

CHAPTER VII CHIEFLY LEGAL

I. POLITICAL INTERLUDE

THUS, almost unwillingly, Burr embarked on his political career. The Assembly then met in New York, so that his legislative labors did not interfere very much with the continuance of his law practice. It was as a lawyer that Burr was determined to make his mark, not as a politician. He was in constant need of money, and the pay of a legislator was pitifully small. Furthermore, he still held aloof with that formidable reserve of his from the heat and squabbings of office holding. It is small wonder, then, that he did not take his new duties at first with the proper seriousness.

The first session of the Legislature opened October 12, 1784. The Assembly Journal discloses that he did not appear in his seat until November 5th, over three weeks later, and that his attendance for the balance of the session was exceedingly perfunctory. The record is blank of any measure proposed by him, or of any participation in debate.¹

Certainly not an enviable record. But the leaven was stirring. For, when the Assembly convened for its second session on January 27, 1785, Burr was promptly on hand, and this time took a considerably more active part in the public discussions and voting.

On February 14th, he was placed on a joint committee to revise the laws of the State — an important assignment. The following day, a bill entitled "An Act incorporating the several tradesmen and mechanics of the city and county of New-York" came up for a vote. On the face of it an innocuous, routine bill. But Burr's motion to reject it met with an instant storm of abuse. In spite of the tumult, however, and in spite of the fact that he was the only member of the Assembly from the city who dared fight the proposal, he persisted in his opposition. His motion was nevertheless defeated, and the bill passed.

The Council of Revision — a peculiar constitutional body, composed of the governor, the chancellor, and the judges of the Supreme Court, before whom all bills must be laid for approval — vetoed the measure in the very terms and with almost the very phrases that Burr had used. It was, they stated, a scheme whereby

the price of labor might be artificially increased; its charter made its bylaws dependent largely on the will of the Mayor and Aldermen of the City of New York, which must necessarily lead to political power and control; it set up a privileged aristocracy in trade, inasmuch as its limited numbers would prove a hindrance to immigrant mechanics and non-members; and, most cogent argument of all, the charter set up forty-three designated persons as the governing body, possessing almost absolute powers, including the right of self-perpetuation in the continuance of their regime and the exercise of full discretion in the choice of the commonalty of mechanics.²

It is obvious that many of these provisions were inherently dangerous, and that Burr was right in vigorously opposing such an incorporation. It was not a labor union, nor even a guild on Old World lines. It was an instrument to be used by certain politicians lurking in the background. But Burr had displayed an immense courage in breasting the popular clamor. The disgruntled partisans tried to instigate riots and threatened an assault on his house. He refused, however, all offers of aid from his friends, going about his business alone and unprotected as coolly as ever he had led his troops in action. He had brought himself forward at one bound from the general anonymity of the Legislature.

More important, however, was his determined fight to force the Legislature into the prompt and unequivocal abolition of slavery in the State of New York. A bill had been introduced in the Assembly purporting to free all those thereafter born from bondage. Burr moved to amend it to the effect that freedom should apply universally and at once. His motion met with defeat, and the unamended bill was finally passed, Burr voting stubbornly in the negative. It was, he felt, a weak compromise.

The Senate did not concur in certain provisions, and the bill came back for further consideration. Steadily and consistently, on every point, Burr's vote was for the greater enlargement of the negro's freedom and the immediacy of his release, even on such controversial questions as the right to vote, to hold positions of trust, to be admitted as witness or juror, and to intermarry without penalties. The bill was finally defeated, not to emerge again until 1799, when Burr was again in the Legislature.³

When the Legislature adjourned on April 27, 1785, Burr had the consciousness of having performed his duties actively and well. His name had been brought into the public view, he had achieved a reputation for courage, he had made many friends — and some enemies.

But he refused to continue in politics. His ambitions still moved in a narrower, more personal circle. The law fascinated him; its sense of achievement and financial rewards were glittering. And his expenses were steadily growing heavier. So that, for a period of years, he devoted himself exclusively to his practice and his family, touching politics merely at its periphery and but lightly.

