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

1. 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

wit, one must be a freeholder with a freehold of the value of £20, or the renter of a tenement of the annual value of 40 shillings, and a taxpayer to boot. For the Senate and for Governor the qualifications were much more stringent. The prospective voter must be a freeholder possessed of a freehold worth £100, over and above all debts and incumbrances. In 1790 there were only 1303 out of a total of 13,330 adult male residents of New York City with the requisite property qualifications to vote for Senators and for Governor.[1] Ten percent of the citizenry, in other words, ran the government; ninety percent to all intents and purposes were largely or completely disfranchised.

It is small wonder then that the State found itself in the grip of a few powerful families. The Clintons generally; in Westchester the Morrises and Van Cortlandts; along the Hudson the Livingstons and the Coldens; in Albany the Van Rensselaers and Schuylers; and to the west Sir William Johnson. All of them were owners of princely domains and exceedingly wealthy. Together they could have dominated the State with irresistible influence. Actually they were usually at cross-purposes, and the Clintons, in the person of the veteran and perennial Governor, George Clinton, rode the conflict of interests and of families with an agility that commands the admiration of the beholder.

The situation has been stated rather succinctly, if with undue simplification. "The Clintons had the *power,* the Livingstons had *numbers,* the Schuylers had *Hamilton.*" [2]

Alexander Hamilton had married the daughter of General Philip Schuyler, of Revolutionary fame, and a land speculator and canal builder extraordinary. Already had the young West Indian made his mark in state and national politics. He was decidedly a Federalist with all that the name implies; he had fought valiantly and hard for the Constitution; he was soon to be the first Secretary of the Treasury and the power that motivated the President of the United States. Yet he cannily realized that political influence must have a local habitation and a name, and set to work to entrench himself strongly in New York.

Accordingly there ensued a jockeying for position. The Clintons were in control. An alliance between the Livingstons and the Schuylers (Hamilton) might oust the ruling family. It simplified matters, too, that the Livingstons were equally with the Schuylers of the Federalist persuasion. Governor Clinton was well aware of the situation. He needed counterbalances. The other families were too feudal — and feudist — in their characteristics to promise much help. He was in trouble.

Meanwhile, in April 1788, Burr had been nominated once again as candidate for the Assembly from New York City by the anti-Federalists. The ticket was advertised in the newspapers and handbills as follows:

"The sons of liberty, who are again called upon to contend with the sheltered aliens [Tories], who have, by the courtesy of our country, been permitted to remain among us, will give their support to the following ticket: —

"*William Denning, Melancton Smith, Marinus Willet, and Aaron Burr.*" [3]

The ticket went down to ignominious defeat. The Federalists won overwhelmingly, and it looked gloomy for the gubernatorial election the following year. Burr does not seem to have canvassed for votes very actively. No doubt he had permitted his name to be entered at the urging of friends who were active. It was known in advance that defeat was certain. He still was not very politically minded.

The Federalists now had a majority in the State Senate and had gained heavily in the Assembly. They were jubilant and assured of success in the coming gubernatorial contest. Clinton seemed doomed to be ousted from the seat he had held so long. It was routine, of course, for him to be renominated on the anti-Federalist ticket.

On February 11, 1789, a meeting of citizens was called in New York City, mostly Federalist in complexion, to nominate an opposition candidate to Clinton. It is noteworthy of remark that they were not all Federalists. Personalities still entered into the consideration of office-holders, though with ever-decreasing force. Judge Robert Yates was nominated to contest the seat with Clinton. Aaron Burr attended this meeting, and was appointed, with Hamilton, Troup, and William Duer, to a committee of correspondence to promote Yates' election.[4]

Yates was now a moderate Federalist. Burr was certainly not. He had run on the opposition ticket only the year before. Yet he appeared now to vote for and advance actively the candidacy of a Federalist. Several considerations entered into this seeming abandonment of his own party.

