

THE STATUTES OF IONA (1609) AND THE DESTRUCTION OF THE HIGHLAND CLAN SYSTEM

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Introduction

The destruction of the Highland Clan system is often dated from the defeat of the Highland Jacobite Clans at Culloden on 16th April 1745.¹ It is true that Drumossie Muir on that day saw the final defeat of a system that had arisen from early tribal beginnings in the vastness of the Scottish Highlands but if this date marked the end it is not this date that should be dwelt upon, nor perhaps, its Jacobite origins, if one seeks the way in which the Highland Clans were brought down. Only a full examination of preceding events in Scottish History will clarify all the ways that led to the final demise of the Highland Clan, its culture, land, people, laws, wealth, language² and leaders. Culloden was the last Government action taken to enforce what had been aimed at for centuries and had been threatened in the so called Statutes of Iona in 1609.³

In Scotland's recorded histories, the shift in relationships between the Scottish State and the Highlands has been marked by two dates, 1493 when the Lordship of the Isles was forfeited, (thus ending the possibility of a semi-independent state developing in the West) and the 1746 defeat of the last Jacobite uprising at Culloden (which signalled the end of the autonomous military power of the Highland clans). Halfway between these dates, however, we find the agreement known as the Statutes of Iona in 1609. Although there were many attempts in the years prior to this gathering on Iona when twelve local clan chiefs agreed to a set of conditions presented to them by the bishop of the Isles, the Statutes offer a clear indication of the position the government sought to establish as

¹ For example in Michael Lynch, *Scotland: A New History* (London: Century, 1991); J. D. Mackie, Bruce Lenman and Geoffrey Parker, *A History of Scotland* (Harmondsworth: Penguin, 1978); Bruce Lenman, *The Jacobite Risings in Britain, 1689-1746* (London: Eyre Methuen, 1980); T. C. Smout, *A History of the Scottish People* (London: Collins, 1979); T. M. Devine (ed.), *The Scottish Nation 1700-2007* (Harmondsworth: Penguin, 2007); or in the 19th century James Browne, *History of the Highlands and the Highland Clans* (London; Edinburgh; Dublin: A. Fullarton and Co., 1851), p. 458.

² Victor Durkacz, *The Decline of the Celtic Languages* (Edinburgh: John Donald, 1983).

³ Julian Goodare, 'The Statutes of Iona in Context' *Scottish Historical Review* vol. 77 (1998), pp. 31-57.

Highland Policy⁴ although there is continuing debate about how effective they were and what their principal purpose was.⁵

From the earliest records, the historic differences between the Chiefs and Crown were principally the way the chiefs set themselves firmly against the institution of a standing Crown army, and the taxation that would be extracted to support it, their argument being that it would weaken the defensive strength of the clans. To them, the monarchs were the 'Kings of Scots' not 'Kings of Scotland'; they rejected the doctrine accepted in England that land was the inherent property of the State. To the Clan Chief land was what lawyers would term 'allodial'⁶ and was held by *prima terrarum* occupatione under God. It was inalienable and the home of each group or clan.

Prior to the Union of Crowns

The Clans supported Alexander II and the Bruce sovereigns and were largely left undisturbed at this time. The first 'marker' to the troubles ahead comes in the year 1411 when Donald, Lord of the Isles, who had a good claim to the Earldom of Ross (one of the seven ancient *mormaer* titles)⁷, descended into the Lowlands with the intention of sacking Aberdeen and

⁴ Michael Lynch, 'James VI and the Highland Problem' in Julian Goodare and Michael Lynch (eds), *The Reign of James VI* (Edinburgh: Tuckwell Press, 2000).

⁵ For a response to Goodare see Martin McGregor, 'The Statutes of Iona: Text and Context' *Innes Review* vol. 57, no.2 (2006), pp. 111-181.

⁶ Allodial land was generally described as free of rent or service held independent of a lord paramount and therefore the opposite of feudal but beyond that there were differences between countries in its legal position. It was the primary form of land tenure in Germany especially east of the Elbe for most of the Middle Ages. See Perry Anderson, *Lineages of the Absolutist State* (London: Verso, 1979), pp. 222-223; it was a subject of much legal wrangling in the 19th century and it carried with it its own form of jurisdiction. See Karl Leyser, *Communications and Power in Medieval Germany*, ed. Timothy Reuter (London: The Hambledon Press, 1994), p 134.

⁷ Euphemia, Countess of Ross, had inherited the Earldom following the death of her father William, who had no male heirs. Her first husband was Sir Walter Leslie, who died in 1382, from whom she had a son, Alexander and a daughter Margaret. Euphemia took as her second husband Alexander Stewart, the Earl of Buchan, who assumed the title. Leslie recovered the earldom in 1398 and married Isabella Stewart, the daughter of Regent Albany. Donald of Islay, Lord of the Isles was married to Margaret Leslie, the sister of Alexander, from whom his claim to Ross arose. See http://en.wikipedia.org/wiki/Battle_of_Harlaw for more details.