He took no part in the heat and uproar that attended the making of the Constitution, or in the greater uproar that attended its ratification in New York and elsewhere. One does not even know how he stood on these burning and all-important questions. Alexander Hamilton was afterward to refer to his attitude as "equivocal," but Hamilton's comments on Burr must always be taken with caution.⁴ There was nothing equivocal about his attitude. He simply took no public stand on the matter, equally with thousands of other private citizens.

New York ratified the Constitution, but only after battle had raged, more intense even than the physical conflicts of the Revolution. Perhaps the issue involved was more fundamental than the earlier struggle. It was a fight between the *haves* and the *have-nots*; between the proponents of a strong central government and those who believed in the essential sovereignty of the states; between those who favored resumption of specie payment and those who thought inflation a better course. There were innumerable cross-currents and strange bedfellows. Returned Tories found themselves fighting for the Constitution, and Revolutionary radicals for local control. Two parties emerged, Federalist and anti-Federalist — those who favored ratification and those who did not.

In New York Governor George Clinton, John Lansing, New York's delegate to the Constitutional Convention, and Melancton Smith violently opposed ratification. Alexander Hamilton, his father-in-law, General Philip Schuyler, the Livingstons, William Duer, the war profiteer, and John Jay were as violently in favor.

So inflamed were the discussions, so fundamental the dissensions, that even after adoption and the final victory of the Federalist forces, the parties continued, and steadily widened the breach. But Burr continued to hold himself aloof, his politics generally unclassifiable. He was generally considered an old Whig, in that he had favored a policy of proscription against the Tories, but he had taken no part in the fray when Hamilton had actively campaigned against such a policy. He leaned, no doubt, toward the anti-Federalists, but he was an independent then as later. He cared nothing for tags or party labels, and voted with equal indifference for measures proposed by either party. Such independ-

ence from party lines and tags is the clue to much that puzzled and enraged his contemporaries in later political affrays. Then, as today, the man who transcended his party's edicts was a traitor, a double-dealer, a trimmer, a Mugwump, a son of the wild jackass!

2. PRACTICING ATTORNEY

Burr went happily back to his law. His reputation steadily grew. He was rapidly forging to the forefront of the legal profession in the State and probably in the United States. It did not take long for him to become, together with Hamilton, an acknowledged leader of the Bar. Clients poured in, fees waxed large, other lawyers employed him as counsel or requested his opinions on moot points in writing.

The Docket of his cases in the Mayor's Court of New York City for the years 1784 to 1788 discloses him as an extremely busy trial attorney, handling matters as various as the conversion of horses that had strayed from their owners, trespass on land, protested notes, assault and battery, and contracts for the sale of merchandise. In short, the usual grist that goes through the legal mill.⁵

The amounts ranged from a few pounds, New York money, to much more substantial sums, and the fees charged were in proportion. This should dispose, once and for all, of that much repeated legend that Burr refused to handle any matter under a minimum fee of £40. This legend is based on a false reading of a statement of his, which has been used time and again to charge him with mercenary qualities, usually in unfavorable contrast to the admitted modesty of Hamilton's fees.

The statement is contained in a letter he wrote to Peter van Schaack. He says: "I have never undertaken the management of a Cause of any moment in error under £40."⁶ There are two distinct limitations to be noted in this assertion. First, that it relates only to matters on appeal (Causes in error); second, that the cause be one of *moment* — in other words, substantial in character and in the amount involved. When it is further considered that appeals were argued before the Supreme Court in Albany, involving a long, tedious journey of days, Burr's avowal becomes considerably more modest, and would be applicable to any practicing attorney of the time.

