



Painting of James Murray, the 2nd Duke of Atholl (1690-1764) (colour version inside back cover).

A Brief Encounter: The Duke of Atholl and the Isle of Man 1736 - 1764

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In 1736 James Murray, 2nd Duke of Atholl (1690-1764) inherited the Isle of Man. He was not the first Scottish lord of the Island.¹ Nor would he be the last.² He was, however, the only Scottish lord who held the Island as a feudal dependency of the English crown. In 1406 the Isle of Man had been granted in perpetuity to Sir John Stanley and his heirs (later Earls of Derby) and in 1610 to the heirs of James, 7th Earl of Derby. In 1736 the 10th Earl died without issue, leaving James Murray the closest male heir.³ When he died in 1764, his heir sold the sovereign rights to the Island in the following year to the crown and the contract was confirmed by an act of Parliament known as the Revestment Act. In effect, therefore, James Murray was the Island's last feudal lord.

Every feudal lordship is unique and the distinguishing feature of the Duke of Atholl's lordship of the Isle of Man was the fact that it was only a temporary expedient. When he inherited the Island in 1736 questions of loyalty swirled around both the Duke and his inheritance. The Duke had been compromised by the actions of his brothers, and the Island was discredited by the row over trade which coloured all its relations with England in the eighteenth century. He therefore took possession of his property with great circumspection. His first Governor was sent to the Island with only his wit to ensure "quiet possession" of the Island and the continued observance of traditional symbols of feudal power. In sum then, the Duke's political sovereignty of the Island seems to have been compromised from the start. His economic sovereignty, however, was not. Indeed the extent to which the 2nd Duke treated the Isle of Man as an item of negotiable real estate seems excessive even by the standards of the "new civilian

¹In 1266 Magnus of Norway ceded the Island to Alexander III of Scotland. It came under the protection of Edward II in 1290, but fell again to the Scots in 1313 when Robert the Bruce successfully invaded it. It fell permanently to the English crown in 1334 when Edward Balliol returned it to Edward III.

²His nephew John Murray (1729-1774) succeeded him as 3rd Duke of Atholl and was in turn succeeded by his son John (1755-1830) as 4th Duke of Atholl.

³He was the grandson of Lady Amelia Sophia, daughter of the 7th Earl of Derby.

feudalism" of the eighteenth century (Namier 1961, 18 - 26). Feudal law concerned the disposal of a grant of land, a feudum, or fee, the definitive characteristics of which were that it was perpetual and hereditary. The Duke felt bound by neither. Even before inheriting the Island he had committed himself to selling it to the crown. Immediately after inheriting it he began settling it in trust on members of his family. These trusts observed the language and form of feudal law—tenants were required to atton to the new owners, etc.—but their purpose was not to reinforce but to circumvent that law, by ignoring the natural course of inheritance and treating with interested parties with a view to the sale of the Island.

When, in 1405, Henry IV conveyed the Island, the two Castles of Rushen and Peel, 23 rights, liberties and franchises and 11 items of land in perpetuity to his servant Sir John Stanley, he did so in the language of "prevailing English feudal law and custom" (Hytner 1981). Through a combination of myth, this feudal grant, and accumulated feudal ordinances, more than ten generations of the Stanley family enjoyed popular legitimacy and virtual independence as Lords of Man (Dickinson 1996).⁴ On such foundations were early western states raised and like its more powerful neighbours, the lordship of Man was hostage to the fortunes of birth (Pocock 1957, 1987). However, inheritance can fail and it did so for the Derbys in 1736.⁵ It had been clear for several years that there would be no Stanley heir to the lordship but the 10th Earl seems never to have contemplated the idea that the title of almost 350 years could leave his family. He thought he could bequeath the Island in his will, but when he died on February 1 1736 the Island fell to James Murray, 2nd Duke of Atholl. The Stanleys would contest this in court, but in 1751 Chancellor Lord Hardwicke ruled that the inheritance of the Island was inalienably vested in the heirs of the 7th Earl of Derby. Thus through a strict application of feudal law, the Isle of Man fell to the Murrays.

