Judge Robert Day 1746-1841

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The diaries and papers of Robert Day are an important source for Munster history in the period before and after the Act of Union. The career of this important judge, politician and administrator is outlined and the political and social context of his activities in the first two decades of the nineteenth century is analysed.

Robert Day was born at Lohercannon near Tralee in 1746. The origins of the family are somewhat obscure. Mary A. Hickson suggested Bristol origins in the early seventeenth century. Burke's Peerage and Baronetage gives the Days as descendants of a Suffolk family, one of whose members settled in Ireland in the seventeenth-century. The suggestion has also been made that the family is Irish, the name Day a version of O'Dea. In Kerry they became head-tenants, sometime after 1700, of the Dennys, an Elizabethan planter family and owners of Tralee. In 1795 the Judge's daughter Elizabeth married Sir Edward Denny, giving her father a commanding role in the management of the Denny estate and the town of Tralee. His mother was Lucy Fitzgerald, daughter of the Knight of Kerry. While this linked him with the earls of Desmond its additional value was the blood connection which came with the families of his mother's sisters, Meredith, Twiss, Stack, Hewson, Rice and Herbert. Strengthening his links with the native population was the marriage of his cousin Rev. James Day, rector of Tralee, to a daughter of the McGillycuddy of the Reeks. These connections with families of longer settlement in Kerry than the Days and with strong histories of support for the native Irish and Jacobite causes in the seventeenth century probably had an important bearing on Day's support for the Catholic cause.

He was called to the bar in London and Dublin in 1774 and won his professional reputation as chairman of the Dublin county court (the Kilmainham Quarter Sessions) from 1789. He was appointed to the court of King's Bench in 1798 and went to live in Loughlinstown House. Robert Day helped arrange the county support for the legislative union with Britain enacted in 1800, a support which seems in retrospect the inevitable extension of Day's voting pattern as a government supporter in the 1780s and 1790s. While in the Irish parliament he had worked to strengthen the government party in Kerry and assisted the government in undoing the imperfect arrangements between the two countries left from the granting of legislative independence in 1782. When the union was enacted it was the political response to the rebellion of 1798. Kerry played little or no part in the rebellion, and this owed something to the pro-Catholic politics of Day's party, including his patron and cousin John Crosbie (Lord Glandore), the Herbets of Muckross and Cahirmane, and the Catholic Lord Kenmare (Browne) of Killarney. However, it was expected among the Catholics that legislative union would be followed by their emancipation, and with the cause of Catholic relief Day had been identified very publicly for many years. Now he ceased to press the claim, principally because it was the aftermath of the Rebellion of 1798 and the war with Napoleon made concessions to the Catholics politically inadvisable but also...
because he felt betrayed by the rebellion and bitter at the loss of close friends. He hoped that economic benefits for Ireland under the Union would dampen enthusiasm for emancipation, a hope which was replaced by increasing anxiety as the campaign began to fall into the hands of a newer, more radical leadership. A war boom masked a deteriorating economic situation, which threatened to accentuate the old conflict in the rural areas. In north Kerry in particular the campaign against tithes and the 'canting' of farms, was particularly bitter, adding to the problems of conservative government in time of war. As if to counter the impression of political stagnation, Tralee did actually undergo a period of urban renewal in the generation or so which followed the Union, and much of the credit for this was given at the time to Judge Day.

