



Scottish Culture and History



The Story of Tartan Day

On August 1, 1746 the Act of Proscription (19 Geo. 2, c. 39) came into effect in Scotland. This was part of a series of efforts to assimilate the unruly Scottish Highlands and ending their ability to revolt. It was the first of the 'King's laws' which sought to crush the Clan system in the aftermath of the Jacobite Rising of 'Forty-Five. These laws were finally repealed in 1782.

The British forces, under the Duke of Cumberland, had been brutal in putting down any hint of Jacobite resistance among Highlanders, and the Act can be seen as Parliament asserting the supremacy of the Civil Courts over unconstitutional military coercion.

The cruel and unconstitutional method of punishing the Highland rebels, and crushing the sting out of them, adopted by Cumberland, was at length put a stop to about the month of August 1746, the Civil Courts successfully asserting their supremacy over military licence and coercion. Parliament set itself to devise and adopt such measures as it thought would be calculated to assimilate the Highlands with the rest of the kingdom, and deprive the Highlanders of the power to combine successfully in future against the established government. To effect these ends, Parliament, in 1746 and 1747, passed various Acts, by which it was ordained that the Highlanders should be disarmed, their peculiar dress laid aside, and the heritable jurisdictions and ward-holding abolished.

The Acts were mainly a restatement of the earlier Disarming Act, but with more severe punishments which this time were rigorously enforced. Punishments started with fines, with jail until payment and possible forced conscription for late payment. The second offence often resulted in transportation to "His Majesty's colonies across the seas" — effectively indentured slavery. Many considered these penalties too severe. Notwithstanding, it seemed to have accomplished its purpose: "the last law", says Dr Johnson, "by which the Highlanders are deprived of their arms, has operated with efficacy beyond expectations... the arms were collected with such rigour, that every house was despoiled of its defence". Not only was this disarming of the Highlanders effectual in preventing future rebellion, but also judged considerably to soften and render less dangerous their daily intercourse with each other. Formerly it was quite a common occurrence for the least difference of opinion between two Highlanders — whose bristling pride is always on the rise — to be followed by high words and an ultimate appeal to weapons, in which the original combatants were often joined by their respective friends, the result being a small battle ending in one or more deaths and many wounds. The Disarming Act tended to make such occurrences extremely rare.

A new section, which became known as the Dress Act, banned the wearing of "the Highland Dress". Provision was also included to protect those involved in putting down the rebellion from lawsuits. Measures to prevent children from being "educated in disaffected or rebellious principles" included a requirement for school prayers for the King and Royal family.

Claims that other portions of the Act of Proscription prohibited the playing of bagpipes, the gathering of people, and the teaching of Gaelic (the Highlander's native tongue) do not appear to be supported by the text of the Act.

The Act of Proscription was followed by the Heritable Jurisdictions Act. This removed the feudal authority that the Clan Chieftains had enjoyed. Scottish heritable sherriffdoms reverted to the Crown, and other heritable jurisdictions, including regalities, came under the power of the British courts.

Marshal Wade, in 1725, seems really to have succeeded in confiscating a very considerable number of good, useful arms, although the pawky Highlanders managed to throw a glamour over even his watchful eyes, and secrete many weapons for use when occasion should offer. Still, that arms were scarce in the Highlands after this, is shown by the rude and unmilitary

character of the weapons possessed by the majority of the rebel army previous to the battle of Prestonpans; there, many of the Highlanders were able to exchange their irregular and ugly, but somewhat formidable weapons for government firelocks and bayonets. Still Culloden, and the merciless oppression which followed, more than annulled all that the Highlanders had gained in this and other respects by their previous success; so that those charged with the enforcement of the disarming Act would have comparatively little work to do, and were not likely to meet with much opposition in performing their duties.

There is certainly considerable room for doubting the wisdom that prompted the enactment that followed the above, enforcing the discontinuance of the peculiar dress of the Highlanders. By this Act,

"Any persons within Scotland, whether man or boy (excepting officers and soldiers in his majesty's service), who should wear the plaid, philibeg, trews, shoulder belts, or any part of the Highland garb, or should use for great coats, tartans, or parti-coloured plaid, or stuffs, should, without the alternative of a fine, be imprisoned for the first conviction for six months, without bail, and on the second conviction be transported for seven years".

