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Aaron Burr—Patriot, Opportunist or Scoundrel?

BY ALBERT E. SHERLOCK*

Not at least since the time of the Whiskey Rebellion, until July of this year, has an American been convicted of treason. But the recent conviction of German-born Max Stephan of the highest crime in the land causes us to reflect on some of the incidents leading up to a more famous charge of the same crime—the indictment and trial of Aaron Burr.

The trial occurred in Richmond, "a pleasure-loving place, famous for its conviviality—when the legislature was in session, a five-gallon of toddy stood ready for all comers every afternoon at the governor's house—for its horse races, and its beautiful women; exactly the place to appreciate the address, the wit, the accomplishments, of a man like Burr."¹ Against this background moved such figures as Thomas Jefferson, John Marshall, General James Wilkinson, Andrew Jackson, Theodosia Burr, Henry Clay, Harmon Blennerhassett, Benedict Arnold and John Wickham.

The curtain rises on the scene set in western New York prior to the Revolutionary War. Indian legend is so deep-rooted, so interwoven and entwined, it is inseparable from early American history, so the Indians, those contemporaries who have seen everything and remember everything, are the first actors appearing in this strange drama, and with a sort of muttering nursery rhyme they tell of the bestowal of gifts of land:

"Hundreds of years ago Ta-oun-ya-wat-haw, the alleged Indian deity, presided over all the streams and fisheries. He visited the earth to clear up the streams and pointed to the best fishing and hunting grounds in an effort to bestow gifts upon his people."²

As he crossed Lake Ontario near Oswego, New York, Ta-oun-ya-wat-haw disclosed to his people the object of his mission. He then instructed the hunters and his children of his visits to all the lesser lakes and made full provision for the sustenance of Hiawatha, to whom is credited the formation of the first Indian Confederacy, comprising five separate nations: the Mohawks, Oneidas, Onondagas, Cayugas and Senecas. Hiawatha then addressed those five tribes and assigned to them their particular duties: "You, the Mohawks, sitting under the shadow of 'the green tree' whose roots sink deep into the earth, and whose

*Of the Denver Bar. Condensed and reprinted by permission from WESTERN SPORTSMAN.

¹18 MCCLURE'S MAGAZINE (March, 1902), 404-413.

²HISTORY OF CAYUGA COUNTY (N. Y., 1789), 11.

branches spread over a vast country, shall be the first nation, because you are warlike and mighty."³

Thus the ancestors of Nicholas Kaghnatohon formed the first Indian Confederacy. Nicholas Kaghnatohon, a famous descendant of those five nations, was commissioned a lieutenant in the Army of the United States June 5, 1779.⁴ He figures in our story as the first owner of lands later acquired by Burr.

Aaron Burr was born in Newark, New Jersey, in 1756. To his father, who was the second president of Princeton University, great credit is given for the development of that famed institution of learning. Orphaned at an early age, Aaron was launched on a life of adventure.

Adventure frequently starts with running away from home, and this Aaron Burr did. Orphanhood to him was a release from the initial responsibility of life, parents; it had its advantages and he soon, after graduating from Princeton at 16, let himself be adopted by the Revolutionary War, romance, politics, chicanery, and New York City. One-third of all criminals are nothing but failed adventurers and so it was with Aaron Burr, Alexander Hamilton, and James Wilkinson. They usually get a stiffer sentence than those others, the imbeciles and the hungry.

No one can say that Napoleon, Caesar, Alexander the Great, or Aaron Burr, before any fair court would be worse men than Wild Bill Hickok, Jesse James or Pretty Boy Floyd. Since the beginning of history we have tried to understand, to "digest" them; their faults are not mudspots but structural outcroppings.

Aaron Burr was an officer in the Revolutionary War and served with a remarkable record. "Burr, Aaron (N. Y.). Served as a volunteer in the Canadian campaign and at Quebec in 1775; aide-de-camp to General Putnam, 22d June, 1776, to January, 1777; lieutenant-colonel of Malcolm's Continental Regiment, 4th January, 1777; resigned 3rd March, 1779; third Vice President of the United States, 4th March, 1801, to 4th March, 1805."⁵

Benedict Arnold, American general, and commonly known as "The Traitor," was born in Norway, Connecticut, January 14, 1741. He was a member of a leading Rhode Island family and noted as a powerful athlete; volunteered immediately after the Battle of Lexington and had charge of the expedition against Quebec of which both Aaron Burr and James Wilkinson were officers; later, becoming disgruntled with the Continental Congress, Arnold turned traitor to his country in September, 1781; was ordered to raid New London, Connecticut, representing

³Ibid., 13.

⁴52 NEW YORK COLONIAL MANUSCRIPTS, 53.