His diary for the period 1808-13\(^1\) starts as the tide of the peninsular war began to turn with the victories of Sir Arthur Wellesley in Spain and Portugal, beginning with Vimeiro in late 1808. He knew Wellesley, soon to be created Duke of Wellington, during his brief stint as chief-secretary and Day had arranged Wellesley's return for Tralee to the imperial parliament in 1807. Before he left for the peninsula, Wellesley was expecting a French invasion on the southern coast and was working closely with the powers that be in Kerry and Limerick to contain a rural campaign which might provide support for the French in the event of invasion. The strength of separatism in Kerry at this period is hard to gauge, but the county appears to have been the scene of exceptional disturbance in the period before and after the Emmet rebellion of 1803. Wellesley's victories in the war with Napoleon had the side effect of sharpening the conflict between the Irish authorities and the rural campaign. Day applauded Wellesley and Castlereagh, Minister for War, as Irishmen, and he considered that the Spanish resistance was a patriotic war of independence against foreign domination. He recruited Kerrymen, a Fitzmaurice from Duagh House for example, as part of the huge Irish presence in Wellesley's army. But many in Kerry in the aftermath of the 1798 and Robert Emmet rebellions applied the lesson of Spanish and Portuguese resistance differently and disclaimed his version of patriotism. Castlereagh's name in particular survives not for his pro-Catholic leanings but for his association with repression in Britain and Ireland. Where in the early 1790s Day had implemented the Militia act to include Catholics the post-Union years saw the institution of martial law and the annual suspension of habeas corpus. He justified such harsh measures in the new emergency environment while simultaneously working to expand the yeomanry, which was increasingly a Protestant force. Tralee's new barracks owed its existence to his efforts, a symbol of the government's continuing fear of invasion and of native rebellion.

The rebellion had deprived him of friends like Luke Gardiner, the advocate of Catholic relief, and he now had philosophical difficulties with the idea of emancipation. The full relief of remaining disabilities, including the right to sit in parliament was now problematic: opponents of relief who said that admission of the Catholics would upset the unitary state based on the Established Church appeared vindicated by the rebellion while he believed more and more that the relief sought would make little difference to the lives of the poor. He believed that there could be progress after negotiation around the conditions to be built in as part of emancipation such as the crown veto on the appointment of bishops and the payment of the priests. His ally in the catholic cause, Lord Kenmare, represented the older and more submissive campaign dating from the 1760s. The new Catholic campaign's opening broadside was the Catholic petition to parliament of 1805 and its author and driving force was Daniel O'Connell ['O'Connell the barrister' Day called him in a letter in 1803] whose support in the south west included

\(^1\) This diary will be published in the next issue of the journal (IWMAJ vol. 42). It is now in the James Marshall and Marie-Louise Osborn collection, Beinecke Rare Book and Manuscript Library, Yale University and fills some of the gaps in the Day diaries in the Royal Irish Academy.
people who, Day considered, had a history of involvement with the Society of the United Irishmen. He was alarmed that his nephew Ralph Marshall, a barrister and an associate of O'Connell, was one of the sympathisers. When the ‘Ministry of All the Talents’ won power on the death of Pitt in 1806 he feared the triumph of his opponents and the French apologists but it proved to be a short administration and when it ended in 1807 there was widespread disillusion in Kerry among the growing constituency of the independent and the unrepresented. This cabinet, which had stood for electoral reform and had included the popular pro-Catholic and pro-French figure of Charles James Fox, tried to bring in Catholic relief legislation. It agreed a property tax to relieve the burdens of the poor but had been dismissed after a brief term in order to make way for a return to Tory rule. Resistance to Catholic relief was the condition of the king’s reappointment of the Tories. Day identified strongly with the administration of Spencer Perceval, in late 1809, which was equally hostile to emancipation and which took office without the support of the pro-Catholic George Canning. Daniel O’Connell opposed the militia exchange legislation of 1811 between Britain and Ireland which Day considered one of the most important initiatives of the Perceval administration.

