



*Courtesy of Estate of Dr. John E. Stillwell*

THEODOSIA BURR ALSTON, 1802

*From a portrait by John Vanderlyn*

## CHAPTER XVIII

### THE IMPEACHMENT OF JUSTICE CHASE

#### I. JEFFERSON SUDDENLY COURTS BURR

ON November 5, 1804, Aaron Burr quietly appeared in the Senate Chamber and took his seat in the chair of the Presiding Officer. Senator Plumer of New Hampshire, staunch Federalist, and but recently a party to the Secession Conspiracy, stared at him aghast. In the bitterness of his soul he wrote a friend that "Mr. Burr, the man whom the Grand jury in the County of Bergen, New Jersey, have recently indicted for the murder of the incomparable Hamilton, appeared yesterday & to day at the head of the Senate! This is, I believe, the first time that ever a Vice President appeared in the Senate the first day of a session. It certainly is the first time, & God grant it may be the last, that ever a man, so justly charged with such an infamous crime, presided in the American Senate. We are, indeed, fallen on evil times!"<sup>1</sup>

The Federalists in the Senate, excluding certain close friends, followed Plumer in treating Burr with great coldness, and avoiding speech with him as far as possible. But the Republicans (or Democrats, as they were beginning to term themselves) showed an attentiveness, a cordiality that the astonished Plumer could only attribute to joy at Hamilton's demise. "Burr is still with us," he exclaims. "He is avoided by federalists, but caressed & flattered by democrats from the President to the door keeper. General rules will not apply to Mr. Burr; he is an exception to them. No man is better calculated to brow beat & cajole public opinion."<sup>2</sup>

Plumer was mistaken. Though a few rejoiced at the killing of Hamilton, far more important issues accounted for the seemingly impossible change of front on the part of the Administration. Jefferson had girded his loins for a death-struggle with the Judiciary, last stronghold of Federalism, and under John Marshall's powerful guidance, an insuperable obstacle to the untrammelled expression of the people's will. As long as the Judiciary held even the threat of annulment of Congressional enactments and Executive decisions alike over their respective heads, as enunciated by Marshall in the case of *Marbury vs Madison*, so long was the United States not truly a democratic nation. Jefferson's plan of

campaign was simple. He had caused the Judiciary Bill to be repealed, but the judges in office held life tenure, subject to good behavior. This was the Constitutional loophole. On charges of misbehavior, they could be impeached and removed from office by Congress.

Justice Pickering had been the first to feel the weight of Jefferson's disapproval, even though it was alleged he was insane. Burr had presided at what was truly a tragic farce, and only his incomparable dignity in the Chair held the judicial trial on a high level of solemnity and decorum.<sup>3</sup>

The case of Justice Samuel Chase, however, was of far greater importance, and destined by Jefferson to establish a precedent whereby he could unseat even the mighty Marshall himself. Chase was accused of browbeating and bullying tactics on the Bench, of using his high office as a springboard for violent political denunciations of the Democrats, of temperamental unfitness. On March 10, 1804, Samuel Chase was indicted by the House on a strictly partisan vote, and the articles of impeachment handed up to the Senate.

The importance of the impending trial before the Senate was realized by Federalists and Republicans alike. On its outcome depended the course of government for decades to come. But Aaron Burr was still Vice-President, and the Presiding Officer of the Senate. On the studied conduct of the Presiding Officer much depended. His rulings, his admission or non-admission of evidence, his entire method of procedure, could very easily sway a closely divided and excited Senate one way or another. And Burr was a famous lawyer, familiar with every legal technicality, to whose iron discipline the Senate had submitted on numberless occasions. Twenty-three votes were necessary to convict; the Republicans had twenty-five, and the Federalists nine. A defection of three Republicans to the solid Federalist ranks would bring Jefferson's carefully prepared structure crashing to ruin. There were at least five who were doubtful or hesitating. One of these was Senator John Smith of Ohio, an intimate friend of Burr. Others could be swayed by him, should he feel urged to extend his arts. At all times he was a dangerous antagonist, and especially now. Jefferson decided he must be placated at all costs, and his natural resentment turned away with oil and flattery.