⁵Letter from the Adjutant General's Office to the writer dated October 4, 1940.

the British, and destroyed large quantities of stores. He left America, was in the employ of the British Government, and died in London June 14, 1801. His name is invariably coupled with that of Aaron Burr.⁶

Later, in politics, Burr became, by appointment, attorney general of the state of New York. As attorney general, he was automatically a member of the New York Land Board. To reward the soldiers for their services in the Revolutionary War, the various colonies passed what was known as military land grants. New York passed such an act April 6, 1790.⁷

This act provided, among other things, for the allotment of certain portions of land in Montgomery County to be known and described as military land grants. It should be recalled at that time Montgomery County comprised the great portion of western New York and since has been divided into some 30-odd counties.

Serving in the Revolutionary War was that other adventurer, Alexander Hamilton, from the West Indies. His history and family genealogy is more or less silhouetted in the early American Republic. Hamilton had one distinct recognition and, should we say, was the only person who enjoyed that distinction? The Constitution of the United States was so framed and amended—Article 2, Section 5—to make it possible for Alexander Hamilton to become President of the United States.

He received recognition in the West Indies, where he was born; his description of a hurricane in the island was so masterly in its detail the natives recognized the ability of the youth who was later and often referred to by John Adams as the illegitimate "brat of a Scotch peddler." Hamilton, after being graduated from Kings College, now Columbia University, joined the Continental Army of 1776. In the pursuit of his duties he met and later married the daughter of General Philip Schuyler, December 14, 1780. Immediately after marriage, he retired from the army and entered private law practice in New York City, where he and Aaron Burr became outstanding members of the bar and the leaders in their profession.

"Hamilton's weakness for women is evidenced by his adventure with Mrs. Reynolds of Pennsylvania, whose husband accepted \$1,000 to salve his outraged honor."⁸

To Hamilton is credited the following: he was an ardent student; active in the framing of the Constitution; succeeded in keeping his father-in-law, General Schuyler, United States Senator from New York (with one exception, Burr was also Senator for six years); Secretary of the

⁶2 ENCYCLOPEDIA AMERICANA, 313, 314.

⁷8 MILITARY PATENTS, State of New York, 278, Dept. of State.

⁸Creel, *The Brat*, 77 COLLIER'S WEEKLY, 24 *et seq.*

Treasury during Washington's administration; refused the appointment of Chief Justice of the United States Supreme Court; revised Washington's farewell address; quarreled with John Adams; made a secret investigation of Burr's land transactions in western New York in connection with the Holland Land Company, and also the military land grants.

Various charges and counter-charges were hurled by Hamilton against Burr in which Hamilton also had the support of his brother-in-law, John B. Church. Church later publicly charged that Burr had been bribed and this charge led to a harmless duel between Burr and Church."

"Just how the money was laid out we do not know. It was charged on the books as for counsel fees since Cazenove had reported that was to go to those attorneys who were to guide the affair through the legislature. As appears in the accounts kept in Holland the total paid out in this way amounted to \$10,500, not an inconsiderable sum for the day. Of this amount \$3,000 went to the attorney-general of the state, Josiah Ogden Hoffman, \$1,000 to Thomas Morris as reimbursement for fees paid by him, and \$1,000 to Mr. L— who refused to give a receipt and required that his name be kept secret. The rest, \$5,500, went to Aaron Burr. There is still some mystery about this transaction. It is evident that Burr did not receive the money as an outright gift for there still exists in the archives of the company an engagement by Burr for its repayment within two years, he being bound meanwhile in a sum double the amount of the loan. It is easy to see the advantage of the loan to Burr who was then, as often, in financial straits; it is not clear, however, why Burr, who received part of the loan in cash and part in a draft on the company's bankers payable to bearer, should have required that the rest (\$2,050) be paid to one Buckley and one Dayton for Burr's account. It is almost needless to say that Burr did not meet his engagement for the repayment of the loan. The bond was cancelled in the settlement of the contract for Burr's purchase of land from the company."¹⁰

Lieutenant Nicholas Kaghnatohon received a patent from the state of New York to 1,200 acres of land located in what was then known as Montgomery County in Township of Junius under date of February 29, 1791, and recorded in Book 8 of Military Patents at Page 278.¹¹ Kaghnatohon sold his land to a white man, Cornelius Van Syck, who, in turn, sold to Benjamin Walker. Walker sold to Burr. Here is the quaint legal form of 1796, which misspelling the name of the Indian, tells the story:

"This indenture, made this 7th day of October, in the year 1794 between Benjamin Walker, of the city and state of New York, mer-

¹⁰DAVIS, MEMOIRS OF AARON BURR, 418-423.

¹⁰EVANS, THE HOLLAND LAND COMPANY, 212 and 213.

¹¹Supra note 7.

chant, and Mary, his wife, of the first, and Aaron Burr of the same place, Counsellor at Law, Esquire, of the second part, witnesseth that the said Benjamin Walker and Mary, his wife, do hereby acknowledge, have and each of them have granted, bargained, and sold, aliened in the effect and confirmed and by these presents do grant, bargain, and sell aliene in effect and confirm unto thè said Aaron Burr who said and assigns all those nine certain tracts or lots of land following to wit: All that certain tract of land situated lined, and being in the county of Onondaga, late County of Montgomery. . . .

