawyer and judge. As its author points out, her study could be extended even more thoroughly by retrieving the printed pleadings of, and the records of legal judgements by, Areskine. These are however

preserved in the largely uncatalogued records of the Court of Session in the National Records of Scotland (fewer Court of Justiciary records survive from the period of Areskine's time as a judge in that court). The British and European aspects of Areskine's career that emerge from this thoughtful book demonstrate the importance of the painstaking research on which it is based, as well as what we might learn from future projects which could benefit from its example.

Notes

1. John Ramsay, *Scotland and Scotsmen in the Eighteenth Century*, ed. Alexander Allardyce (Edinburgh and London, 1888), vol. I, pp. 100–2. Baston, pp. 17 & 187.[Back to \(1\)](#)
2. John Finlay, *The Community of the College of Justice: Edinburgh and the Court of Session 1687–1808* (Edinburgh, 2012), John Finlay, *Legal Practice in Eighteenth Century Scotland* (Leiden, 2015), Esther Mijers, 'News from the Republic of Letters': *Scottish Students, Charles Mackie and the United Provinces, 1650–1750* (Leiden, 2012).[Back to \(2\)](#)
3. Charles Areskine, *Information for Appollonius Lampsints, ... Directors of the Honorable East India Company of Holland and Mr William Drummond of Grange, their factor, for His Interest against His Grace Charles Duke of Queensberry and Dover, Vice Admiral of Scotland, for his Interest ...* (Edinburgh, 24 March 1729), p. 35. See Baston, pp. 90–1.[Back to \(3\)](#)
4. Margaret S. Bricke, 'The Pelhams vs. Argyll: a struggle for mastery of Scotland, 1747–1748', *The Scottish Historical Review*, 61, 2 (Oct. 1982), 157–62.[Back to \(4\)](#)

Author's reply: I would like to thank Dr Murdoch for his generous and perceptive review of my book. I would be delighted if it became a model for future projects, especially those relating to the Session Papers, as he suggests. It is my great hope that these materials will eventually be explored alongside studies of the book owners who wrote them and that these sources will enhance our understanding of the ideas and personalities that underpinned the Scottish Enlightenment.

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[1] <https://reviews.history.ac.uk/item/181622>