His clientele was large and varied. It included his old Colonel, William Malcolm, now once more a prosperous New York merchant; he managed large landed properties in Maine for remote

English clients; ⁷ he represented the famous De Peyster family,⁸ and was for years general counsel for the even more famous tribe of Livingstons, the most powerful family in the State. His bill, rendered the Estate of Robert G. Livingston in 1789, on a running account of six or seven years, discloses a total of over £10,000, New York money!⁹

It has been estimated that his annual earnings exceeded \$10,000 a year, a huge sum in those days, and it is claimed that he received as much as that for a single fee.¹⁰ No one in his day exceeded him in legal income. His first partner was William T. Broome, the son of the Treasurer of the New York Chamber of Commerce. He had several thereafter, notably William Coleman, who later was to edit the *New York Chronicle* and defend his former partner vigorously, though opposed to him in politics.

The restrictions against Tory lawyers were lifted in 1786, but the raising of the ban did not affect Burr's prestige or success at the Bar. It was said at the time that in all his life Burr never lost a case that he personally conducted. The obvious retort to such an assertion is, as all lawyers are aware, that the successful one's practice was either severely limited or that he chose his cases with care. Burr chose his cases with care. He refused to appear in court on a matter of whose eventual success he was not fairly confident.

More important, he prepared his cases thoroughly. He was indefatigable in research, he marshaled his facts and precedents with telling precision and irresistible force. He obtained every scrap of available evidence; he "pursued [says a legal friend] the opposite party with notices, and motions, and applications, and appeals, and rearguments, never despairing himself, nor allowing to his adversary confidence, nor comfort, nor repose. Always vigilant and always urgent, until a proposition for compromise or a negotiation between the parties ensued. 'Now move slow' (he would say); 'never negotiate in a hurry.'" ¹¹

Another lawyer avowed that Burr had defined law as "whatever is boldly asserted and plausibly maintained" and that he acted accordingly. This anonymous informant went on further to say "that Colonel Burr was not a deep-read lawyer; that he showed himself abundantly conversant with the general knowledge of the profession, and that he was skilful in suggesting doubts and questions; but that he exhibited no indications of a fondness for the science, nor of researches into its abstruse doctrines; that he seemed, indeed, to hold it and its administration in slight estimation." ¹²

It is difficult to appraise adequately the legal talents of the great

lawyers of the past. The learning and ability of judges may be determined from their reported opinions, but there is no such test for the intangible things that go into the making of a great and successful lawyer. His work is essentially ephemeral, transmitted only through the colored and prejudiced impressions of others. Nevertheless, a careful analysis of the few briefs and opinions that have been preserved leads to conclusions somewhat similar to those just quoted.

Burr's mind was agile and active; he seized the essential points of an argument with unerring insight, and possessed the faculty of reducing an elaborate, difficult discussion to a single luminous point. He was always a strict practitioner, addicted to every legal technicality, never soliciting his opponent's favor nor indulgent in overlooking the errors of others, but courteous to his adversary and eminently polite. Yet it is true, from the available evidence, that he did not penetrate into the inner philosophy of the law, the broad consideration of its abstract principles, of fundamental justice. Nor did he object, when the occasion offered, to the use of technical arguments to gloss over matters in which equity and justice seemed to rule otherwise. This, however, cannot be considered as an indictment. Such has been the uniform custom of lawyers and judges of whatever time or clime. It is inherent in the very structure of the law.

In court as well as in the office, Burr was irresistible. He valued oratory but little. He pleaded his cause in a conversational tone, never declaiming, never diffuse, compacting his argument in small compass, covering the essential points thoroughly and concisely. "I have not the talent of making long harangues," he told the court.¹³ His argument was prepared to the last detail before he entered the courtroom. He was quietly sarcastic, yet immensely impressive. His manner was courtly, despite his small stature, and his air one of dignity and perfect breeding.

