

CHAPTER XIV  
JEFFERSON OR BURR

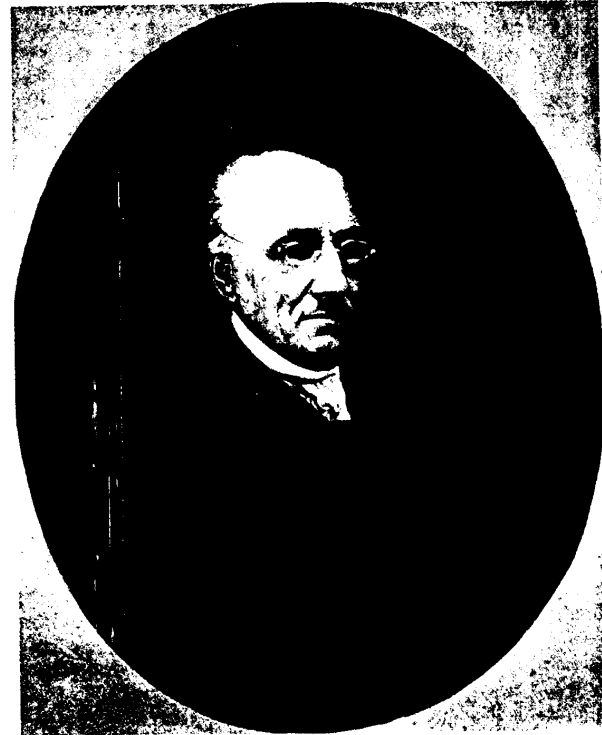
1. PREMONITORY MURMURS

THE Republicans had won. But an unprecedented situation had arisen. Jefferson and Burr were tied in the number of votes received. Owing to the peculiarities of the Constitution, the electors of the various States had cast their ballots for two men, without differentiating between them as to which was to be designated President and which Vice-President.

As early as November, Madison had perceived the possibilities, but refused to believe that any danger could arise out of the anomalous situation.<sup>1</sup> Jefferson had correctly gauged the situation also, and seemed to have taken certain precautions, which, however, did not prove effective. On December 2nd, Peter Freneau was writing him that one South Carolinian elector had been expected to vote for George Clinton instead of Burr, to insure the Presidency to Jefferson, but that he had failed to do so.<sup>2</sup>

Jefferson himself was still confident on December 12th that his plans had not wholly gone astray, notwithstanding South Carolina's defection. He had other strings to his bow. On that date he was informing Thomas Mann Randolph that "it was intended that one vote should be thrown away [in South Carolina] from Colo. Burr. It is believed Georgia will withhold from him one or two. The votes will stand probably T. J. 73, Burr about 70, Mr. Adams 65."<sup>3</sup>

Nevertheless, to dispel certain small doubts, he wrote a very canny and carefully worded congratulatory letter to his running-mate on December 15th. "It was badly managed," he told Burr, "not to have arranged with certainty what seems to have been left to hazard. It was the more material, because I understand several of the high-flying federalists have expressed their hope that the two republican tickets may be equal, and their determination in that case to prevent a choice by the House of Representatives (which they are strong enough to do), and let the government devolve on a president of the Senate." Under the Constitution, in case of a tie, the choice of a President was to be decided by a majority of the House of Representatives, voting as States, from the two highest candidates.



*Courtesy of The New York Historical Society*

MATTHEW L. DAVIS

*From a miniature*

"Decency required," he continued, "that I should be so entirely passive during the late contest, that I never once asked whether arrangements had been made to prevent so many from dropping votes intentionally as might frustrate half the republican wish; nor did I doubt, till lately, that such had been made." This is confusing, and refers evidently to a former statement of his in the same letter that South Carolina, Georgia and Tennessee might withdraw certain votes from Burr. He was blowing hot and cold. In one breath he disavows all complicity in any set-up which might deprive Burr of the Vice-Presidency; in another he fears the possibility of a tie between them.

However, "while I must congratulate you, my dear sir, on the issue of this contest; because it is more honorable, and, doubtless, more grateful to you than any station within the competence of the chief magistrate, yet, for myself, and for the substantial service of the public, I feel most sensibly the loss we sustain of your aid in our new administration. It leaves a chasm in my arrangements which cannot be adequately filled up. I had endeavoured to compose an administration whose talents, integrity, names, and dispositions should at once inspire unbounded confidence in the public mind, and ensure a perfect harmony in the conduct of the public business. I lose you from the list, and am not sure of all the others."<sup>4</sup>

This section of Jefferson's letter is fairly clear in its tenor, though there has been a tendency to wrap it in confusion. The confusion, if any, lies in the preceding paragraph, in which he was attempting to safeguard himself against all eventualities. Jefferson had marked Burr for a place in his Cabinet, in the event that he would gain the Presidency and Burr be defeated for the second office by a Federalist. Burr, however, was to be Vice-President, and hence unavailable for a Cabinet position. Jefferson was already aware of the comparative futility of being a Vice-President.

But Burr had also anticipated the possibility of a tie, and on December 16th had written to General Samuel Smith of Baltimore, a Republican Congressman and close friend to Jefferson: "It is highly improbable that I shall have an equal number of votes with Mr. Jefferson; but, if such should be the result, every man who knows me ought to know that I would utterly disclaim all competition. Be assured that the federal party can entertain no wish for such an exchange. As to my friends, they would dishonour my views and insult my feelings by a suspicion that I would submit to be instrumental in counteracting the wishes and expectations of the United States. And I now constitute you my

Albany 12 Feb. 1804

Dear Sir

It was so obvious that the most indignant spirit of flander and intrigue would be busy that, without any enquiry, I set down as calumny every tale calculated to disturb our harmony. My friends are often more creditable and more virtuous; fortunately I am the depository of all their virtues and characters; and I invariably presume to be a lie, every thing which ought not to be true - my former letter should have assured you of all this by anticipation - I thought however that you would be able to judge of the truth, it would have made no impression on me - Your liberality on this occasion, though given up, is friendly & obliging - continue to believe in the very good sense & wisdom which I have found in you

Thos. Jefferson

Courtesy of Library of Congress

HITHERTO UNPUBLISHED LETTER FROM BURR TO JEFFERSON

proxy to declare these sentiments if the occasion should require." <sup>5</sup> Forthright, explicit, unmistakable in meaning. In those days of limited newspapers and poor dissemination of news, such letters were the accepted medium for the public avowal of views. This letter was to become famous.