But politics were never black-and-white. In Tralee, where Day controlled the corporation and dictated its parliamentary representation, he appears to have enjoyed support and popularity among the townspeople. The campaign to relieve the people of the burden of tithe payments to the Anglican clergy seems to have united rather than divided the gentry of the two denominations in the county. Day’s commitment to tithe retention as an essential perquisite of the Established Church appears to have outweighed his humanitarian instincts. Kerry had a history of happy coexistence between settler and native; a subject often mentioned in the toasts of contemporaries on occasions like the king’s birthday celebration and noted by nineteenth-century Kerry historians as well. Moreover political change was visible in the Grand Jury where by 1806 prominent Catholic landed families in the county had become members, McGillycuddy of the Reeks and Cronin of the Park, for example. Meetings on emancipation and tithe were well attended by the gentry of both denominations. While the relationship between Day and O’Connell was on a collision course, their followers retained important contact with each other. In 1807 the tithe reform campaign in the county found Day’s own nephews prominent among the reformers, and they drew up a petition which was presented to parliament by the leading O’Connellellite MP, Day’s first-cousin Maurice Fitzgerald, Knight of Kerry. But the seeds of antagonism remained and the threat of a return to sectarian politics due to the direction in which the Catholic demands was moving. Barrister figures like Dominic Rice together with gentry of both denominations took a leading role in the emancipation meetings at Tralee in the 1810-13 period with members of O’Connell’s inner circle like James Lawlor of Killarney and Peter Bodkin Hussey of Dingle. These meetings were held to coincide with the assizes in Kerry and in the other Munster assize towns of the O’Connell heartland, and Day found this deliberate action to be deeply provocative.

The campaign to repeal the union took off in earnest with a meeting in Dublin in 1810. Dissatisfaction with the fruits of the union heightened the excitement surrounding the trials of the Catholic delegates (Sheridan, Kirwan and others) in the period 1811 to 1813. Day’s role was widely reported and he had to contend with the sympathy for the defendants of the opposition press led by the Dublin Evening Post and its editor John Magee. Day and O’Connell conflicted publicly. The debate surrounding civil liberties, including the interpretation of libel, reflected the current controversy in England, both countries experiencing the same curtailment of liberties under the war-time crackdown. When the trials were over Day made ever more frequent allegations of collusion between the Catholics, the rural agitators and separatists.
Meanwhile his role in Tralee confirmed in a very tangible manner his Tory political philosophy. Sir Edward Denny, his son-in-law, should have been the principal power in the town, but the Denny power was in a stage of transition, the start of the family’s absenteeism dating from possibly as early as 1807 or 1808 when Sir Edward Denny and Elizabeth departed to live in England. Though resident in Dublin, Day visited the county every year, either on circuit or in the autumn. As his grandchildren were still minors, and living in England with their parents, important civil and ecclesiastical appointments in the county, such as sheriffs and rectors, were filled by his nephews and nephews-in-law. This continued grip by him on the county sphere explains the resentment towards him: O’Connell stressed this aspect of his opposition when their conflict broke publicly in 1815. Gradually Day dominated the county less and the sphere of Tralee more, doing so in the era when the triumph of Toryism postponed the reform of the parliamentary borough representation and the replacement of the old town municipal oligarchy of Denny appointees. The rudiments of democratic local government had to await the town commission of 1840, precursor of the county councils set up under the Act of 1898. The evidence for any democratic rumblings against the control of Tralee is very scarce for this period, which could be a testimony to Day’s undoubted popularity in the county; similar evidence for Limerick is readily available. The fact that Tralee was associated not with the historic owners but with an efficient chief executive of the Denny estate may contain some of the explanation. His own interests were interwoven with those of the family: Day Place dates from the first years of his management. He worked to make the Denny estate solvent, taking particular interest in the development of the Spa district as a tourist resort in order to extinguish the debts on the estate.

The town undoubtedly benefited from his activities. His diary reveals the popular, private judge at ease in his native county, working to maintain the town through the existing structures of church and municipal authority. There is little sign of interference with him as he operates through his own personal representatives such as Rev. James Day, his cousin, rector, representative of the vestry, and prison inspector, and Rickard O’Connell, physician from the jail. Simultaneously there was official interest in infrastructural change, meant to act as a justification for the conservative status quo during the Napoleonic era. Many the greatest changes in Tralee came much later: the demolition of the Castle, the construction of Denny Street and the port canal to Blennerville all date from the 1820s, but earlier work brought a revolution of equal proportions. In 1783 the Bank of Ireland had been founded in an effort to replace the confused system of private banks. This must have been of great benefit to Day, accountant as he was to many Kerry clients before the era of modern banking institutions. With the establishment of the post office in 1784 the post-master general was entrusted with the responsibility of improving the roads for the delivery of the mail, paid for by a tax on the county. Day comments favourably on the arrival of these mail coach roads (the so called ‘new lines’). The influential figure John Anderson, Scotsman, philanthropist, ‘father of our mail coach roads’ and builder of Fermoy, is referred to and Anderson’s work in the creation of the new Fermoy undoubtedly influenced him. There was a personal connection with Anderson through the Judge’s sister-in-law Barbara Forward, Anderson having bought the Forward estate in Fermoy. Day’s efforts in updating and reforming the infrastructure of prisons and infirmaries seem to have been of an exceptional nature. He underlined the commitment in these matters of the viceroy, the Duke of Richmond, who encouraged the implementation of Georgian legislation through jail, infirmary, and mail-coach road construction.