A contemporary described the contrast between Burr and Hamilton, the two acknowledged leaders of the Bar, in action. Hamilton would exhaust a case, and his hearers, with a wealth of elaborate detail on every point, on every possible objection. He would speak for two or three hours, fluent, loftily eloquent, orotund. Burr would then arise in rebuttal, select with uncanny care two or three vulnerable, yet vital points in Hamilton's argument, and quietly demolish them in a few cogent words. Then he would sit down, leaving all the rest of his adversary's elaboration untouched. But in twenty minutes he had completely destroyed the effect of Hamilton's hours of effort.¹⁴

General Erastus Root, himself one of the best lawyers of the day, remarked that the two rivals were equal in reasoning powers and scholarship, but that Burr would say as much in half an hour as Hamilton in two. "They were," he continued, "much the greatest men in this State, and perhaps the greatest men in the United States."¹⁵

An Englishman, traveling in America, averred that "his [Burr's] distinguished abilities attracted so decided a leaning of the Judges in his favour, a deference for his opinions so strongly marked, as to excite in no small degree the jealousy of the bar. So strong was the impression made by the general respect for his opinions, that exclamations of despair were frequently heard to escape the lips of the Counsel whose fortune it was to be opposed by the eloquence of Mr. Burr. I am aware that this language wears the colour of panegyric; but the recollections which the facts must excite in the breasts of his candid rivals, will corroborate its accuracy."¹⁶

3. DOMESTICITY

By 1786 the Burrs had moved to 10 Little Queen Street, or what is now known as Maiden Lane. In 1789 they removed once more to quarters on the corner of Nassau and Maiden Lane, more spacious, with garden and wonderful grapes. In 1791 they were at No. 4 Broadway, to remain there until the final hegira to Richmond Hill.

Mrs. Burr's two boys, John and Augustin Prevost, joined their stepfather's legal staff and applied themselves diligently, faithfully and loyally to their work. Between Burr and his stepsons there was always to be mutual affection and devotion.

Between Burr and his wife ardent love had deepened to an abiding trust. His law practice took him on numerous, extended trips, but always they were in each other's thoughts. He writes from Philadelphia that "I have been to twenty places to find something to please you, but can see nothing that answers my wishes."¹⁷ She replies that "all, in silent expectation, await the return of their much-loved lord, but all faintly when compared to thy Theo."¹⁸ And little Theo, by now a plump, beautiful little baby of almost two, equally adored her father. Says her mother: "Your dear little daughter seeks you twenty times a day; calls you to your meals, and will not suffer your chair to be filled by any of the family . . . O, my Aaron! how many tender, grateful things rush to my mind in this moment; how much fortitude do I

summon to suppress them! You will do justice to their silence; to the inexpressible affection of your *plus tendre amie*."¹⁹

Sally, the second child, was born, and died. Mrs. Burr herself, as her letters testify, was in perpetual ill health. She finds herself unable to climb stairs; she is prey to frequent fits of melancholia. But little Theo is a constant source of joy. "Your dear little Theo grows the most engaging child you ever saw. She frequently talks of, and calls on, her dear papa. It is impossible to see her with indifference." And again, "I really believe, my dear, few parents can boast of children whose minds are so prone to virtue. I see the rewards of our assiduity with inexpressible delight, with a gratitude few experience."²⁰ And still again, "Your dear Theodosia cannot hear you spoken of without an apparent melancholy; insomuch that her nurse is obliged to exert her invention to divert her, and myself avoid to mention you in her presence. She was one whole day indifferent to everything but your name. Her attachment is not of a common nature."²¹

There was much of prescience in these observations. The singular and overwhelming attachment between Theodosia Burr and her father is still one of the great devotions in all history. Nor was her mother far behind. Her letters are instinct with the breath of a lofty and noble nature; all her life was laid at the feet of Aaron Burr. He reciprocated in kind, though not to the extent and sacrificial depths of his wife. How could he? He was a man of affairs, immersed in the world of men, of law, of politics, of a hundred and one distractions. Whereas she, held to a round of domesticity, afflicted with an incurable disease, brooded on her love and fed it with small, still hands. "Tell me, Aaron, why do I grow every day more tenacious of thy regard? Is it possible my affection can increase? Is it because each revolving day proves thee more deserving?"²²

Burr's letters are tender, thoughtful, considerate, breathing a manifest sincerity. Every remedy of which he hears is promptly reported home in the steadily lessening hope that here is finally the cure; he buttonholes every doctor, in Philadelphia, in Albany, in New York, seeking the causes of that obscure disease which is wasting his beloved Theo. He truly and devotedly loved her — even though he had become involved in certain disputes with her relatives.