He replied to Jefferson's communication on December 23rd. His response seems to have been overlooked by historians and biographers generally. Yet it throws a flood of light on his stand and on the hidden mechanism of the election.

"Yesterday," he begins, "Mr. Van Benthuisen handed me your obliging letter [of December 15th]. Gov. Fenner is principally responsible for the unfortunate result of the election in R. I. So late as September, he told me personally that you would have every vote in that State and that A[dams] would certainly have one & probably two: this he confirmed by a Verbal Message to me through a confidential friend in October. He has lately given some plausible reasons for withdrawing his name from the republican ticket. I do not however apprehend any embarrassment even in case the Votes should come out alike for us. My personal friends are perfectly informed of my wishes on the subject and can never think of diverting a single Vote from you. On the contrary they will be found among your most zealous adherents. I see no reason to doubt of you having at least nine States if the business shall come before the H. of Rep."

In other words, Burr, while insisting that he be not knifed in the South, where he could not oversee the result, had expected that Rhode Island would drop a vote or two from him and ensure Jefferson's election to the primary office. He had been assured of this by the Republican Governor himself. But Fenner, for private reasons, had at the last moment decided not to run as elector, and his substitute had voted equally for Jefferson and Burr. Here Burr named names. Jefferson was in possession of this information. When the lid blew off and Cheatham proclaimed to a believing world Burr's faithlessness and treachery during the entire course of the election, Jefferson had the means of inquiring from Fenner as to the truth of Burr's allegations. He chose not to do so. In fact, in spite of Jefferson's asseverations that he had kept his hands off the Southern electors, the evidence points at least to the activities of his Lieutenants in withdrawing votes from Burr in South Carolina, Georgia and Tennessee. Had *that* been done, and Rhode Island had followed suit, Burr might have been nosed out by Adams. Yet, as Madison's correspondence and the letter of Nicholson to Gallatin indicate, the arrangement had originally been for none of the Southern States to do this very thing. ))

In answer to the second part of Jefferson's communication, anent his Cabinet arrangements, Burr proceeded to remark that "as far forth as my knowledge extends, it is the unanimous determination of the Republicans of every grade to support your administration with unremitting zeal: indeed I should distrust the loyalty of any one professing to be a Republican who should refuse his services. There is in fact no such dearth of Talents or of patriotism as ought to inspire a doubt of your being able to fill every office in a manner that will command public confidence and public approbation. As to myself, I will cheerfully abandon the office of V. P. if it shall be thought that I can be more useful in any active station. In fact, my whole time and attention shall be unceasingly employed to render your administration grateful and honorable to our Country and to yourself. To this I am impelled by the highest sense of duty as by the most devoted personal attachment." <sup>6</sup> Which proffer of services was also carefully to be lost sight of by Jefferson. When he had safely gained the Presidency, he preferred to have the dangerous Burr in the innocuous position of Vice-President. He could more easily be handled there. JW

## 2. THE FEDERALISTS TAKE STOCK

The world seemed to have come to an end for the Federalists. Nurtured as they were in the welter of party passions, and accustomed to the use of epithets and slogans for so long that they had conditioned themselves into a blind belief in the actuality of their own phrases, they felt that the triumph of the Democrats — one of the many names they applied to the Republican party — spelled unlimited disaster. Jacobins, French-lovers, infidels, Constitution-destroyers! — what would happen to the nation when this pernicious breed, under the egis of Jefferson, seized the reins of government?

The Federalist leaders, in Congress and out, scurried into caucus to decide their course. The more hotheaded, especially those from New England, openly advocated secession of their States from the Union, rather than submit to the domination of Virginia and its Southern allies. Others, almost as impulsive, seized upon the tie between Jefferson and Burr, and the consequent throwing of the election into the House of Representatives, where the Federalists were in the majority, as a manifest working of Providence. Let us, they cried, refuse to vote either candidate into office, and by what, they maintained, "would only be a stretch of the Constitution, name a President of the Senate *pro tem*," and permit him to exercise indefinitely all the functions of govern-

ment. This course of action had a very respectable number of Federalists in its favor.

But the majority agreed finally on another plan — to vote Aaron Burr into the Presidency of the United States, as the lesser of two evils. On December 2nd, Gouverneur Morris, prominent Federalist, recorded in his Diary the reasons for this choice. "It seems to be the general opinion," he wrote, "that Colonel Burr will be chosen President by the House of Representatives. Many of them think it highly dangerous that Mr. Jefferson should, in the present crisis, be placed in that office. They consider him as a theoretic man, who would bring the National Government back to something like the old Confederation. Mr. Nicholay comes to-day, and to him I state it as the opinion, not of light and fanciful but of serious and considerable men, that Burr must be preferred to Jefferson."<sup>7</sup>

The plot brewed and bubbled over. All considerations of the known and expressed will of the people in favor of Jefferson, of public honor and decency, fell upon heedless ears. The Federalists were desperately determined that the hated Jefferson be not exalted over them. As for Burr, he was personally on good terms with many of them, they felt he was more moderate and less given to chimerical adventures, and that his course in office would not be as conducive to violent upheavals.

Federalist Robert G. Harper, hitherto a satellite of Hamilton, wrote Burr from Baltimore that "I advise you to take no step whatever by which the choice of the House . . . can be impeded or embarrassed. Keep the game perfectly in your own hands, but do not answer this letter, or any other that may be written to you by a Federal man, nor write to any of that party."<sup>8</sup> A wholly unsolicited communication, and there is no record of an answer. It asked for none, nor did it require any. Burr had already written an open letter to General Samuel Smith, also of Baltimore, in which he had stated his position in clear and unmistakable terms.