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2 His Denny grandchildren can be seen in the lists of clergymen who succeeded to the rectories in and near the town from the 1830s, such as Anthony Denny to Tralee and his brother Henry to Churchill (Ballynahaglish).
This drive to improve the country had two deep springs: the eighteenth-century Enlightenment and the revived mission of the Established Church after 1800. His family was strongly connected with the Church of Ireland and its numerous clergymen who had worked to bring about the moral regeneration of the country even before the revival of Anglicanism after the act of Union. Day assisted the work in Kerry of the Hibernian Bible Society and the educationalist Joseph Lancaster. He inherited the management of the Erasmus Smith school on Valencia Island from his uncle, Robert Fitzgerald, the Knight of Kerry. The context for Day’s work is the cosmopolitan world of eighteenth-century Europe which attempted to spread civilisation outwards from the cities to the peripheral regions. In more recent times the growth of the empire with the Seven Years war, and the questions of its governance raised by the American, French revolutionary and Napoleonic wars, provided an additional context for ideas of increased liberty and civilisation under the aegis of a revivified Britain. Native Irish culture appears almost completely excluded by Day. There is little sense of the Irish language, of Kerry’s antiquity, the continental colleges and Irish regiments, or of the world of the smuggler which was so all-pervasive in the county in the eighteenth century. However if one is to judge from his English diaries, he had a wide interest in antiquity, being unable to pass art and monuments of Tudor and Stuart history in the course of his travels. He was aware of the fame of Thomas Moore whose Irish Melodies appeared in instalments from 1807 creating a distinctly Irish nationalism based on the history of the defeated Gael; and romantic-nationalist writers such as Byron, part of the Moore circle, occupied a prominent place in Day’s library. Moore had Kerry connections through his father, and he commended Day in his Journal as a landlord when he visited Kerry in the early 1820s.

In regard to the land system he was critical of the role of middlemen and had a deep interest in good farming practices as an alternative to the middleman culture with its subdivisions and general negligence. Day’s Toryism comprehended the betterment of the poor under the paternal rule of the landlords. He urged his Kerry patron Lord Glandore to resume his land from the middlemen when leases expired; the occupying tenant was the working bee, he told him; look after his interests because material and moral improvement went hand in hand. In his diary he kept records of farming matters as well as court decisions, but he often omitted to include aspects of the county which he took for granted: even the agrarian campaign fails to disturb his equanimity. Perhaps rural violence was considered routine and the culprits undeserving of mention or possibly because it had continued virtually uninterrupted for two generations. He is clearly unhappy when obliged to order executions, particularly perhaps in Kerry. This is the background to his row with the north Kerry magistrates in the spring of 1811.