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dispersing the forces of the Duke of Albany, Regent of the kingdom, who had a different claim. Some ten thousand Highlanders assembled beneath the banner of the Lord of the Isles at Harlaw where they were met by a force under Alexander Stewart Earl of Mar. On the 24th July a bloody but indecisive battle was fought Five hundred of Mar's forces were killed including many Lowland barons. The Lowland fear of gathering Highland power brought the Highlands into direct conflict with Lowland law.

The release of James I in 1424 after he had spent 18 years of captivity in England became the next problem for the Highlands. Whilst a 'guest' of the English Lancastrian kings, James learned of the English system of parliamentary, and representative government as a centralised system. He returned to Scotland with the intention of reorganising the existing unicameral Parliament and the Great-Council of Scotland into both a House of Lords and House of Commons,⁸ and reducing the Celtic earldoms to purely personal peerages. It was his intent to destroy the House of Albany, confiscate the earldoms of Strathearn, Lennox, and Mar and suppress the whole Celtic area of the Kingdom. His pursuit of this policy for the Anglicisation of Scotland and extirpation of the great Clan divisions culminated in popular resentment and his murder at Perth in 1437.

The Lords of the Isles continued to behave like semi-independent rulers, making treaties with the English but the hold of the Scottish monarchs over the Western Isles was strengthened towards the close of the 15th century by the downfall of John fourth and last Lord of the Isles when having lost his clan support he had to submit to James IV who annexed the title to the Crown. Attempts by John's heirs to reassert their position finally failed in 1543. Thenceforth the title of Lord of the Isles would be borne by the Duke of Rothesay, eldest son of the sovereign.⁹

James IV, with the assistance of the Campbell dukes of Argyll, also used other ways and means for bringing the clans directly under the Royal influence. His favourite device was that of encouraging one clan to attack another and thereby to weaken the power of both. Another was concealing charters by which the West Highland chiefs held their ancestral possessions

⁸ See K. M. Brown and R. J. Tanner, *The History of the Scottish Parliament, Volume 1: Parliament and Politics, 1235-1560* (Edinburgh: Edinburgh University Press, 2004).

⁹ A Grant, 'Scotland's "Celtic Fringe" in the Late Middle Ages: The Macdonald Lords of the Isles and the Kingdom of Scotland', in A. Grant and R. R. Davies (ed.), *The British Isles, 1100-1500* (Edinburgh: J. Donald Publishers, 1988).

and offering them instead other tenures.¹⁰ The object was to bring the Chiefs under the ordinary legal situation of the rest of Scotland. James IV, however, learnt the Gaidhlig language and did see value his Highlanders, many of whom fought with him at Flodden. During the reign of his son James V relations with the Highlanders remained quite cordial. James V even wore the Highland dress.

From these Stewart sovereigns, clanship and its customs received some understanding and encouragement at a predominantly lowland “that is ‘Incountrey’ as opposed to ‘Outcountrey’ or periphery” Court. This historic association was no doubt factored into the relationships between the Stuarts and the Chiefs in the troubled days of the eighteenth century when it was mainly upon the Highland Chiefs that the Stuart kings had to rely.

The Reformation was to drive a different wedge between the Highlands and Lowlands. In parts of the Highlands as elsewhere the new creed was not only to uproot many of the old customs but also stunt for an appreciable time the growth, and revival of Highland arts and accomplishments. Under Archbishop James Beaton of Glasgow, despite his conservatism, a statesmanlike readjustment might have been achieved and the old traditions, with modifications, carried on¹¹ but in 1559 John Knox proved only too able to propagate the doctrines of Calvin and within a short time untold damage had been done to the glorious antiquities and ancient culture of Scotland.¹² Knox’s sermons encouraged iconoclasm. The ancient churches and cathedrals of Scotland were stripped, their archives dispersed or burnt and, beautiful manuscripts and paintings, native art and the craftsmanship of jewellery and carvings of the old Celtic saints were destroyed. In the more inaccessible parts of the Highlands however, the old faith persisted.

James VI who wrote; “And as ye see it manifest that the King is overlord of the whole land, so is he master over every person that inhabiteth the same, having power over the life and death of every one of them”¹³ was not enamoured of the differing views of his Highland subjects and on

¹⁰ This was a complex procedure as it had to have advantages for the chiefs as well as the monarch. See Alison Cathcart, *Kinship and Clientage: Highland Clanship, 1451-1609* (Leiden and Boston: Brill, 2006).