Hamilton, when he heard of this strong and concerted movement among the Federalists, was stunned. In the first place, he was supposedly the overlord of the party, yet these men, his henchmen, had not even taken the trouble to consult him. In the second place, the mere thought of Aaron Burr, whom he hated with a blasting hate, as President of the United States, was conducive to nausea. At first these rumors of what was going on behind his back were difficult to believe. He wrote Oliver Wolcott, old line Federalist, that there had been some talk of preferring Burr to Jefferson, but

he hoped it was not so. Much as he was opposed to Jefferson, he would rather have him in office than Burr, whose "private character is not defended by his most partial friends. He is bankrupt beyond redemption, except by the plunder of his country . . . If he can, he will certainly disturb our institutions, to secure to himself *permanent power*, and with it *wealth*. He is truly the Cataline of America." Hamilton was becoming more and more reckless in unsubstantiated, and unsubstantiable, charges, as well as in phrase-making. Then, surprisingly, this guardian of the morals of a nation continued in quite another vein. "Yet it may be well enough to throw out a lure for him, in order to tempt him to start for the plate, and then lay the foundation of dissension between the two chiefs."<sup>9</sup> One wonders, in the face of this, whether Hamilton had instigated the craftily worded letter that Harper had sent to Burr.

But Hamilton was not long to continue in this vein. He soon discovered that the Federalist leaders had taken the bit in their mouths, and were running wholly away from his leadership and counsels. They were in earnest. It was no mere *lure* they were dangling before Burr; they grimly intended to go through with their scheme. They had come to the conclusion that the only hope of salvaging something from the wreck lay in Burr. Harper visited Morris and told him that it would be "advisable for the House of Representatives to give him their voice, without asking or expecting any assurances or explanation respecting his future administration. He thinks Burr's temper and disposition give an ample security for a conduct hostile to the democratic spirit which Mr. Harper considers as dangerous to our country, while Mr. Jefferson, he thinks, is so deeply imbued with false principles of government, and has so far committed himself in support of them, that nothing good can be expected from them."<sup>10</sup>

And Sedgwick was telling Hamilton that Burr "holds to no pernicious theories, but is a mere matter-of-fact man. His very selfishness prevents his entertaining any mischievous predilections for foreign nations. The situation in which he lives has enabled him to discern and justly appreciate the benefits resulting from our commercial and national systems; and the same selfishness will afford some security that he will not only patronize their support but their invigoration."<sup>11</sup> This in answer to Hamilton's condemnation of Burr as selfish, profligate, unscrupulous.

Hamilton was not to be convinced by these arguments. As he saw the tide running strongly for Burr among his own followers, he grew desperate, hysterical even. He threw himself into the

breach with every epithet, every mouth-filling phrase at his command. He wrote feverishly, angrily, to every Federalist leader, in vain attempt to stem the tide. He argued and threatened and cajoled and painted black, horrendous pictures. The letters went out in an endless stream, wordy, repetitious, almost facsimiles of each other. He told Robert Troup, almost his sole loyal supporter, that "if the federal party play so dangerous a game as to support Burr, and he should succeed in consequence of it, he will withdraw from the party and from all public concerns."<sup>12</sup> He wrote to Sedgwick, Bayard, Wolcott, Rutledge, Morris, Otis, Cabot, practically every Federalist in Congress. He was right in this — that Burr in office would be less amenable to Federal compromise and threats than Jefferson. The event showed that Jefferson was willing to compromise, to placate. But the Federalist leaders did not know this at the time. They feared with an unholy fear Virginia domination and the theories of the physiocrats. They considered other things as well. Burr "has no political theories repugnant to the form of the constitution or the former administration," wrote Theophilus Parsons to Otis. "His ambition & interest will direct his conduct — and his own state is commercial & largely interested in the funded debt. If he will honorably support the government for which he has undoubted talents, he will have the support of the federalists and some of the Jacobins whom he may detach — and his election will disorganize and embarrass the party who have given him their votes." But, on the other hand, others of the Federalists "are fearful of his activity of his talents & his personal courage. They consider Jefferson as a man cautious thro' timidity — that he will fear to go the lengths of his party, & will thereby disgust many of them; and proceeding slowly the chapter of accidents may furnish opportunities of self defence which the vigour of Burr will not admit of."<sup>13</sup>

Hamilton, aside from his personal obsession over Burr, was clearer-minded in foreseeing the future than the others. He had been in intimate contact with Jefferson in Washington's Cabinet, and he realized that the Federalists had less to fear from his activities as President than from Burr. He said as much to Wolcott. If the movement to elect Burr should succeed, he warned, "it will have done nothing more or less, than place in that station a man who will possess the boldness and daring necessary to give success to the Jacobin system, instead of one, who for want of that quality, will be less fitted to promote it." And, significantly, considering that Hamilton was forever harping on the single string of Burr's cynical amenability to anything that would promote his inordi-

nate ambition, "let it not be imagined that Mr. Burr can be won to the federal views. It is a vain hope."<sup>14</sup>

"If there be a man in the world I ought to hate, it is Jefferson," he wrote Morris. "With Burr I have always been personally well. But the public good must be paramount to every private consideration."<sup>15</sup>

To each, Hamilton directed those arguments which seemed to him the most effective in the particular case. To Bayard of Delaware he termed Burr a man "without probity," "a voluptuary by system," that, being in debt, "with all the habits of excessive expense, he cannot be satisfied with the regular emoluments of any office of our government. Corrupt expedients will be to him a necessary resource. Will any prudent man offer such a President to the temptations of foreign gold?"<sup>16</sup>