In the strict sense of the term he never was a party man. Aside from the fact that his interest in politics had been comparatively slight, he was essentially a moderate in disposition. He was too coolly intellectual and keenly logical to yield to fanatical extremes on either side. Furthermore, he did not consider this particular contest as one involving national principles. It was a contest of

men, of personalities. And Robert Yates was his close, his personal friend. He remembered gratefully the time when Yates had eased the way for his admission to the bar and the ties had deepened and strengthened ever since. He owed no allegiance to George Clinton.

Clinton defeated Yates, but by an uncomfortably close vote. And the Federalists won majorities in both branches of the Legislature. Clinton more than ever was determined to strengthen his lines. His eye fell on Aaron Burr. Burr was a comparatively young man, only thirty-three years of age, of excellent family and background, and had risen by his own unaided efforts to the top of his profession. Though he had supported Clinton's antagonist in the recent election, he was still in fact an anti-Federalist. And, most important of all, he had no entangling alliances in the welter of interfamily quarrels that made of New York politics such an intricate web.

Clinton acted swiftly and decisively. He appointed his late opponent, Robert Yates, to the Chief Justiceship of the Supreme Court, and thereby eliminated him from future political consideration. Then he attempted to attach Burr to himself by offering him the office of State Attorney General. On September 25, 1789, Burr accepted, after some hesitation. He was reluctant to give up his law practice.

2. Stepping-stone

The Attorney-Generalship was just then a particularly important position, involving immense labors and the determination of a host of knotty legal questions. The respective obligations and status of the State and Federal governments had not been thoroughly worked out as yet, and it was necessary to discriminate between claims that were legitimately the obligation of the State and those which might be thrust upon the Federal nation. There were an enormous number of claims arising out of the chaos of the Revolution; creditors clamoring for immediate payment, soldiers for back pay and because of disabilities incurred, damages alleged to have been sustained by expropriation and confiscation, losses arising out of the depreciated currency.

Burr found himself at once submerged under a welter of petitions that a harassed Legislature promptly shifted to his desk for legal consideration. There were no precedents, no well-established principles by which he could test the validity of individual claims. Accordingly, commissioners were appointed by the Legislature to

report a basis for orderly settlements. The commission consisted of Gerard Bancker, State Treasurer, Peter T. Curtenius, State Auditor, and Aaron Burr, as Attorney General.

The report, when submitted, was Burr's creation. It was a masterful and exhaustive study, codifying the groups of claims, establishing uniform rules of procedure for their orderly examination, and treating all classes of claimants with rigorous fairness and impartiality. The Legislature entered the report on April 5, 1792, unanimously, and it was made the basis for all future settlements.

As Attorney General, Burr was also ex-officio a Land Commissioner. The other members of the commission were J. A. Scott, Secretary of State, Gerard Bancker, State Treasurer, Peter T. Curtenius, State Auditor, and Governor George Clinton.

The State of New York was possessed of 7,000,000 acres of unappropriated land. This immense domain literally cried for settlement, and the State Treasury as vehemently required funds. Yet sales along normal lines were proceeding slowly. In order to quicken the tempo the Legislature in 1791 authorized the commissioners of the Land Office to dispose of any waste and unappropriated lands, in such parcels and on such terms and in such manner as they deemed in the public interest. It was a broad designation of powers that opened the door wide to what actually followed.

Under this unlimited authority the Commission sold forthwith, during the year, 5,542,173 acres for a total purchase price of $1,034,483. Less than 20 cents an acre average. But included in this total was one regal donation — it could hardly be called a sale — to Alexander McComb of 3,635,200 acres at 8 pence an acre, payable in five annual instalments without interest, with a discount of six per cent for immediate payment. The other parcels, even those of considerable extent, were disposed of at much higher rates, ranging from a shilling to 3 shillings an acre.

Instantly an outcry arose. Ugly charges were bandied back and forth. The Federalists pounced upon the matter and elevated it to a distinct major scandal. Talbot, from Montgomery County, rose in the Assembly and offered some severely condemnatory resolutions. He intimated very plainly that Clinton and his friends had personally feathered their nests in the matter of the sale to McComb. An investigation was instituted. But, though on the face of it favoritism, if not corruption, seemed rampant, no factual evidence was forthcoming. Talbot's resolutions were finally rejected by the Assembly, and the report of the Land Commission

(and, inferentially, their conduct) was approved by a vote of 35 to 20.