¹¹ Margaret Sanderson, *Cardinal of Scotland, David Beaton c. 1494-1546* (Atlantic Highlands: Humanities Press 1986).

¹² Jasper Godwin Ridley, *John Knox* (New York: Oxford University Press, 1968).

¹³ ‘A Trew Law of Free Monarchies: Or the Reciproock and Mutual Duetie Betwixt a Free King, and His Naturall Subjects’, c. 1597

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reaching the age of 21 he started to legislate against them. A list of Highland clans was embodied in an Act passed by the Scottish Parliament in 1587 “for the quieting and keeping in obedience of the inhabitants of the Borders, Highlands and Isles”. The list of chiefs in the Highlands, (reproduced in footnote below) is very considerable as the Act, which set up a special court of the Privy Council “for receiving, hearing, answering and directing of all complaints, causes and matters concerning the misrule of the disordered and troublesome subjects, inhabitants [of] the highlands and borders, and attempts committed by them upon the good and peaceable subjects in the in-country”, required “landlords who have their lands lying in far highlands or borders, they making residence themselves in the inlands” nevertheless to take action to enforce the royal fiat.¹⁴

In 1597 several Acts of Parliament were passed relating to the Highlands and Islands. One, entitled “That the inhabitants of the Illis and Heilandis shaw their haldings (charters)”, required all persons possessing or pretending to possess a right to lands in the Highland and Islands to exhibit their titles to the Lords of Exchequer on the 15th of May 1598 and at the same time to “give suitable security for their future good conduct towards their king, their neighbours and such as desired to trade with them”.

The penalty for non-compliance or inability to comply with these commands was forfeiture of property they either held or claimed. Over a great part of the Highlands many of the clan lands were still held by tenures which had not been committed to writing and had only been after the old manner being ‘done in open court’ i.e. by real investiture in the Clan or Provincial council. Many of the Highland chiefs when asked to exhibit proof of their titles, produced their own sword along with a body of their clansmen and proudly pointed to these as their titles of possession.¹⁵

In many cases the Act was enforced by conferring a new Crown charter on payment of a substantial amount, in other words the unfortunate Highlanders were made to buy back their own lands or agree to pay the Crown a handsome feu-duty, that is to accept that the land was no longer allodial, where the original holding until then had effectively been allodial’. In cases where it was claimed the land was held by grant from the Lord of the Isles either by charter or by ceremony at the Black Stones the Edinburgh

¹⁴ The Scottish parliament project offers a translation of this.
<http://www.rps.ac.uk/1587/7/70>

¹⁵ For a detailed account of this period see John Leonard Roberts, *Feuds, Forays and Rebellions: History of the Highland Clans* (Edinburgh: Edinburgh University Press, 1999).

lawyers evolved a theory that unless confirmed by the Crown such tenures had become void by the forfeiture of the Lord of the Isles. Thus, further grounds were found for expropriating Highland property and the requirement of making the chiefs re-purchase their own lands. In the long term this made the land alienable, allowed the chiefs to treat their followers as mere tenants and treat the property as theirs alone but few took immediate advantage of this.¹⁶

On completion of the Report by the Royal Commissioners under the Act of 1597, the islands of Lewis and Harris, the areas of Trotternish, and Dunvegan in Skye and Glenelg on the mainland were declared at the king's disposal. The Crown argued that from the very absence of Crown charters under Scottish law they could claim for the Crown land it had previously never owned. In 1598 therefore, the Government conveyed these lands to a Lowland company belonging to the East Coast known as the Five Adventurers. These speculators arranged to begin by colonising the Island of Lewis. Their contract with the Crown bound them "to plant policy and civilisation in the hitherto most barbarous Isle of Lewis with Iona and Trotternish". The inhabitants, however, resisted and after three attempts to take possession and a succession of struggles and open warfare that lasted for twelve year 'the Adventurers' were in 1610 obliged to resign their claims, to purchase a remission from the king for their enemies and to leave hostages until this was achieved. As a consequence of the struggle between Highland and Lowlander Lewis passed from the MacLeods and was handed over to the MacKenzies.¹⁷

James and the Pacification of the Highlands

Prior to the Union of the Crowns of Scotland and England in 1603 the efforts of the Crown and Parliament to weaken the Highlands clan system had ended in failure. Circumstances altered after 1603. The King's English advisers were ever alert to make use of any opportunity for weakening the northern sister kingdom and subordinating its interests to those of the more powerful 'predominant partner'. The ruling faction in the Lowlands who had become largely Presbyterian regarded with bitter and fanatical feeling the Highlanders who held the balance of power in Scotland. Although Lowland Scots and the English were equally jealous of each other, their common object was to weaken the Highland clans and thereby an unnatural alliance was formed.¹⁸ James's main object was money, but he was also

¹⁶ Henry VIII had used this same device in Ireland in the 1540s.