When Bayard responded in terms that did not show any undue alarm over these terrific qualities, he repeated his charges, with embellishments. Rather Jefferson, he cried, even though "his politics are tinged with fanaticism," and "he is crafty and persevering in his objects; that he is not scrupulous about the means of success, nor very mindful of truth, and that he is a contemptible hypocrite." In spite of all this, he repeats, rather Jefferson than Burr, who "is a man of extreme and irregular ambition; that he is selfish to a degree which excludes all social affections; and that he is decidedly profligate." Hamilton had come a long way in the use of billingsgate. Why, he continued, "if Burr's conversation is to be credited, he is not far from being a visionary." This in answer to the Federalist argument that he was a "matter-of-fact man." "He has quoted to me *Connecticut* as an example of the success of the democratic theory, and as authority, serious doubts whether it was not a good one. It is ascertained, in some instances, that he has talked perfect *Godwinism*." This of course should strike horror into the hearts of all good Federalists, as should also the following: "I have myself heard him speak with applause of the French system, as unshackling the mind, and leaving it to its natural energies; and I have been present when he had contended against banking systems with earnestness, and with the same arguments that Jefferson would use." Furthermore, Hamilton maintained, Burr had gone so far as to quote approvingly Napoleon's phrase, "*Les grand âmes se soucient peu des petits moraux.*" (Great souls care little for small morals.)<sup>17</sup>

But Hamilton's long harangues made little impression on his former followers. He seemed pitifully alone in his opposition. Few listened, fewer still were swayed by his declamations. The ex-

piring Congress was soon to meet in session to count the ballots, and, with a tie in prospect, the House of Representatives was to choose a President.

### 3. REPUBLICAN FEARS

The Republicans were literally beside themselves with rage and fear at the Federalist machinations. They had won a glorious victory, and now, through the interposition of a peculiar set of circumstances, the fruits were about to be snatched out of their eager hands. It was not that they feared, at that time, any wavering in Burr's loyalty to Jefferson, or the cause of Republicanism. It was, as Jefferson had indicated, the open and avowed boast of the Federalists that they would prevent an election altogether, and continue to hold the reins of power, through the medium of a Federalist President of the Senate.<sup>18</sup>

In this view he was not far mistaken. To a good many of the scheming Federalists, Burr's name was a mere pretense. Read what Samuel Sewell, member of Congress and later Chief Justice of the Massachusetts Supreme Court, has to say to Otis: "Another purpose may be effected by a steady and decided vote of the federal party for Mr. Burr: it is possible that an election at this time and with the materials you will be confined to, may be wholly prevented. This is most desirable."<sup>19</sup>

General Samuel Smith rushed to publish Burr's letter of disclaimer to him, as he had been authorized to do. It made no difference in the Federalist plans. They went right ahead with their determination to vote for Burr, and stalemate Congress into an impasse. Some even surmised that perhaps Burr would not be very angry at being aided by them in this fashion.<sup>20</sup>

The Republicans did not know whom to blame for having permitted themselves to be maneuvered into this unprecedented situation. The air was filled with mutual recriminations. McHenry gleefully reported "that the democrats in Congress are in a rage for having acted in good faith, that they swear they will never do it again and mutually criminate each other for having done so now, each declaring if they had not had full confidence in the Treachery of the others they would have been Treacherous themselves, and not acted as they promised to act at Philadelphia last winter viz: to give equal votes for Jefferson and Burr."<sup>21</sup>

Yet still no word of blame for Burr, or of his actions in the present crisis. In fact, nothing but a chorus of approval on the part of the Republicans. Jefferson himself was writing his daughter on

January 14, 1801, that "the Federalists were confident at first they could debauch Col. B. . . . His conduct has been honorable and decisive, and greatly embarrasses them."<sup>22</sup>

George Clinton, too, who later was to aid his nephew, De Witt Clinton, in the instigation of vicious attacks upon Burr's course of action, now declared that "I have Reason to believe from Burr's explicit declaration to me that he will not countenance a Competition for the Presidency with Mr. Jefferson."<sup>23</sup>

And Caesar Rodney was writing Joseph H. Nicholson, Republican Congressman, that "I think Col. Burr deserves immortal honor for the noble part he has acted on this occasion."<sup>24</sup>

Jefferson appointed Albert Gallatin the leader of his strategy in the ensuing session of Congress. Gallatin hurried to Washington and started work, quietly checking on every member of the House, preparing for every possible contingency. Jefferson himself, also on the ground, hovered watchfully in the rear, saying nothing for publication, sawing wood. He, too, was preparing, feeling the pulse of the nation over the proposed usurpation, asking for opinions from his friends. Madison was a bit doubtful. "Will it be best to acquiesce in a suspension or usurpation of the Executive authority till the meeting of Congress [the newly elected one] in December next, or for Congress to be summoned by a joint proclamation or recommendation of the two characters having a majority of votes for President? My present judgment favors the latter expedient."<sup>25</sup>

Joseph H. Nicholson was far more forthright. "In the Event of a non-election in consequence of federal Machinations," he asserted, "Virginia would instantly proclaim herself out of the Union."<sup>26</sup> There were hotheads in both parties.

Jefferson inclined to Madison's view, but only in case of eventualities. He personally was willing to have the House of Representatives elect. Failing that, other measures must be taken. "The federalists . . . propose to prevent an election in Congress," he wrote Tench Coxe. "The republicans propose to press forward to an election. If they fail in this, a concert between the two higher candidates may prevent the dissolution of the government and danger of anarchy, by an operation, bungling indeed and imperfect, but better than letting the legislature take the nomination of the Executive entirely from the people."<sup>27</sup>

Meanwhile, during all this preliminary turmoil and uproar, where was Burr? He was attending quietly to his duties in the New York Legislature to which he had been elected. The Session had commenced on November 4, 1800, and adjourned on November

8th until January 27, 1801. Burr attended its debates until February 17th, right through the balloting in Washington. There was something else engrossing his attention at this particular time. His adored Theodosia, the child he had reared in accordance with a rigorous system of education, was now a young woman of eighteen, beautiful, brilliant beyond all expectations — and about to be married. The bridegroom was Joseph Alston, a South Carolina young gentleman of fortune, a plantation owner, twenty-two years old, amiable, with some talent, and in due time to rise, with certain shoves from Aaron Burr and Theodosia herself, into the Governor's chair of his native State. He was, however, not quite up to his remarkable wife.