By December 23rd a great light burst on Plumer. He was writing now that Burr is "flattered and feared by Administration." <sup>4</sup> Nothing was too good for the man whom they had thought crushed, ostracized, a pariah. Plumer observed that "Mr. Jeffer-

son had shewn more attention & invited Mr. Burr oftener to his house within this three weeks than ever he did in the course of the same time before. Mr. Gallatin . . . has waited upon him often at his lodging — & on one day was closetted with him more than two hours. The Secretary of State, Mr. Madison . . . accompanied him on a visit to M. Terreau [*sic*] the French Minister." Giles was busy circulating his petition to the Governor of New Jersey, and "the Democrats of both Houses are remarkably attentive to Burr . . . Duane, in his Aurora, has declared in his favour."<sup>5</sup>

Nor was this all. More tangible proofs were to be offered Burr of the Administration's sudden access of warmth and good will. J. B. Prevost, Burr's stepson, was appointed Judge of the Superior Court at New Orleans; James Brown, his brother-in-law, was made Secretary of the Louisiana Territory; and *James Wilkinson*, whom Burr had considered his closest of friends since they had participated in the siege of Quebec, and now Commanding General of the American Army, was given in addition the Governorship of the Louisiana Territory: a combination of civil and military authority that Jefferson ordinarily would never have stomached.

There can be no doubt that these appointments were made at Burr's suggestion, and in a studious effort to avoid his enmity during the forthcoming trial.<sup>6</sup> Burr must have smiled his slow, courteous smile at the hullabaloo, the flattery, the sudden cordial attentions of all the members of the Administration; and it is equally certain that he avoided any direct commitments in exchange. He knew quite well why the tempting bait was being offered, that underneath, there had been no change in the hostility of the Virginians, and he went his way, keeping his own counsel. He was not, however, averse to using these gifts of offices for his own purposes. It is significant that all appointments were made in the newly purchased Louisiana Territory and the separate, though adjacent, Territory of Orleans. His plans were soon to be translated into action; those plans of which he had dreamed back in 1802, because of which he had only recently journeyed into Florida. The placing of three good friends in positions of responsibility and influence on the borders of Spanish Territory would prove of invaluable assistance in the future. Claiborne of Tennessee, however, to his great disgust and annoyance, had received the important post of Orleans' Governor. Claiborne was an honest nincompoop and was destined to arouse the alien citizenry of New Orleans to turbulence. Plumer records on

December 12th that "after the Senate was adjourned the Vice-President observed at the fire that the Senate had agreed to advise to the appointment of Claiborne when not a single Senator believed he was qualified for the office." To which Senator Bradley retorted "that the President's dinners had silenced them — & that Senators were becoming more servile."<sup>7</sup> Jefferson was well acquainted with the methods of ingratiation.

## 2. TRIAL AND ACQUITTAL

The trial of Justice Samuel Chase opened on January 2, 1805, to crowded galleries in the Senate. It was well known that the Supreme Court itself was on trial in the person of Chase, and that, should he be convicted, other impeachments were pending, even of the great John Marshall himself, who had only two months before dared to enunciate the doctrine that the Supreme Court had the right and the power to declare Acts of Congress invalid as contrary to the Constitution.

Chase had been impeached on eight articles, the most important of which alleged that in charging the Grand Jury at Baltimore he had denounced in unmeasured terms Republican principles and violently assailed Republican acts and purposes. The House had chosen seven managers to conduct the prosecution, and John Randolph of Roanoke was put forward to lead the fight. For the defense there was a far more imposing array of legal talent, headed by Luther Martin, the Federalist bulldog, anathema now and to become even more so in the future to Jefferson. Associated with him were Robert G. Harper, Charles Lee, Philip B. Key, and Joseph Hopkinson, all brilliant lawyers and skilful politicians as well.

Burr arranged the setting for the trial with careful detail and a flair for the dramatic. The nation was seething with partisan propaganda, great issues were at stake, Jefferson hovered in the background, moving invisible strings, and the trial might, if not properly ensconced, descend to the level of political hustings. To Burr had been given the sole power of making the arrangements.<sup>8</sup>

The Senate Chamber glowed with the trappings of a great theater. To the right and left of the President's chair, in which the slight, carefully attired Burr was seated in state, were two rows of benches, fronted by desks covered with crimson cloths. These were for the Senators, constituting the Court. A specially built semicircular gallery, of three rows of benches, was elevated above the well of the amphitheater on pillars and draped in dark green

hangings. Two boxes flanked them. These were crowded with the ladies of officialdom, gaily dressed, perfumed, enjoying the spectacle as a splendid show. On the floor beneath this temporary gallery were three more rows of benches, arranged in tiers, covered also with green cloth, where sat the Representatives, watching their champions and the impassive Senators. On the right was a box for diplomats, foreign representatives, members of the Cabinet. High overhead was the permanent gallery, to which the general public was admitted. A cleared passage led from the President's chair to the door of the Chamber, and on either side of this aisle were blue-draped stalls, occupied on the right by the managers of the House, and on the left by the lawyers for the defense. A very impressive show indeed, and one which, coupled with the pale dignity and flashing eye of the President of the Court, stilled all whisperings and shufflings and commotions.<sup>9</sup>