Of all the medicines administered by the government physicians to the Highlanders at this time, this was certainly the most difficult for them to swallow, and the one least calculated to serve the purpose for which it was intended. Whatever the Highlanders might have thought as to the other enactments made by the government to keep down rebellion, this interference in a matter so personal and apparently so harmless as that of dress, this prohibition of a costume so national, ancient (at least in fashion), and characteristic as that of the Highlanders, seemed to them an act of mere wanton and insulting oppression, intended to degrade them, and without purpose, to outrage their most cherished and harmless prejudices. They seem to have felt it as keenly as any officers would feel the breaking of his sword or the tearing off of his epaulets, or as the native troops, previous to the Indian mutiny, felt the imposition of greased cartridges. It humbled and irritated them far more than did any of the other Acts, or even than the outrages and barbarities that followed Culloden. Instead of eradicating their national spirit, and assimilating them in all respects with the Lowland population, it rather intensified that spirit, and their determination to preserve themselves a separate and peculiar people, besides throwing in their way an additional and unnecessary temptation to break the laws. A multitude of prohibitory statutes is always irritating to a people, and serves only to multiply the offences and demoralise a nation; it is generally a sign of weakness and great lack of wisdom in a government. This Act surrounded the Highland dress with a sort of sacred halo, raised it into a badge or nationality, and was probably the means of perpetuating and rendering popular the use of a habit, which, had it been left alone, might long ere now have died a natural death, and been found only in our museums, side by side with the Lochaber axe, the two-handed sword, and the nail-studded shield.

The wise President Forbes — to whom, had the government perceived clearly the country's true interest, they would have entirely entrusted the legislation for the Highlands — had but a poor opinion of the dress bill, as will appear from the following letter of his to the Lord Lyon, dated July 8, 1746:-

"The garb is certainly very loose, and fits men inured to it to go through great fatigues, to make very quick marches, to bear out against the inclemency of the weather, to wade through rivers, and shelter in huts, woods, and rocks upon occasion; which men dressed in the low country garb could not possibly endure. But then it is to be considered, that, as the Highlands are circumstanced at present, it is, at least it seems to me to be, an utter impossibility, without the advantage of this dress, for the inhabitants to tend their cattle, and to go through the other parts of their business, without which they could not subsist; not to speak of paying rents to their landlords. Now, being too many of the Highlanders have offended, to punish all the rest who have not, and who, I will venture to say, are the greatest number, in so severe a manner, seems to be unreasonable; especially as, in my poor apprehension, it is unnecessary, on the supposal the disarming project be properly secured; and I must confess, that the salvo which you speak of, of not suffering the regulation to extend to the well-affected Clans, is not to my taste; because, though it would save them from hardships, yet the making so remarkable a distinction would be, as I take it, to list all those on whom the bill should operate for the Pretender, which ought to be avoided if possible".

General Stewart perhaps speaks too strongly when he remarks, that had the whole Highland race been decimated, more violent grief, indignation, and shame, could not have been excited among them, than by being deprived of this long inherited custom.

The means by which the Highlanders endeavoured to elude this law without incurring a penalty, were ingenious and amusing. Stewart tells us that, "instead of the prohibited tartan kilt, some wore pieces of a blue, green, or red thin cloth, or coarse camblet, wrapped round the waist, and hanging down to the knees like the fealdag. The tight breeches were particularly obnoxious. Some, who were fearful of offending, or wished to render obedience to the law, which had not specified on what part of the body the breeches were to be worn, satisfied themselves with having in their possession this article of legal and loyal dress, which, either as the signal of their submission, or more probably to suit their own convenience when on journeys, they often suspended over their shoulders upon their sticks; others, who were either more wary, or less submissive, sewed up the centre of the kilt with a few stitches between the thighs, which gave it something of the form of the trousers worn by Dutch skippers". The Act at first appears to have been carried out with rigid strictness, these ingenious attempts at evading it being punished somewhat severely; but, if we may judge from a trial which took place in 1757, the administrators of the law had by that time come to regard such breaches with a lenient eye. Although no doubt the law in course of time became prac-

tically obsolete, it was not till 1782 that it was erased from the statute book. The Act of Abolition was repealed by the Government obtaining the King's ascension on 1st July 1782. In the North there was great rejoicing. A proclamation was issued in Gaelic and English which announced as follows:

Listen Men. This is bringing before all the Sons of the Gael, the King and Parliament of Britain have forever abolished the act against the Highland Dress; which came down to the Clans from the beginning of the world to the year 1746. This must bring great joy to every Highland Heart. You are no longer bound down to the unmanly dress of the Lowlander. This is declaring to every Man, young and old, simple and gentle, that they may after this put on and wear the Trousers, the Little Kilt, the Coat, and the Striped Hose, as also the Belted Plaid, without fear of the Law of the Realm or the spite of the enemies.

Since then, "tartans and kilts an' a', an' a'", have gradually increased in popularity, until now they have become "the rage" with all classes of society, from John o'Groats to Land's End; tartan plaids, of patterns which do great credit to the ingenuity of the manufacturers, are seen everywhere and the not so long since proscribed kilt being found not infrequently displaying itself in the most fashionable London Assemblies.

After Culloden

The island of Britain had suffered a tremendous shock by the near success of the Jacobite rebellion. The nation was accustomed to fighting its battles at sea or on territories other than its own. It was unnerving, to say the least, that an enemy army, recruited from its own population, had been able to penetrate so close to the nation's capital, especially since that army had been composed mainly of Highlanders, a backward people so far as most of the English were concerned. Furthermore, it had also been an ill-equipped, ill-prepared and often ill-led army but one that had won so many battles against the troops entrusted to defend the English constitution.

Great relief at the suppression of the rebellion found expression in the first public appearance of the new English anthem "God Save the King." Just four months after Culloden (the old song, often used by supporters of the Stuarts had now been appropriated to lustily praise the Hanoverian king). Fears about future rebellions and the inadequacy of Britain's security were now instrumental in the measures taken to control the Highlands.

The trials held after the '45 showed that the government not only wanted to punish those responsible -- those who held the power within Highland society -- but wanted to prevent a recurrence of the revolt by destroying any social and governmental basis it possessed. The absolute will of the Scottish lairds was to be replaced by the execution of the king's laws. Legislation of 1746 and 1747 was passed to weaken the independence of the Highlands. Public executions of those loyal to the Jacobite cause impressed upon the Scottish people the need to toe the line.

The lands of the Jacobite chiefs were forfeited and a determined effort was made to end the clan system once and for all. Yet, as more than one historian has pointed out, the great lords on the fringes of the Highlands such as Argyll, Montrose, Gordon, Atholl and others lost their baronial rights, in the more remote regions, the power of the chiefs had been patriarchal rather than feudal, personal rather than legal and territorial. It was the inexorable advance of a money economy into the Highlands that followed the rebellion, and not the effects of any royal statute that finally ended their supremacy.

The Disarming Act of 1746 forbade the carrying and concealing of arms, made broadsword illegal and the search for them legal. The wearing of Highland clothes or plaid was prohibited to all except serving soldiers of the Crown. Another act was passed to suppress nonjuring, meeting houses, considered "seminaries of Jacobitism" and "nurseries and schools" of rebellion.

In 1747 the principal heritable jurisdictions were abolished as were regalities, with the latter's jurisdictions assumed by the royal courts. Heritable sheriffdoms were abrogated and their powers transferred to the Crown. In Edinburgh, in 1746, a publication made clear the government's belief that legislation would extinguish the Jacobite menace:

"Superiorities display'd: or Scotland's grievance, by reason of the slavish dependence of the people upon their great men; upon account of holdings or tenures of their lands, and of the many and the hereditary jurisdictions over them. Wherein is shown, that these have been the handles of rebellion in preceding ages, especially in the year 1715: and that, upon their removal, and putting the people of Scotland on the footing of those in England, the seeds of rebellion will be plucked for ever."

The great Civil war that had taken place in Britain in the middle of the 18th century, resulting in the defeat of the Highland clans at Culloden, brought to an abrupt end centuries of a way of life that we can call Celtic, for after Culloden and the defeat of Jacobitism, a social system we can simply call British was imposed on the Highlands. For British, we can substitute English, for all hopes of wresting back control of Scotland from Westminster were now effectively ended. Welsh hopes for eventual independence had died in 1536 with the Act of Union. Thus the successful referenda of the 1990's that will bring back limited control of their own affairs to these two Celtic nations is all the more remarkable. After all, even the pipes had been prohibited after Culloden.