It would not remain there long. When the 2nd Duke assumed the lordship his family was already under considerable obligation to the crown. His elder brother William, along with two of his younger brothers, Charles and George, had been amongst the first to join the Earl of Mar in 1715. They fled when the uprising failed and they were all attainted for treason. William forfeited his inheritance. The following year the crown agreed to allow James to inherit the Atholl estates and he did so on the death of his father in 1724. At the time of his death the 1st Duke was seeking a pardon for his son George (Charles had died in 1720) and this was granted just after the 2nd Duke came into his inheritance.

By the early 1730s the 2nd Duke knew that he stood to inherit the Isle of Man (Manx Museum (MM) 1). He must also have known, given his family's political vulnerability, that there would be conditions. The most drastic came from the Treasury. It had been trying for many years to protect English, Irish and—after 1707—Scottish trading interests, by discouraging "dependencies" such as the Isle of Man from allowing their

⁴A quasi-mythological "constitution of old time," also known as "The Supposed True Chronicle of the Isle of Man," described the Island as a kingship. It is printed in *An Abstract of the Laws, Customs, and Ordinances of the Isle of Man*; compiled by John Parr, ed. by James Gell, Manx Society vol. xii (Douglas 1866).

⁵An earlier failure, in the 1590s, had led to the act of 1610, which settled the inheritance on the 7th Earl of Derby.

bays and harbours to be used as entrepôt centres.⁶ Their lordships had tried persuasion. When that had failed there had been a brief period of accommodation following the 1707 Act of Union, when the Manx people tried to negotiate a similar trade agreement. This also failed and in the early 1720s the Treasury turned to legislation, with two very clumsy attempts to restrict Manx trade. In 1720 parliament passed an act containing a clause specifically prohibiting the Isle of Man from importing East Indian products.⁷ In 1726 another act directly interfered, for the first time, in Manx trade by prohibiting the entry of all goods from the Isle of Man except local produce, and prohibiting the drawback on tobacco and other goods exported to the island (MM 2).

The legislation was badly crafted, either in ignorance or with mischievous intent and when, in 1726, an English customs officer tried to seize a cargo of "East India Goods" brought into a Manx harbour by Richard Green in his ship 'Dove', the customs officer had been challenged, "... it being doubtfull ... whether the officers of the Customs placed there who have Deputations from the Commissioners of the Customs in England can make a Seizure in that Island and Prosecute in the Courts there" (MM 3). The Attorney General thought not; the commissions of English Customs Officers "doth not extend to that Isle to empower their officers to make Seizures."

The decision should not have surprised anyone. It had long been established that no English legal authority below the crown exercised jurisdiction in the Isle of Man. However, it may have come as a shock to the legislators to realize that instead of making life more difficult for Manx traders, the act made life difficult for the English customs officers. After the Attorney General ruled that they could not make seizures in their official capacity, he went on to say that they could do so as private citizens. Therefore, after 1726, when investigating cargoes arriving in Manx ports, English customs officers were dependent on the good will and support of the Manx officials for any seizure they might wish to make.

Perhaps anticipating all this, another clause in the 1726 act authorised the Treasury to negotiate with the lord for the purchase of the Island. The origins of this radical proposal are unknown. Again, it was a very blunt instrument to use against Manx trading delinquents, and was probably equally illegal. It was certainly unenforceable, and the 10th Earl of Derby never contemplated entering into any negotiations with the Treasury. That changed, however, with the likelihood that the Duke of Atholl would become lord. On May 17 1733 the Duke accepted that the clause in the 1726 act was indeed a valid authorization for the Treasury to proceed, and it was agreed that the Duke should inherit the Isle of Man on condition that he and his heirs agreed "to sell the Isle to the crown within 7 years of taking possession" (NRA (S)).

This promise was probably not the only limit placed on the power of the new lord of Man. Immediately the 10th Earl died, and over Stanley objections, the Duke of Atholl had despatched James Murray to the Island as his Governor (Mathieson 1959). He was the Duke's man, promising to do "what to my understanding is best for

⁶The basic protection came from the 1660s Navigation Acts.

⁷After June 24 1721 no East India goods to enter the Isle of Man but those "Shipt in ... Ships Navigated according to the several Laws now in being upon Penalty of forfeiting Ship and Goods and such Ship and Goods ... may be seized and the same ... prosecuted in any of his Majestys Courts of Record at Westminster or Dublin ...".

securing your interest and the Affections of the people ...". However, he was not totally bound to the Duke and others had probably had a role in his selection, because he was a retired military officer currently on leave from the Treasury, where he was the Receiver General of Scotland.