From the very first rap of his gavel, Burr swayed and dominated the proceedings. He gave his rulings on moot points promptly, unhesitatingly, with clear precision and legal exactitude. Federalists and Republicans alike watched him with hawk-like eyes, seeking for signs of partisanship. They were to be disappointed. When the trial was over, universal approbation for his conduct was in everyone's mouth, friend and foe alike. He had lent new luster to his office, he had made the trial, begun in sordid political passions, a memorable example of judicial dignity and orderly proceeding.

Manasseh Cutler told Dr. Torrey that "the trial has been conducted with a propriety and solemnity throughout which reflects honor upon the Senate. It must be acknowledged that Burr has displayed much ability, and since the first day I have seen nothing of partiality."<sup>10</sup>

The Washington *Federalist*, bitterly hostile to him, declared that "he conducted with the dignity and impartiality of an angel, but with the rigor of a devil." Senator Plumer, who, though one of the Judges, from the first took a wholly partisan view of the proceedings, and who was especially unfriendly to Burr for the "murder" of Hamilton, filled the early days of his Diary with splenetic references to Burr's conduct. He had not been quick enough to give Chase a chair — according to Parliamentary practice, the accused was not entitled to a seat — he had interrupted Chase several times while he was reading a lengthy application to the Court, he demanded that the Court hold longer sessions so as to bring the trial to a fairly early conclusion. Worse still, he informed Senators — Judges of the Court — that it was their duty to

remain in their seats during the course of the trial, and not to leave whenever they wished — which angered the haughty Senators, who already knew, without the benefit of testimony, which way they were going to cast their votes. Plumer, one of those so rebuked, wrote angrily in his Diary, “Mr. Burr has for this few weeks assumed the airs of a *pedagogue* — & rather considered the senators as his scholars than otherwise.”

But the worst offense Burr committed was to insist that the Senators refrain during the examinations from wandering casually all over the Chamber, and from munching apples and cakes. “Mr. Wright said he eat cake — he had a just right so to do — he was faint — but he disturbed nobody — He never would submit to be schooled & catechised in this manner . . . Burr told Wright he was not in order — sit down — The Senate adjourned — & I left Wright and Burr scolding. Really, *Master Burr*,” exploded Plumer when he got home, “you need a ferule, or birch, to enforce your lectures on polite behavior!”<sup>11</sup> One wonders what manner of trial the Senate would have conducted if any other but Burr had presided.

But as the trial moved forward, with speed and precision, and Randolph fulminated and thundered, and Luther Martin roared back in his great voice, and Burr held an even balance between the contending factions, even Plumer came at length to unwilling respect and admiration. When Chase was acquitted on all counts, though a majority had voted “guilty” on three of the eight articles, Plumer, relieved of his anxiety, could then view Burr’s conduct with more candor and impartiality. On March 1st he wrote, “Mr. Burr has certainly, on the whole, done himself, the Senate & the nation honor by the dignified manner in which he has presided over this high & numerous Court.”<sup>12</sup>

Jefferson had been defeated in his assault on the Judiciary. Burr, in spite of bribes and flattery, had done nothing to assist or rebuff the prosecution. He had been a fair Presiding Officer when impartial conduct was not exactly a virtue in the eyes of the Administration.

### 3. A LONG FAREWELL

The great trial ended on March 1, 1805. Burr’s term of office as Vice-President expired on March 4th. Already it had been his dubious privilege to announce the election results to the Senate. Thomas Jefferson, President; George Clinton, Vice-President. His own public career was ending.

On March 2nd, he rose quietly from the Chair where he had sat for four years. The Senators, lounging in weariness after the tenses of the preceding months, straightened up. There was that in the Vice-President’s manner which demanded attention. He spoke to them, extemporaneously, and as his voice rose and fell in the hushed Senate Chamber, a wave of emotion quivered over his auditors. They were listening, they knew, to a great speech, the greatest they had ever heard. It was Burr’s farewell address.