The Acts Against Highland Dress

During the '45', the Highlanders under Bonnie Prince Charlie almost succeeded in conquering England. King George the

Second was in Hanover, and most of the English army was off fighting in Germany and Flanders. If not for a series of events that changed the obvious outcome of the Jacobite rebellion, the Highlanders - and not the British - would have ruled Scotland.

Soon after the rebellion was put down, the English implemented a series of Acts to eliminate the Scottish threat. Ingenious in their conception, these laws not only restored order, they virtually eliminated a way of life by destroying the clans, their identities and economic structures. That the laws were harsh is true but, considering the fact they were implemented within a context of fear, they are understandable. Fear that this rebellion could happen again, and the next time with more successful results.

As an imperial nation, Britain was used to fighting outside of its own borders, and the fact that a so-called 'ill-equipped, ill-led rabble of barbarians' almost succeeded in taking over the country shook its leadership deep down to its roots. Legislation went into effect quickly: the time from the defeat of the Scots until implementation of the first Act was only months. The rule of the Scottish lairds and their absolute control of the Clans had to be broken, and very soon. On August 1st, 1746 the Act of Proscription went into effect. This was the first of the 'Kings laws' bent on breaking the back of the Scottish system of government and independent life. It was largely a reiteration of an earlier act, The Disarming Act, but this time the penalties were harsher and much more thoroughly enforced.

The penalty for the owning or carrying of arms (weapons) under the new Act of Proscription was death. The wearing of the kilt or tartan was also punishable unless worn by a soldier actually serving the crown. Other portions of the Act of Proscription prohibited the playing of bagpipes, the gathering of people, and teaching Gaelic, the Highlander's native tongue. The punishments for these lesser offences were fines, jail time or transportation to the colonies. Once transported, the "criminal's" punishment consisted of seven years, indentured slavery.

The impact of these Acts on all levels of Scottish society was swift and brutal. Landed peers who participated in the '45 had already lost their territory to the English outright. Now all the remaining lords of the land lost power over their subjects except the rights of landlord. The English system of law was forced on to the people and nobody could change it.

The Scottish Highlanders lost their culture: they were forbidden to dress in the style of their ancestors and could not carry or own a weapon. They could not listen to bagpipes and were even forbidden from participating in Highland Games due to the laws against gathering. Their whole way of life was turned upside down and shaken vigorously. The clan chiefs and lairds whom they normally would turn to in times of trouble no longer had the authority to do anything.

Many Scots could not stand to live under these harsh rules and so they emigrated to the colonies. For other men of the time, the only way to preserve the way of life they knew was to join the English army. At least in the Army, Highlanders could wear the kilt and hold a sword again, thus retaining some of their pride. Ironically, many of these men later died fighting their 'brothers' who had emigrated to the colonies, or while placing the heel of English authority over other peoples.

By the time these repressive laws were finally repealed in 1782, the damage was already done. A generation and in some cases, two generations of children had been born and were raised not knowing the language, dress or customs of their ancestors. It is a tribute to the strength of the Scottish Highlanders that even today, the old ways of life are remembered and honoured. And even more amazingly, their spirit remains and is manifest in the successful referenda that recently recreated the Scottish Parliament.

Repeal of the Act Proscribing the Wearing of Highland Dress

22 George III, Cap. 63, 1782

"Whereas by an Act made in the Nineteenth year of the reign of his late Majesty King George the Second, entitled "An Act for the more effectual disarming the Highlands in Scotland and for more effectually securing the peace of the said Highlands and for restraining the use of the Highland dress".... It was, among other things enacted that from and after the first day of August, One thousand seven hundred and forty seven no man or boy, within that part of Great Britain called Scotland other than such as shall be employed as officers and soldiers in his Majesty's forces, etc., etc. And whereas it is judged expedient that so much of the Acts above mentioned as restrains the use of the Highland dress should be repealed. Be it therefore enacted by the King's most Excellent Majesty, by and with the advice of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same. That so much of the Acts above mentioned or any Acts of Parliament as restrains the use of the Highland dress be, and are hereby repealed."