The rural agitation, which crested in the year 1808 making north Kerry the most turbulent part of Ireland, is a chapter of Kerry’s history now almost forgotten. One incident, which has survived in folk history, was the capture and execution of the Gabha Beag, or James Nolan, in April 1808. Nolan had resisted arrest in the previous December and contrived, without success, to cheat death by wearing an iron or steel collar around his neck. Nolan’s case is not mentioned in his diary, though the unconnected and apparently motiveless murder of Rev. Tisdall in south Kerry is, and Day successfully arranged the appointment of the husband of a relative of his own to the resulting vacancy in Kenmare parish. The juxtaposition is interesting: the killing of a clergyman and the possibility of appointing a relative. His diary refers to the lighting signals exchanged on the hills by the north Kerry insurgents; his sheriff escort when he appears on the county border to conduct the assizes in Tralee is more than a ceremonial escort. The repercussions of the Gabha Beag phase of the Whiteboy agitation suffuse much of his narrative, and it is possible to connect the spread of rural disaffection to the row between Day and
Marriage interconnection of Crosbie of Ardfert, Rose of Morgans and Mount Pleasant, Mahon of Strokestown, Talbot of Mount Talbot, Sandes of Carrigafoyle, Fitzgeralds Knights of Kerry, and others

David Crosbie
Ardfert

Sir Maurice Crosbie MP Kerry
1715 m Ann Fitzmaurice dau 1st Lord Kerry

- William 1st Earl of Glandore d 1781
- Maurice, Dean of Limerick, MP Strokestown, "Father of the House"
- John 2nd Earl of Diana Sackville assumed name and estate

- Maurice Mahon m W.J. Talbot. Hartland 1800
- Agnes Eliz m 1750 Sir John Wandesforde

Rev John Talbot Crosbie m 1816 Jane, dau Thoe Lloyd of Beechmount

- Anne m John Butler of Garryricken, restored Earl of Ormonde

Ann m Judge Henry Rose of Morgans and Mount Pleasant, MP Ardfert

- Sarah m 1st John Southwell of Enniscouche
- Sarah m 2nd 1739 Wm Talbot of Mount Talbot, Roscommon
- George m Catherine Sandes [First cousin] George

Elizabeth Crosbie m 1703 Maurice FitzGerald, Knight of Kerry, Dingle

- Lucy m Rev John Day
- Mary m (1) Colls of Churchill, and (2) Thos Rice
- Judge Robert Day, MP Ardfert m 1774
- Elizabeth m Sir Edward Denny 1795

- Stephen Christina
- Ed Rice m Catherine Geo
- Spring Fosbery of Kildimo
- Thomas Lord Monteagle

Anne Crosbie

m 1775 William John Talbot

m 1795 Elizabeth m Sir Edward Denny
sections of the north Kerry gentry which broke out at the Spring assizes of 1811, and this in turn to his political difficulties in Kerry. A special commission was held in January of 1809 in Limerick and Tralee to deal with the outrages. He was absent (a deliberate move perhaps) from the Munster circuits during 1807, 1808, the spring of 1809, and again in the years 1814 and 1815, his direct governmental influence in Kerry diminishing with the defeat of the ‘aristocratic’ party in the 1812 general election, and the departure of his bountiful patron the Duke of Richmond in 1813.

Meanwhile Day waged something of a rearguard action to maintain his power and that of the old aristocratic party in the county. He continued to control Tralee and the sale of the town’s parliamentary representation, with what level of opposition it is difficult to say. But he faced two, possibly three, opposition groups in the county: the alternative gentry party, composed of William Ponsonby of Crotta, James Crosbie of Ballyheigue (who won a county seat in the 1812 election), John Segerson of Westcove, and Lord Ventry; the rising Catholic community of the county, including many the barrister Dominic Rice, Catholic activists like James Lawlor of Killarney, Peter Bodkin Hussey of Dingle and Daniel O’Connell; and the Catholic ‘gentry in waiting’ such as the McGillycuddy of the Reeks, Daniel Cronin of the Park (Killarney), John O’Connell of Grenagh, brother of ‘The Liberator’, and others. Thomas Mullins. Lord Ventry, appeared to emerge as an important force in at about this time, as did the Hare family, which had purchased the Fitzmaurice estate in north Kerry and parts of the estate of the Knights of Kerry and the Catholic unionist Lord Kenmare, who was of Day’s aristocratic party, ‘crossed over’ to rejoin the Catholics.3 With Day forced to maintain the government line he must have felt an isolated figure in the political realignment. There were sufficient difficulties for him in discharging his official duties in his native county. Assize judges dealt with passing the grand jury presentments for roads, bridges etc., nominating magistrate and removing those who were inert or ‘supine’ i.e. cowed by, or somehow in league with, the campaign of rural agitation.