They were married on February 2, 1801, amid scenes of festivity. Almost immediately the bridal couple commenced their journey southward, on their way to the Alston ancestral home in Charleston, South Carolina. They were first to stop at Baltimore, however, where Burr promised to join them by the 28th at the latest.<sup>28</sup> These duties and preoccupations kept him in Albany, and busy. Yet he expressed his position on the matter of the proceedings in Washington time and again, and with great force. It has been stated repeatedly that he kept a discreet silence, wholly diplomatic in origin, and that secretly he was not averse to accepting the mantle of the Presidency which the Federalists were offering to throw over his shoulders. The record, however, tends to disprove this contention.

On January 16, 1801, Burr wrote in congratulatory vein to Albert Gallatin, whom he knew to be the leader of the Jeffersonian forces in Congress. "I am heartily glad of your arrival at your post. You were never more wanted, for it was absolutely vacant." As for the question that was agitating the nation at the time, "Livingston will tell you my sentiments on the proposed usurpation, and indeed of all the other occurrences and projects of the day."<sup>29</sup>

Edward Livingston, young Congressman from New York, was a member of the great clan, and Burr's close friend. Indeed, it was to be asserted by the ineffable Cheetham that Livingston was the intermediary between Burr and the Federalists in the great conspiracy to place Burr in the Presidency; a charge which Livingston was emphatically to deny. More important, however, than his denials, more important even than the close communication evidenced above between Livingston and Gallatin, is the testimony of a private and confidential letter he wrote to Matthew L. Davis — that Davis who was Burr's lieutenant in the Society of St. Tammany, and to whom certainly he would have unbosomed himself

if treachery had been afoot. This is what he said, however, immediately before the House began its fateful sessions:

"I can now speak with some degree of confidence and have great pleasure in assuring you that all the little intrigues of falling ambition, all the execrable plans of violence and usurpation will in a few hours after you read this be defeated by the election of Mr. Jefferson." A prophecy which was, to be sure, a bit premature. He continued, "You may I think rely as fully on this information as on any that the nature of the case will admit . . . but if any unforeseen event should disappoint our hopes and wishes, you may rest assured that our City shall never be disgraced by any temporizing plan or acquiescence in usurpation on the part of its representatives and I think I may without danger give this pledge for all those with whom he acts."<sup>30</sup>

Gallatin himself was well satisfied with Burr's attitude. He had already written his wife that "A more considerable number [of Federalists] will try actually to make Burr President. He has sincerely opposed the design, and will go any lengths to prevent its execution."<sup>31</sup>

The Federalists were resorting to trickery. Robert G. Harper had written Burr a seemingly incriminating letter, Gouverneur Morris, the same Federalist who had determined to support Burr in spite of Hamilton, was nevertheless telling General Armstrong (according to Jefferson): "How comes it that Burr who is four hundred miles off, has agents here at work with great activity, while Mr. Jefferson, who is on the spot, does nothing?" Matthew Lyon, vociferous Republican Congressman, was also to tell Jefferson that he had been approached by a Federalist from Rhode Island with the following words: "What is it you want, Colonel Lyon? Is it office, is it money? Only say what you want, and you shall have it."<sup>32</sup>

If these conversations actually took place as reported, they show the measures employed by the Federalists to embroil Burr with Jefferson to the prejudice of Burr. Jefferson meticulously noted them down in his *Anas*, as well as certain other second-hand conversations, long after the event. But evidently other attempts were made, and these were intended to prejudice Burr against Jefferson. Burr, however, did not keep *Anas*, or any similar repository for all the gossip he heard. Nevertheless Jefferson was alarmed at the possible reaction of his running-mate to these insidious rumors. His letter to spike these is well worth quoting.

"It was to be expected," he says, "that the enemy would endeavor to sow tares between us, that they might divide us and our

friends. Every consideration satisfies me you will be on your guard against this, as I assure you I am strongly. I hear of one stratagem so imposing and so base that it is proper I should notice it to you. Mr. Munford, who is here, says he saw at New York before he left it, an original letter of mine to Judge Breckenridge, in which are sentiments highly injurious to you. He knows my handwriting, and did not doubt that to be genuine. I enclose you a copy taken from the press copy of the only letter I ever wrote to Judge Breckenridge in my life. . . . Of consequence, the letter seen by Mr. Munford must be a forgery, and if it contains a sentiment unfriendly or disrespectful to you, I affirm it solemnly to be a forgery . . . A mutual knowledge of each other furnishes us with the best test of the contrivances which will be practiced by the enemies of both."<sup>33</sup> Yet, while he was penning these sentiments and defense of himself against a forgery, so well done that it fooled a friend who was familiar with his handwriting, he was hoarding in his *Anas* for future use every rumor, every bit of second-hand gossip against Burr.

This alleged forgery, indeed, gave Burr a splendid chance, if he desired, to justify an open alliance with the Federalists to capture the Presidency. Professional politician and tactician that he was, if he had in truth been conspiring secretly to supplant Jefferson, he would not have failed to jump at the heaven-sent forgery. Instead, he wrote back to the anxious candidate in terms calculated to dispose for all time of this ready-made opportunity. His letter has missed the eyes of historians. Jefferson never saw fit to publish it.

"It was so obvious," he wrote, "that the most malignant spirit of slander and intrigue would be busy that, without any inquiry, I set down as calumny every tale calculated to disturb our harmony. My friends are often more irritable and credulous; fortunately I am the depository of all their cares and anxieties; and I invariably pronounce to be a lie, every thing which ought not to be true. . . . Montfort never told me what you relate & if he had, it would have made no impression on me."<sup>34</sup> It must be confessed that Burr, the slippery intriguer, as he has so often been painted, emerges from this particular situation with all the honors.

#### 4. THE HOUSE VOTES

February, 1801. Washington, the new capital of the United States, raw, unfinished, its streets by turn mud-holes and knee-deep in snow, was jammed to bursting. Space in the boarding-houses

was at a premium; prominent men slept on rude cots, on draughty floors, and were glad enough to obtain such accommodations. Intrigue was in the air, conspiracy stalked the passageways. Excitement, anxiety, showed on every face. Congress was in session. The counting of the ballots was the province of the Senate and House jointly, Thomas Jefferson presiding over the unsealing of his own fate. But every one knew the result, even before the day. There was a tie between the two leaders of Republicanism.