Burr's complicity in this transaction is the subject of dispute. Davis claims that " these resolutions [Talbot's] exempted Col. Burr from any participation in the malconduct complained of, inasmuch as the minutes of the board proved that he was not present at the meetings (*being absent on official duty as Attorney General*), when these contracts, so ruinous as they alleged, to the interest of the state, were made." [5]

Hammond, however, maintains that the resolutions made no such express exemption, though they *did* refer only to " such of the commissioners as had an agency in the sales." He is skeptical, moreover, of Burr's alleged absence, alleging that Davis cited no supporting evidence. He feels that inasmuch as the transactions complained of extended over a period of months, Burr must have known and, knowing, approved of what was being done.[6]

An examination of the facts must dispose of the controversy summarily, in Burr's favor. The Legislative grant of powers to the Commission was made on March 22, 1791. The letters that passed between Burr and Theodosia prove that he was away from New York — at Kingston, Claverack and Albany — from at least the beginning of June, 1791, engaged on a " very laborious task," and that he did not return until sometime in August.[7] And in October he was in Philadelphia, ready to embark on his Senatorial duties, already resigned from his office as Attorney General. The entire scandal over the land sales occurred during his absences, and after he was no longer a member of the Commission. He must therefore be absolved of all possible complicity.

As for the routine duties of his office, it was said that " in State prosecutions, a disposition to aggravate the enormities of the accused was never attributed to him." [8]

3. Into the Arena

The next step in Burr's political career was one of those wholly unexpected twists of fortune, of a sudden concatenation of events, that appear with strange regularity in the lives of all famous men. It was responsible for the translation of Burr from a purely local celebrity to the national stage, where the eyes of the entire country could be focused upon him, and the basis laid for his subsequent meteoric and sensational rise to prominence.

Philip Schuyler and Rufus King had been appointed the first

United States Senators from the State of New York by joint resolution of the Legislature. Schuyler had drawn the short term and his office expired March 4, 1791. Naturally he was a candidate again, and the Legislature being safely Federalist, his reappointment was expected to be a routine affair. There were seemingly no candidates in opposition. He was a man of power and influence, with the prestige of a brilliant Revolutionary record and a great family to back him up. There was Alexander Hamilton, his son-in-law, too. But subtle influences were at work.

To understand these, one must rehearse the story a bit. The Federalists had won the Legislature and barely missed unseating George Clinton in 1789 by a coalition of Schuylers and Livingstons. The Livingstons were Federalist — had they not worked valiantly for the Constitution? — but they were likewise ambitious. They viewed with increasing discontent and a jaundiced eye the manifest tendency of the Schuylers (meaning Hamilton) to arrogate to themselves the spoils of office, both in local and in national affairs, and to dominate almost exclusively the Administration of President Washington.

It had been expected that a Livingston, as well as a Schuyler, would have been chosen to represent the State in the United States Senate. Instead, Hamilton set up Rufus King, only recently arrived from Massachusetts. It had also been expected that the venerable head of the family, the Chancellor, Robert Livingston, was to have been granted the Chief Justiceship of the Supreme Court of the United States. John Jay was given the honored position. Everywhere they turned they saw the fine Machiavellian hand of Hamilton, exalting the Schuylers and their allies, quietly shoving the too-powerful Livingstons aside. It was an alliance in which there was no comfort.

George Clinton, too, was surveying the scene with political forevision. Alone, the anti-Federalists could not do anything in the Legislature. But if the Livingstons, ostensibly Federalist, were to join. . . .

A vote was taken. Schuyler's name was the only one proposed. He was rejected. Had the heavens fallen the supporters of Hamilton could not have been more profoundly startled or surprised. But the fact remained — Schuyler had been considered, and emphatically disposed of.

Whereupon Burr's name was promptly put in nomination. In the Assembly he received a majority of 5; in the Senate, with only 16 voting out of a possible 24, he was chosen by an overwhelming