But to say that these opposition groups combined would be simplistic. There was no discernible divide in Kerry on the Union, or among the elite on the issue of Catholic emancipation. Day, Lord Glandore, the Herberths and others had a proud record on the Catholic issue, and their pronouncements were carried in the press. But times had changed: the Union had failed to deliver either emancipation or economic prosperity and the Protestant crusade in Ireland was about to get under way. Day was associated with the Hibernian Bible Society in Tralee. Its work and that of other Anglican groups encountered the even greater missionary zeal of the catholic clergy at this time, leading to a conflict of interest and a return of the sectarian atmosphere which Day loathed. We can sense the change: Day dined with ‘Danl. Connell’ in the autumn of 1808, but not later; they had become antagonists by 1812. The political climate in Britain had become strongly Tory and there was firm resistance to further relief for the Catholics, certainly while the war with Napoleon lasted and during the conservative climate which accompanied the French revolution and continued French aggression under the dictatorship of Napoleon. Napoleon was a hero to many, including O’Connell. Any forcing the pace of the campaign for emancipation or repeal was regarded by Day as not only calculated to stir rebellion, but unpatriotic. Tralee had soldier representatives at battles such as Talavera and Barossa, some of them, like Rev James Day’s son, John, of the 87th regiment, the future Royal Irish Fusiliers. It was the vigorous prosecution of the war that made the Judge a Tory, and he was very hostile to the Ministry of All the Talents for their poor record in the war during their short government in 1806-7 and their sponsorship of Catholic relief legislation at that time. The faction of Ponsonby, Crosbie and Ventry was available to exploit

3 For Catholic meetings held in Tralee during these years, see the Freeman’s Journal, January 25 1810, the Limerick General Advertiser, August 27 1811 and the Cork Mercantile Chronicle, January 24, 1812. In addition to Daniel O’Connell these meetings featured the Dominic Rice, The McGillycuddy of the Reeks, Daniel Cronin of The Park, the Knight of Kerry and John O’Connell of Grenagh.
the hostility to Day's party in the county, and ingratiate themselves with Dublin Castle. They did so successfully from 1812, when politics became increasingly polarised, siphoning off at the same time some of the old support among the Catholics which Day had enjoyed.

To travel the Irish circuits he left Dublin 'with only five horses and three servants'. To relax during a long trek or to see something interesting, he would revert to horseback whenever possible. For local transport he used gigs, curricles and chaises. In Kerry he wrote of dining at a different table every night. He was very much at home in the district between Tralee and the sea because he went to school to a Catholic Master Casey at Banna and his cousin Lord Glandore’s mansion was in Ardfert. For greater anonymity than was possible in Kerry he preferred his extended walking holidays with friends in Wicklow. He enjoyed playing host, especially to retired judicial figures, where he lived near Bray. He was a great admirer of Kilkenny as the county of origin of Bushe, Flood and Langrishe, legal-political names he associated with the winning of legislative independence in 1782, and for the cultivated life he found there. This area, rather than the mid- or south west, was for him the ideal Irish society.

In appearance Day was evidently a tall, robust man though he was prone to accidents and illnesses which may have been part of the hazards of his occupation on the circuits. O'Flanagan, the legal historian, recorded a rhyme heard in Limerick:

As brawny Day and puny Brown
Came thundering into Limerick town
'Lord!' cries a lout with wondering eyes
'Call you them judges of assize!'\(^4\)

In his extreme old age he was still devoted to writing. In May 1837 Day's cousin the Knight of Kerry visited him at home in Loughlinstown. He wrote that Day was 'writing his English History in a beautiful small hand without spectacles'.\(^5\) His obituary referred to this project and to translating the lives of the church fathers. This task, however, remained unfinished at his death in 1841.

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\(^5\) Godfrey papers [in private possession], Maurice Fitzgerald to Sir John Godfrey, 23 May 1837.