It was in the House of Representatives that the true drama would unfold. Congressmen from 16 States, voting by States, held in their hands not only the individual fates of Jefferson and Burr, but perhaps of the nation as well. It was an open secret that the Federalists were determined on one of two courses, either to supplant Jefferson with Burr, or to drag matters into an impasse, from which, by some feat of legerdemain, the Federalists would emerge triumphant and in control of the Government.

The nation watched, and rumbled with excitement and alarm. The Republicans cried to the skies their execration of Federalist tactics. There was talk of secession, of the forcible seizure of government, even. It was said that armed men were congregating in Pennsylvania and in Virginia to resist such a subversion of the election returns. The Governors of these States were reported to be ready to call out their troops for a sudden descent on Washington. There was dark talk of assassination of any one who assumed to don the purple in place of the beloved Jefferson. It had been suggested by the Federalists that a law be passed placing John Marshall, Chief Justice of the United States, in the seat of the mighty. To which the Republicans retorted that blood would flow before they would permit such a usurpation.

The Federalist newspapers were almost unanimously for Burr, especially in New England, where his ancestry stood him in good stead. "He is," quoth one, "the grandson of the dignified Edwards, the great American luminary of Divinity, and a son of President Burr who was also a burning and shining light in the churches."<sup>35</sup> And the same paper boasted, in answer to Republican threats, not deigning even to consult the object of its exordium, that "our General [Burr] if called upon can assure them that he has seen southern regiments in former times and knows what they are composed of."<sup>36</sup>

There were dissenting notes, notably in those newspapers under Hamilton's control.<sup>37</sup> Hamilton, who wandered vainly on the periphery of his party, still seeking to argue its leaders into voting for Jefferson. At the Tontine Coffee House in New York, presid-



ing at a dinner tendered to Oliver Wolcott, he gave the bitter toast: "May our government never fall a prey to the dreams of a Condorcet nor the vices of a Cataline."<sup>38</sup>

On February 11, 1801, Congress opened in an atmosphere of unexampled tenseness. It was bitter cold and Washington was blanketed with snow. The electoral votes were counted in joint session, Jefferson reading the results. A tie. Then the House retired to its own chambers, and settled down to the real business.

On February 8th, Bayard of Delaware had already offered a resolution that in the event of a tie, the House would continue to ballot until a President was chosen. The Federalists held an absolute majority in numbers. But the voting was to be done by States, not by individuals. Each State was to be counted as a unit, by a majority of votes within its delegation. Not only that, but the Constitution required for an election an absolute majority of all the States; in this instance nine.

The first vote was taken in breathless silence. The members leaned forward eagerly in their seats when the result was announced. It was indecisive. Eight states had cast their votes for Jefferson — New York, New Jersey, Pennsylvania, Virginia, North Carolina, Kentucky, Georgia and Tennessee. Six States had voted for Burr — New Hampshire, Massachusetts, Rhode Island, Connecticut, Delaware, and South Carolina. Two States, their delegations tied, cast blanks — Vermont and Maryland. Eight for Jefferson, six for Burr; nine States required for an election.

The divisions within the States are interesting. They may be summarized as follows.<sup>39</sup>

	Jefferson	Burr
New Hampshire .....	0	6
Vermont .....	1	1
Massachusetts .....	3	11
Rhode Island .....	0	2
Connecticut .....	0	7
New York .....	6	4
New Jersey .....	3	2
Pennsylvania .....	9	4
Delaware .....	0	1
Maryland .....	4	4
Virginia .....	14	5
North Carolina .....	6	4
South Carolina .....	1	4
Georgia .....	1	0
Kentucky .....	2	0
Tennessee .....	1	0
	51	55

Burr had an actual majority of votes cast.

The details are important. The Republican members of the State delegations voted, from all available reports, solidly for Jefferson. Included were the six Republicans from New York, headed by Livingston, Burr's personal friend. Also those from New Jersey, where Burr's influence was supposed to be strong. The Federalists, on the other hand, though in possession of a majority in numbers and in States, did not vote as solidly for Burr. There were a few recalcitrants, who did not follow the caucus. They were sufficient to keep Burr from an immediate election. It is impossible from the evidence to determine how many of these few voted for Jefferson from sincere motives, how many followed Hamilton in his violent exertions to avert the menace of Burr, or whether, behind the scenes, this method had been taken to create a stalemate, and prepare the ground for a later usurpation of power by the Federalists. Had the Federalist caucus been binding on all its members, Burr would have been elected President on the very first vote.

Outside, a snowstorm raged, the House was cold and draughty, but the members settled down to a long and weary balloting. Joseph Nicholson, Representative from Maryland, had left his sick bed in a high fever, toiled through the snow, and had bedded again in the House, in order to cast his vote for Jefferson in his State delegation, and thus create a tie. Thereby he prevented Maryland's vote from going to Burr.<sup>40</sup> Harrison Gray Otis viewed him as he lay on his rude cot, voting through interminable days, with a certain admiration. "It is a chance that this kills him," he wrote his wife. "I would not thus expose myself for any President on Earth." As to the first day's work, he went on to say, "we have agreed not to adjourn, but we have suspended balloting for one hour to eat a mouthful. Perhaps we shall continue here a week. No conjecture can be formed how it will terminate, but if we are true to ourselves we [the Federalists] shall prevail."<sup>41</sup>

The voting started at one in the afternoon on February 11th, and continued, with interruptions only for hasty snatches of food, until eight the following morning. Twenty-seven ballots were taken without the slightest change in the result. Both forces were steadfast in their determination to see it through.<sup>42</sup>

At 8 A.M. of February 12th, the wearied Representatives adjourned until noon in order to get a little sleep. "They looked banged badly," observed Uriah Tracy, one of their number, "as the night was cold, & they had the most of them not slept a wink: and those who had, were none the better for it: as it was caught in

a chair or on the floor in a Cloak." 43 Then they resumed for more ballots. Still no change. Whereupon they adjourned until the following day.