The Governor had instructions to secure the Island for the Duke and investigate the state of the revenues and, but for him, Atholl might not have assumed possession so effortlessly. By the time his Governorship was over in 1743, his successor was able to report that he was "universalie beloved and esteemed here to this day" (MM 4). Even a critic called him a man of "Most natural strong good Parts" with liberal inclinations, while adding "unfortunately most strongly influenced by Principles which are so peculiar to people of that nation ... [and] confirmed by a French Education ..." (MM 5).⁸ Governor Murray's long letters to the Duke were not the equal of Boswell, but they were written in the same usefully observational style and shed a little more light on the character of this much admired man.

He arrived with little identification. The crowd waiting on shore that watched him disembark at Derbyhaven one Thursday morning in late March had no idea who he was, were quite in the dark about the inheritance, and were still loyal to the Stanley family (MM 6).⁹ He was told that a few weeks before his arrival the people had been "firing ... cannon [and] making very merry" on the strength of a letter from the former Governor of the Island "that Sir Edward Stanley was Earl of Derby and undoubtedly Lord of Mann." By the middle of April Murray was still unable to counter rumours that Sir Edward had taken his seat in the House of Lords "and would as certainly be Lord of this Island" (MM 7).

He had no troops but he did have a strategy. Describing himself as "naturally cautious and mistrustfull," his main aim was to keep things "as quiet as could be imagined," to act "for Your Graces Interest and the quiet of Your Island" and he was indeed soon able to report that he had secured the "quiet possession of this Island" (MM 8). However, it was "a ticklish time", he wrote later, needing "some truths and some Seasonable Lies" (MM 9).

The problem seems to have been that the Duke did not have overall military command of the Island. He should have been able to give his Governor his commission, but when Murray presented himself to the Island's principal military officer, Major General Christian, and was asked for the "proper Authority" from Atholl, he could only say that he had to see the Bishop first. Later, in conversation with some people who "suspected I came with powers from Your Grace," he had "thought it best by insinuations to confirm them in that Opinion." The papers he revealed to the Bishop the following day showed that he had a letter from Atholl and a commission sent separately, "with instructions." Unfortunately, we learn nothing more about these important documents, beyond the fact that the Bishop "seemed ... pleased" and they also satisfied the Major General to whom Murray presented them the following day as promised (MM 10).

His second objective was the compliance of the Island's leading inhabitants. All those prepared to acknowledge the Duke's claim to the title were to be "kept in the same

⁸The writer was one of those rabidly xenophobic Englishmen common in mid-eighteenth century England, for whom effeminate, Scots and Fiench were equally damning epithets.

⁹His name soon circulated and they took this "to be a hint enough" (MM 6).

temper untill you were put in full possession of the Island. It will be time enough to make what changes you think proper on or after your Arrival," he wrote (MM 11). He met the Duke's officers for the first time on the morning of his swearing-in ceremony. It was necessary for them, too, to take oaths and they were invited to do so.¹⁰ "They all made a low bow and said your Grace was most Gracious." The comptroller hesitated, but later decided he had been "ill advised" and Murray excused him, having no desire to make a martyr of him amongst "the mob" and no power anyway, he wrote, to replace someone who controlled "all business in the Island" (MM 12).¹¹

It was probably with some relief, then, that Murray found himself greeting them all at his lodgings at three o'clock that afternoon. They walked to the castle "in great procession", where they were sworn in and listened to the Governor read his commission and "Instructions." Then he was "led up to a particular Stone in the pavement a White rod put in my hand and I took the usual oath" as 5 guns were fired. Thirty soldiers marched "up to the cross"; Murray followed "with my White Stick, [and] we drank health and prosperity to the Duke of Atholl & Lord of Mann and the Isles and 7 guns [were] fired from the castle." Toasts followed "to the King Queen etc., beer and punch to the people." And "all this" he marvelled, "without the least disturbance."