General Maunsell, her uncle, residing in London, had originally approved of the marriage. He had written his sister-in-law, Mrs. Watkins, a widow in New York, and in search of legal advice, that "Mr. Burr will counsel you in all this. I hear a great charac-

ter of him, and I think Theo was lucky in meeting so good a man." 23

But when he came to America the following year (1784) to attend to certain real estate interests in New York and to act with Burr as co-Trustee under the will of Mrs. de Visme, Theodosia's mother, the tune changed. Burr took exception to the General's inquisitorial inquiries into his management of the estate. Furthermore, the military man seems to have bogged down completely in a mass of figures. They quarreled. What happened thereafter is vague. The General was arrested in 1787. It has been assumed that his incarceration was at Burr's instance, but there is no basis for such an assumption in Maunsell's simple statement that Burr paid him "the sum of £87: 10: 11, as on that day I was arrested, and he paid for me £125 out of all the money he had of mine in his hands." 24 If anything, it would seem that he was being assisted in his extremity.

In any event there was a definite break with the English branch of Theodosia's family. Maunsell was later to splutter to another relative: "Liddy tells me that Mr. Burr expects a seat in congress, and that he had taken *Big Symmon's* house in Wall Street. As I shall never more have any intercourse with him, or his family, his changes in life give me no concern, or pleasure; he is no friend to your house." 25 And Burr was to remark sarcastically to his wife: "You have really a Distressing family. I hope it has by this time diminished." 26

But this latter remark was contained in a letter remarkable for its general bitterness of tone and fault-finding. Burr was ill at the time — as he constantly was during the middle years of his life — Mrs. Burr was ailing and a bit querulous, and she had crossed him in several ways. A single letter cannot be made the basis for a general trend of affairs, as has been attempted. As a matter of fact, within a few days thereafter, their correspondence is again replete with the tenderest and most warm-hearted expressions. The cloud had vanished.

CHAPTER VIII

THE POLITICIAN EMBARKED

I. PREVIEW

MEANWHILE politics had been steadily growing more exacerbated and party lines more sharply delimited in New York State. The Federal Constitution had been fought over and adopted in 1787. Governor George Clinton had been its bitterest opponent, preferring the prestige and power of a semi-independent State. Names were being called, in spite of the unanimity with which George Washington had been elected President. Already the lines were being drawn for the agrarian revolt under Jefferson and others.

The situation in New York was rather peculiar. Under the State Constitution of 1777 it was comparatively easy for the few with power, influence and wealth to rule the many. It could not in any modern sense of the term be considered a democracy. Nor, for that matter, could the political set-up of any other State in the newly formed United States.

The government consisted of a Governor, a bicameral Legislature — the Assembly, 70 members elected annually, and the Senate, 24 members chosen for terms of four years. These were the nominal government; actually there were two other bodies specified in the Constitution that held as much, if not more, of real power. The Council of Revision, composed of the Governor, the Chancellor and Judges of the Supreme Court, was vested with veto power over all legislation, subject to be overridden by a two-thirds vote of *each* branch of the Legislature. The Council of Appointment was even more curious. It consisted of four Senators nominated and appointed by the Assembly, who, together with the Governor, appointed all state officials with the exception of the Governor, Lieutenant-Governor, and State Treasurer. The patronage was enormous, ranging from Supreme Court Judges down to justices of the peace and auctioneers. It can readily be seen what a powerful and flexible weapon this Council could be in the hands of unscrupulous politicians.

Suffrage was heavily restricted. To be permitted to vote for members of the Assembly there were property qualifications — to