Meanwhile Gallatin, fighting to hold his lines intact, received a letter from Burr, expressing astonishment at the advices that had come to him from the field of battle. "My letters for ten days past had assured me that all was settled and that no doubt remained but that J. would have 10 or 11 votes on the first trial. I am, therefore, utterly surprised by the contents of yours of the 3rd. In case of usurpation, by law, by President of the Senate pro tem., or in any other way, my opinion is definitely made up, and it is known to S. S. and E. L. On that opinion I shall act in defiance of all timid, temporizing spirits." 44

Burr understood quite clearly the motives that actuated at least some of the Federalists, in their advocacy of himself. He was prepared for such an emergency. So were Jefferson and Madison. They had already discussed the situation together and laid their plans.

February 14th passed, with three more ballots; thirty-three in all. Not a single vote had shifted. On February 15th, Jefferson wrote to Monroe that "if they [the Federalists] could have been permitted to pass a law for putting the government into the hands of an officer, they would certainly have prevented an election. But we thought it best to declare openly and firmly, one and all, that the day such an act was passed, the Middle States would arm, and that no such usurpation, even for a single day, should be submitted to." In fact, the Republicans were already declaring for a Convention, at which the government would be completely reorganized and the Constitution amended, from a "democratical" point of view. 45

Doubtless Burr was advised of these plans. It is also inconceivable that Gallatin, floor leader for Jefferson, should not have exhibited openly to the recalcitrant Federalists the threat of action contained in Burr's letter to himself.

Yet the voting went on, sluggishly, day by day, while the whole country seethed with wild rumors and alarms.

On February 16th came the first break. It had all along been obvious that it required very little shifting to decide the Presidency either way. To put Jefferson into the office was a mere matter of a single vote. James A. Bayard, solitary Representative from Delaware, cast the ballot of his State. Should he change his vote from Burr, Jefferson would have the necessary nine States. Should a single member of either the Vermont or Maryland dele-

gation, presently voting for Burr, decide to shift, such State, now voting blank because of a tie within its ranks, would be sufficient to break the deadlock. In other words, any *one* of six men, from the designated States, had it in his power to make Jefferson President.

To elect Burr required a little more effort. To gain the requisite nine States, it was essential to divert a Jeffersonian voter in Maryland and Vermont, the tied States, and also one in New Jersey, whose ballot Jefferson was receiving by a precarious majority of (*one*). In other words, *three* men would have to shift to his camp.

This, however, was not very difficult to accomplish. For this statement there is the authority of Bayard himself. Not long after the event, he wrote Hamilton in disgusted mood that though he was willing at first to take Burr, "I was enabled soon to discover that he was determined not to shackle himself with federal principles." An attempt had been made by the Federalists to treat with Burr in exchange for the election. David A. Ogden, Hamilton's law partner, was chosen as the emissary. But Burr explicitly refused to entertain any terms whatever, and Ogden wrote to the conspirators advising them to "acquiesce in the election of Mr. Jefferson, as the less dangerous man of the two." 46

With the testimony of Ogden in mind, what happened becomes all the more clear from Bayard's narration to Hamilton. "When the experiment was fully made," he said, "and acknowledged upon all hands to have completely ascertained that Burr was resolved not to commit himself . . . I came out with the . . . declaration of voting for Jefferson."

"The means existed of electing Burr," he went on to declare, "but this required his co-operation. By deceiving one man (a great blockhead), and tempting two (not incorruptible), he might have secured a majority of the States. He will never have another chance of being President of the United States; and the little use he has made of the one which has occurred, gives me but an humble opinion of the talents of an unprincipled man." 47

A remarkable document indeed, written by one Federalist, strategically the leader of their forces in the House, to another — and that one, Hamilton. Burr *could* have been elected, had he not turned down decisively all overtures from the Federalists. Bayard declared so now; David A. Ogden, Hamilton's own law partner, was to declare so later in a public forum. Certainly, had Hamilton any evidence of Burr's alleged intrigues, he would not have scrupled to use it then and in the Gubernatorial election of 1804, to

his opponent's disadvantage. The record is clear, even without considering those declarations of Bayard, made years after the event, when extraneous considerations might have entered into the picture. One phrase in Bayard's letter is illuminating, as evidence how Hamilton's characterizations of Burr, by constant reiteration, had been so impressed on the minds of even intelligent men, that they became almost automatic in response. Burr, it seems, was "an unprincipled man" for not having yielded to the Federalist blandishments and usurped the Presidency! Posterity was to adopt a similar uncritical choice of adjectives.

Before leaving finally the violently disputed matter of Burr's alleged conspiratorial involvement in the Federalist campaign for his election, several additional bits of evidence remain to be adduced. One is a letter from William Cooper, Federalist Congressman, addressed to Thomas Morris during the very peak of the weary session. "We have postponed, until to-morrow 11 o'clock, the voting for president. All stand firm. Jefferson eight — Burr six — divided two. *Had Burr done any thing for himself, he would long ere this have been president. If a majority would answer, he would have it on every vote.*"<sup>48</sup>

The other is the memorandum of a conversation, jotted down by Martin Van Buren many years after the event, with Judge John Woodworth, who had been one of the New York electors, and close to the Clintons. De Witt Clinton, it seemed, had expressed a fear that Burr might induce one of the electors to throw away a vote from Jefferson and thereby elect Burr. Woodworth, however, found "Burr's conduct in that affair entirely unexceptionable," and discovered no evidence of any attempt to oust Jefferson. Furthermore, though politically allied with the Clintons, he had been in close contact with Burr during the entire period of the Congressional balloting. According to the old Judge's recollection, Burr repeatedly reprobated the Federalist stand as an attempt to defeat the will of the people, and said strongly that "extreme measure should be resorted to to render their efforts unavailing," and on one occasion went so far as to say that in his opinion the success of their undertaking would "justify a resort to the sword."<sup>49</sup>

##### 5. THE HOUSE ELECTS

On February 16, 1801, James A. Bayard of Delaware determined to break the interminable deadlock. Burr had been approached and found adamant against Federalist blandishments. The temper of the country was too alarmingly ominous to at-

tempt the *coup d'état* that had been contemplated. There was only one thing to do — to try to obtain from Jefferson certain concessions in return for voting him into office. Here again controversy has raged.