His third objective was to appear judicious. As governor he was also Chancellor, and "without appearing over fond of power", he wrote, "I shall endeavour to keep a just mean" (MM 13). He had no great knowledge of Island law and complained that the people are "... certainly the most litigious of all the human race" (MM 14). However, he dutifully took his seat as a judge in the Islands courts, although he came close to panic when he learnt that the Island's previous comptroller, now a Lancashire Attorney, had arrived on the Island (MM 15).¹² "For god's Sake My Lord come over directly and in the meantime I shall do my utmost to keep things right and Open."

His fourth objective was to observe other established customs and give proper regard to all other symbols of power. He was anxious to visit the forts, because it is custom, he wrote, "on such occasions to fire some guns" and he urged Atholl to take possession of the Island personally. Nothing would please the people more, he wrote; "all the people [are] fond of seeing their Lord it is indeed the only thing they agree in" (MM 16).¹³ The Duke must come to the annual Tynwald Court on June 24th. There was more chance of having "any Law [passed] you may think for Your advantage at the beginning of Your Reign than any other time."

The Governor promised "a magnificent cavalcade" and began to fuss over details, (all of which came to pass when the Duke did indeed visit the Island as requested). The Duke's arrival had to be carefully orchestrated; he must take care to signal his arrival; all the Officers must be there; addresses must be read; "everything shall be managed with as much Solemnity as possible." There was also the question of the regalia. "The

¹⁰The Comptroller and Attorney General kept the Island's legal and finance records. The receiver General and the Water Bailiff collected the rents, fines and customs. Two Deemsters and 24 Keys, the Island's assembly of tenants, made up the rest of the legislature.

¹¹He was keeper of the records (MM 12).

¹²The Sheading, or Common Law, courts were conducted in Manx, and "the Governor has only the pleasure of Sitting eight hours a Cypher?" (MM 15).

¹³"Since their dear Lord William's dayes (pre 1702) they have never seen anything above a Governor ..." (MM 16).

Sword of State might have been a fine thing in the days of Yore but now rusty and very paultry Yr' Grace should order Another. Let it only be glaring it is no matter what metal it is made of."

Without force, then, but with military determination, Governor Murray achieved "quiet possession" of the Island. It was a provisional possession, because the 2nd Duke knew he wouldn't hold the Island in perpetuity. He was, however, determined to profit from it. There was a "constant cry for money" from the Dukes of Atholl throughout the eighteenth century and the 2nd Duke seemed particularly needy (Leneman 1986). He had houses and estates to beautify and an aristocratic family to support. Towards all this the Island had to contribute. Services and produce were welcome, but what the Duke really wanted from the Isle of Man was cash.

After securing the Island, Governor Murray had orders to review the Island's revenues. Rules and regulations concerning the collection of revenue were centuries old. Murray's job was to modernize procedures for the new regime. He soon found that he had a great many interests to accommodate. The Derbys for example, continued to hover around the Treasury. Murray found it locked and the Duke ordered it opened by force, but Murray refused. The previous Governor had already taken most of the money away, but what remained had not been collected by Atholl's Officers and it was felt a representative of the late Earl ought to be present (MM 17). Murray thought it "better they at present should be humour'd" and ordered another room set up for Atholl's money.

Merchants also had to be accommodated. "Locking up all the merchants Cellars in the Island" till he had Atholl's instructions wouldn't do because it "might have put a Stop to all trade" (MM 18). Insisting on the full amount of customs duty might equally "stop trade" and also "give a bad notion of the lenity of Yr Grace's government." The usual practice was to make a bargain with them "as it is none of your interest I hope [and] none of your inclination to totally ruin the merchant."¹⁴ Finally the Duke's officers had to be remembered; the practice was to divide up the duty, with one quarter going to the comptroller, one quarter to the collector and a half to the Lord.

All this probably came as an unwelcome shock to the Duke, but Murray made one improvement which no doubt pleased him. Not long after he arrived the Governor noticed ships in Douglas bay whose cargoes were being broken up and transferred into wherries. Some merchants broke up cargoes to avoid paying Manx customs duties; others did so because they supplied merchants who couldn't afford to pay duty on a whole cargo (MM 19). Murray was concerned with neither. He insisted that the practice must stop because "by the Law of England breaking bulk at Sea forfeits Ship and Cargo" (MM 20).