The speech itself is but a lifeless thing as it is summarized in the various accounts of the time. The magic of the occasion, the impressiveness of that short, erect figure, the grandeur of his bearing, the simplicity of his voice, too deep for tears, the knowledge that a glamorous, talented man was about to pass from the stage he had occupied so long — these were the things that blurred Senatorial eyes, and confused them into speechless emotion.

Plumer reported it; so did John Quincy Adams, newly elected Senator; so did the Washington *Federalist*. None of them could recapture the strain. But the *Federalist* remarked, “It is . . . said to be the most dignified, sublime and impressive [speech] that ever was uttered. . . . The whole Senate were in tears, and so unmanned that it was half an hour before they could recover themselves sufficiently to come to order, and choose a vice-president pro tem . . . At the president’s . . . two of the senators were relating these circumstances to a circle which had collected round them. One said that he wished that the tradition might be preserved as one of the most extraordinary events he had ever witnessed. Another senator being asked, how long he (Burr) was speaking, after a moment’s pause, said he could form no idea; it might have been an hour, and it might have been but a moment; when he came to his senses, he seemed to have awakened as from a kind of trance.”<sup>13</sup>

The varying accounts of the text of the speech agree in the main on its essentials. The official account prepared by the Senate reporter is perhaps the most accurate. First Burr touched lightly on the necessity of changing certain rules of the Senate, then he spoke of his personal relations with the members. He had not knowingly done or attempted any injuries to any of the Senate, nor had he any to complain of. “In his official conduct, he had known no party, no cause, no friend, that if, in the opinion of any, the discipline which had been established approached to rigor, they would at least admit that it was uniform and indiscriminate.” He paused a moment, and then spoke his peroration. “He challenged their attention,” wrote the reporter, “to the considerations

more momentous than any which regarded merely their personal honor and character — the preservation of law, of liberty, and the Constitution. This House, said he, is a sanctuary; a citadel of law, of order, and of liberty; and it is here — it is here, in this exalted refuge; here, if anywhere, will resistance be made to the storms of political phrenzy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor.”

After which, he took leave of his colleagues in touching accents, “perhaps forever,” with expressions of personal respect and prayers, and consoling himself, and them, with the reflection that, though they separated, they would still be engaged in the common cause of disseminating principles of freedom and social order.<sup>14</sup>

Whereupon, noted John Quincy Adams, he left the Chair and the room, quietly and without ostentation. He had spoken his swan song, and for the moment the hearts of all were softened to the effulgence of his passing.

Mr. White moved a resolution of thanks to Burr “for the impartiality, integrity, and ability with which he had presided in Senate, and their unqualified approbation of his conduct in that capacity. It passed unanimously.”<sup>15</sup>

Several weeks before, in anticipation, Senator Smith of New York had moved a bill to grant Burr the franking privilege for life. It had never been given previously to any retiring Vice-President. After some debate, the measure passed by a vote of 18 to 13, every Republican voting *yea* and some of the Federalists, including the critical John Quincy Adams. But the House did not approve of their colleagues’ action. On March 1, 1805, it buried the bill in the Committee of the Whole from which it was never to emerge.<sup>16</sup>

#### 4. L’Envoi

The door of the Senate had closed on Aaron Burr with abrupt finality. He was an outsider, a stranger now in the scenes of public life. Plumer, personally resentful because of Hamilton, was moved to reflection and analysis. “This man, but for his vices, might have held the first office in the gift of the Nation,” he wrote his son. “He certainly is an able man — he is ambitious — But he is fallen & I much doubt if he can ever rise again . . . I saw him after he was no longer in office. And my pity involuntarily was excited in his favor. He appeared dejected, gloomy, forsaken by all parties. Mr. Jefferson owes the presidency to the conduct of Mr. Burr. Mr.

Jefferson is in power, but he will not give Mr. Burr any office. Governor of the Territory of Orleans, or Attorney Genl of the United States, either of them, would have been acceptable. But these are given to men of far less talents than Burr. Mr. Jefferson appears to afford no countenance to the man who served him so effectually. The reasons for this, 1st it would be unpopular; 2nd jealousy of his talents, & 3rd fear that if Burr had the means he would injure him.”<sup>17</sup>

Bankrupt in fortune, with two indictments suspended over his head, his creditors waiting with writs of execution and body attachments, unable to return to New York to resume his law practice, homeless and adrift in Washington, execrated by most Federalists, feared and suspected by all Republicans, small wonder that the great frontiers of the nation beckoned now with irresistible force. Fortune, fame, power — all shimmered over the farther reaches of the continent like a mirage. Aaron Burr, aged forty-nine, was ready to slough off the old life and pioneer the new.