Bayard gave his side of the story in a sworn statement which became a matter of court record. According to him, he, Baer and Craik of Maryland, and Morris of Vermont, the holders of the balance of power, had determined to vote together. When it was seen that a break must come, the four Federalists met and decided to make terms with Jefferson. They applied to Nicholas of Virginia as the intermediary. If Jefferson would assure them on certain points, they would arrange to switch these three States to him and make certain his election. They wished assurances that he would not, once in office, take any measures that might disturb the public credit, that he would maintain an adequate naval establishment, and that he would not remove subordinate administrative public officers from their posts because of their political faith. Nicholas refused to approach Jefferson, whereupon the four Congressmen turned to General Samuel Smith of Maryland.

"I told him," swore Bayard in 1806, "I should not be satisfied or agree to yield till I had the assurance of Mr. Jefferson himself [on the moot points] . . . The general . . . proposed giving me his [Jefferson's] answer the next morning. The next day, upon our meeting, General Smith informed me that he had seen Mr. Jefferson, and stated to him the points mentioned, and was authorized by him to say that they corresponded with his views and intentions, and that we might confide in him accordingly."<sup>50</sup>

That same day, February 17th, on the thirty-sixth ballot, the members from Vermont and Maryland who had voted for Burr cast blank ballots, and the votes of their States were registered for Jefferson; Bayard of Delaware and the South Carolina delegation refrained from voting altogether. The result was — ten States for Jefferson, four for Burr, and two not voting. Jefferson was elected President, Burr Vice-President, and the most bitterly contested election in all American history was closed.

But there were scars left. For one thing, the charges that Jefferson had compromised his principles in achieving the office. He resented them intensely, and wrote interminable defenses of himself in his *Anas*. For had he not, in a letter to Monroe, already stated emphatically that "many attempts have been made to obtain terms and promises from me. I have declared to them unequivocally, that I would not receive the government on capitulation, that I would not go into it with my hands tied."<sup>51</sup>

When Bayard's deposition was published in 1806, Jefferson told in his Diary that "this is absolutely false. No proposition of any kind was ever made to me on that occasion by General Smith, nor any answer authorized by me. And this fact General Smith affirms at the moment." However, as he wrote on and on, he qualified this statement somewhat. "I do not recall," he now recorded, "that I ever had had any particular conversation with General Samuel Smith on this subject. Very possibly I had, however, as the general subject and all its parts were the constant theme of conversation in the private tête-à-têtes with our friends. But certain I am, that neither he nor any other republican ever uttered the most distant hint to me about submitting to any conditions, or giving any assurances to anybody, and still more certainly, was neither he nor any other person ever authorized by me to say what I would or would not do."<sup>52</sup>

But Smith, in a deposition similar to that of Bayard, unwillingly admitted that he had spoken to Jefferson about the inquiries put to him by Bayard, and that Jefferson had told him that he would not dismiss officers of the government on political grounds only, especially with reference to Mr. M'Lane of Delaware, Bayard's friend, and that "Mr. Bayard might rest assured . . . that Mr. Jefferson would conduct, as to those points, agreeably to the opinions I had stated as his."<sup>53</sup> The whole dispute, then, seems to boil down to a question as to whether or not Jefferson *knew* for what purpose Smith was asking these questions, and whether or not he had directly *authorized* the answers given to Bayard. Which, on

rather an academic distinction. Certainly we have realized why Smith discuss certain matters

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Burr to detect and on the success sword."<sup>49</sup> that Jefferson office. He re- sences of himself oe, already stated en made to obtain ed to them unequiv- ment on capitulation, is tied."<sup>51</sup>

against Jefferson, this time Bill on the floor of the r matters, he charged di-

rectly that Jefferson in a frenzy of fear that he might not gain the Presidency, had assured himself of certain votes by the bribery of promised appointments. Claiborne, who held the sole vote of Tennessee in his hands, received the Governorship of the Mississippi Territory, Linn of New Jersey, whose vote would have shifted that State from Jefferson to Burr, was given the profitable office of supervisor of his district, Edward Livingston was since made District Attorney for New York, and his brother, the Chancellor, Minister to France. And above everything else, M'Lane, for whom Bayard had directly spoken, was continued in office, in spite of the efforts of disgruntled Republican politicians to oust him. Not to speak of Theodorus Bailey of New York, friend to Burr, who had voted for Jefferson and was soon thereafter made postmaster of New York.<sup>55</sup>

6. CAUSE AND EFFECTS

The election was over, but irremediable damage had been done. Jefferson had never been too comfortable with Aaron Burr, and now, because of his narrow escape, Burr was doubly to be feared and distrusted. In spite of all Jefferson's protestations of friendship, it may be that he actually believed Burr had intrigued for the office. In fact, Hamilton had been at the greatest pains to inform Jefferson and the Livingstons alike of Burr's alleged plots and maneuvers, and thereby sown with skilful hand the seeds of distrust within the camp of his enemies.<sup>56</sup> In any event, from this day on it was Jefferson's deliberate purpose to remove Burr from his path, and crush him so thoroughly that never again would he be able to rise and trouble the dreams of the Virginia dynasty. The chapter of Burr's enemies was now complete. Alexander Hamilton, Thomas Jefferson, George and De Witt Clinton, the entire Livingston clan. Deadly, powerful enemies, still working in secret, nibbling stealthily at the sources of Burr's power, all still opposing smiling faces to his sight, and all the more dangerous because of that. They ringed him round in an ever-tightening circle, patient, inexorable, waiting for the right moment to crush him. From this moment on, Burr was a marked man. No stratagem was too low, no maneuver too foul, to encompass his destruction. Once more he stood alone, dependent solely on his own resources, on the little group of devoted followers in New York City, on the personal friends he had made. All the machinery of politics, the machinery he had done so much to create, was now to be used against him with irresistible pressure. Aaron Burr, Vice-President of the United States.