Manxmen were not generally agreeable to the enforcement of English Law in their waters but in this case there was little complaint. By forcing merchants to land their cargoes first, and pay the full Manx, or more precisely ducal, customs, Murray probably put some small traders out of business. Merchants dealing in whole cargoes suffered less. Manx customs were not heavy and, as we have seen, were subject to negotiation.

¹⁴Bargaining with foreign merchants was a long established custom on the Island, although historically, to protect the inhabitants not the merchants.

While Murray was probably not intending to favour the Duke—he was scrupulously honest, writing that "if any dar'd to talk to me of anything had relation to corruption I wold lay him in Irons"—the cynical saw it as a "masterly stroke of Policy, for it not only increas'd ... Atholl's Revenues but it gave the utmost Encouragement to the inhabitants to extend their trade and to invite others to come and settle in the Island" (MM 21).

That this was indeed the case is born out in the record of cash periodically taken to Liverpool. The Attorney General usually transferred it, on the ships of a few trusted captains, into the hands of "a merchant of good credit" (MM 22). Sums steadily rose as Governor Murray's revenue reforms were implemented and customs revenues improved. £4,600 was carried to London in 1751—the largest sum ever to leave the Island (MM 23). In 1754 John Sanforth, a trusted Island trader for over 30 years, put 2500 gns "into our iron chest where we keep our money" (MM 24).

The Island itself was, of course, the biggest item for sale. After showing the Earl of Derby that he could not dispose of the Island as he wished, the Duke of Atholl then proceeded to do just that. Almost immediately after inheriting the Island the Duke began to deed it in trust to family members through a series of legal instruments (Train 1850). By the "Indenture or Deed of Feoffment with Livery and seisin ... Nov 14 1737" the 2nd Duke "did Sell Alien Enfeoff and Confirm" the Island to his uncle John late Earl of Dunmore, the Hon Wm Murray Solicitor General, later Attorney General [later Lord Mansfield] and John Murray of the City of Edinburgh Esq" (MM 25). The Trustees would "Execute all ... Leases:" Atholl would "enjoy ... the Rents." After his death the Trustees would continue to pay Fees out of the Islands Revenues to all Persons holding Office within the Isle." They were also allowed "with the Consent ... of whoever after Atholl's death might be entitled to the Island's Revenues, to sell the Island to any person and for such Price as they could reasonably get."

Over the next twenty-five years the trusteeship was revoked and rewritten as trustees died, new financial circumstances emerged, and the prospect of selling the Island waxed and waned. The most important revision was made in 1756 when the Duke of Argyle and Lord Stormont replaced Dunmore, who had died (Train 1850, MM 25). Instead of authorizing the trustees to sell to anyone, this new contract only authorised them to sell to the King. It also specified that the proceeds from such a sale were to be used to buy lands in Scotland for the benefit of the Duke's heirs.

Writing in 1765 or 1766, George Moore, a prominent merchant, claimed these trusteeships were meaningless (MM 26). The 2nd Duke "could neither alienate the Isle of Man nor newly model the succession of it ... all the feoffments and conveyances of the Island in his time were nullities and waste-paper ... the trust he created for sale of the Island was void." This may have been true, but it was surely irrelevant. The Trusts had existed and trustees had administered the Island for the Duke. In 1747 Lord Mansfield had been made the judge of appeals brought before the Duke of Atholl (MM 27). The Duke of Argyle had been consulted regarding incidents involving customs officers, proposals for the sale of the Island and the appointment of at least two, and probably all three Governors who succeeded Murray (MM 28).

When the 2nd Duke died in January 1764 his heir duly inherited the Island, but just

twelve months later the contract was concluded between the Treasury, the Duke and Duchess of Atholl and *their trustees*, for the sale of the Island to the crown (MM 29). Moore might well conclude, as he did, that "... the agreement made by the Treasury for purchase of the Island was made with persons who were not authorized to sell," but by then the Island was sold. The Revestment Act is generally considered the instrument through which the lord of the Island sold his sovereign rights to the English crown. But, what, by that time, did this mean? Did the Duke of Atholl ever have sovereign rights to the Island, and if not, who really led this lordship during its brief encounter with Scottish authority?

Acknowledgement

Painting of the 2nd Duke of Atholl by permission of Blair Castle, Perthshire.

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