¹⁷ Roberts, *Feuds, Forays and Rebellions*, pp. 137-139, 142-143.

¹⁸ Jane H Oldmeyer in *The Oxford History of the British Empire*, ed, William Roger Louis (Oxford: Oxford University Press, 1998).

disgusted by what he perceived as the uncivilised behaviour of the Highlanders and their evil disposition and barbarity. They were “void of any knowledge of God or his religion.”¹⁹ Andrew Stewart earl of Ochiltree and Andrew Knox, bishop of the Isles and ‘abbot of Icolmkill’ were sent in 1608 as the king’s commissioners to the Isles and Ochiltree was able to trick a number of clan chiefs (traditionally twelve) into boarding his ship and take them into custody from which they were not released until they had signed the bond and statutes.²⁰ that abolished all the heritable jurisdiction of the Chiefs of Clans, placing their castles at the disposal of the Crown; ordering the breaking up and destruction of the Galleys, berlins and lymphads of the Island Clans.²¹ The Government’s first stage to ‘progress’ was thus to undermine the existing beautiful and effective system of Island communications. Next they prohibited the use of guns, bows and two handed swords by the clans-people and the Chiefs were compelled to send their children as hostages to Edinburgh so they “may be found able sufficiently to speik, reid and wryte Englische” under penalty of death.²²

In 1609 Ochiltree did not accompany Knox and the king’s primarily financial intentions were over-ridden by Knox’s personal agenda that produced “the distinctly loose and impractical agreement that has come to be known as the ‘Statutes of Iona’.”²³ which aimed at evangelising the Isles. At first sight it might appear that the above statutes were framed with the benevolent idea of civilising the Highland and imparting instruction to their inhabitants. The true purpose however was to destroy the tribal Celtic civilisation and to pave the way for the exploitation of the Highlands by companies like the Fife Adventurers.

To less prejudiced eyes, the Highlands were far from being either uncivilised or without instruction or codes of law. On the contrary there were schools of language music and architecture. True, English was not taught, however Latin, which was at this period the language of diplomacy was familiar to most Highland gentlemen. The Highlands were famed for

¹⁹ Roberts, *Feuds, Forays and Rebellions*, p. 137.

²⁰ David Armitage. ‘Making the Empire British, Scotland and the Atlantic world 1542-1707’ *Past and Present* vol. 155 (1997), pp. 34-63.

²¹ Jenny Wormald ‘The Creation of Britain: Multiple Kingdoms or Core and Colonies’ *Transactions of the Royal Historical Society*, 6th Ser., vol. 2 (1992), pp. 175-194.

²² Kenneth MacKinnon, *Gaelic - A Past and Future Prospect* (Edinburgh: The Saltire Society, 1991), p. 46.

²³ Michael Lynch, ‘James VI and the Highland Problem’ in Julian Goodare and Michael Lynch (eds), *The Reign of James VI* (Edinburgh: Tuckwell Press, 2000), p. 222.

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their manufactures, smiths and jewellers. Progress and changes came harmoniously by degrees under the influence of the experience of each new generation. The clans exported manufactured goods, timber, and stone to the continent of Europe and received in exchange various articles of commerce. Wine was plentiful in the Highlands until the seventeenth century. The fine wrought iron gateway on the steps of the river terrace to the Castle of Donibristle was sent from Holland in exchange for stone from the Highlands.²⁴

While the Statutes of Icolmkill, aimed at damaging the commerce of the Highlands appears to have succeeded, the provisions regarding the disarmament of the Highlanders was more honoured in the breach than in the observance. Had it been otherwise the risings in 1715 and 1745 might never have taken place

Professor MacInnes, in *Clanship*, argues that the Statutes “commenced a sustained legislative offensive by the Crown, to modify, if not terminate, the disruptive aspects of Clanship.”²⁵ He treats the Statutes as a considered and coherent programme that, once introduced, buttressed the privileged position of the chiefs, and clan elite while assimilating them to the Scottish Landed Gentry. and that therefore from this time we can trace the beginning of what later followed in the loss of Highland Culture, Highland law and the Highland Clan. In fact the programme was more piecemeal than that but Acts of the Scottish Parliament in 1616 and 1617 reinforced the requirements that obliged the chiefs to involved themselves more closely in the Lowland culture and saw the decline of Gaelic literature and song.

²⁴ Steve Murdoch, *Network North: Scottish Kin, Commercial and Covert Association in Northern Europe* (Leiden: Brill, 2005).

²⁵ Allan MacInnes, *Clanship, Commerce and the House of Stuart, 1603-1788* (East Linton: Tuckwell Press, 1996).