“And also that other certain tract of land situate in the County aforesaid in the township of Junius aforesaid distinguished on the map aforesaid, by Lot No. 76 containing 450 acres which said to last mentioned tract of land of 450 acres each were granted by the people aforesaid to a certain Nicholas Kagnaston, an Indian, his heirs and assigns by their letters patent and by the said Nicholas, bargained and sold to Cornelius Van Syck, his heirs, and assigns and by the said Cornelius bargained and sold to the said Benjamin Walker, his heirs, and assigns. . . .

“And the said Benjamin Walkers, for himself, his heirs, executors, and administrators doth hereby covenant promise and agree to, and the said Aaron Burr, his heirs, and assigns in manner and form following, that is to say that he, the said Benjamin Walker at the time of and sealing and delivery of these presents is lawfully and rightfully seized in his own right of a good, sure, and perfect absolute and indefeasible estate of inheritance of and in, all and singular the said several tracts of land premises above mentioned subject nevertheless to the conditions, exceptions, and reservations herein before mentioned. . . .

“In the witness whereof the parties to these presents hereunto interchangeably set their hands and seals the day and year first above written.

BEN WALKER (L.S)
 MARY WALKER (L.S)

“Recorded the 22nd day of March, 1796, at 7 o'clock A.M. Glen Cuyler, Deputy Clerk.”¹²

The acquisition by Burr of this land, which formerly belonged to the widely known Indian lieutenant, eventually fed fuel to the fire blazing between Burr and Hamilton, more particularly when Burr defeated General Philip Schuyler for the appointment of United States Senator from New York. Schuyler at that time was Hamilton's father-in-law.

Hamilton and Burr, jealous of each other's political ambitions.

¹²Book 2 of Seneca County Deeds.

were continually trying, and did expose and reveal political, financial and romantic skeletons in the other's closet. Hamilton was closer to Washington than Burr and successfully used his friendship in stopping appointments of both Burr and Burr's friends.

In the presidential election of 1800, Burr and Thomas Jefferson, "the Sage of Monticello," received the same number of electoral votes, 73. This strange coincidence of political intrigue threw the presidential election into the national House of Representatives. Newspaper headlines of the day screamed various alleged political scandals surrounding each candidate.

Burr's connection with Benedict Arnold, and his purchases of military land grants in western New York echoed and re-echoed through the Senate Chamber, and after many days of debate, Jefferson was elected President by the House of Representatives and Burr Vice President.

From 1801 to 1805, Burr as Vice President of the United States, was presiding officer of the United States Senate. Of all the men to reach the Vice Presidency of the United States, with one exception (Jefferson), he was the most fascinating and brilliant, and discharged the onerous duties of that exalted station—as, indeed, he did those of every position he ever held—with grace, tact, and signal ability. He used his office as a theater peculiarly adapted to the display of his shining talents. Notwithstanding the odium which clustered about his name, the traditions of the Senate still rank him foremost among its presiding officers.

Far better for him and those who loved him, had he died while president of the most august body on earth. Later came the evil days which rank his name indissolubly with Judas Iscariot and Benedict Arnold.

Historians agree that Burr needed but one thing to make him one of the most resplendent figures in America—a moral sense. Aaron Burr was lavishly endowed by nature in the most prodigal of her moods but she held from him the most precious of gifts, a pure and honest heart. Instead, she placed in his bosom, a "gift" which, in the language of Holy Writ, was "deceitful before all things and desperately wicked," or as the law books say, "regardless of social duty and fatally bent on mischief." To fill a long-felt want, the lawyers have invented the phrase "moral insanity." Morally, he was totally color-blind.

The fashion is and has been to prate much of Hamilton's virtue, honesty, patriotism and morality. They are supposed to represent his contest with Burr as a warfare between good and evil, between the powers of light and the powers of darkness. In the final analysis, the plain, sober, unvarnished truth is that Hamilton was just about as bad

as Burr, and the difference between them was only the inappreciable difference between tweedledum and tweedledee.

Some historians and other authorities who have a thorough knowledge of the social, military and political background of both those gentlemen phrase it: "In fact, Aaron Burr rendered inestimable service to Hamilton's fame by killing him."

During the four years in the Senate, with treaties made, resolutions adopted, ministers of foreign powers received, demands by Napoleon—the bankrupt in need of money—the Louisiana Purchase, Burr visualized an empire in that great southwest. The dreams of this empire were increased by the love of his only child, Theodosia Burr, and on her he lavished everything.

In 1804, while Vice President of the United States and presiding officer of the Senate, he was defeated for the governorship of New York. Hamilton, as always, vigorously opposed him. As one who differs politically from another, Hamilton continually harassed Burr in his craving for relief and racked him intermittently, as thirst racks a wanderer in the desert. This was the climax which led to the duel between Burr and Hamilton at Weehawken, New Jersey, July 11, 1804. According to their own stories, and from their record, they were both as honest as the next man and ready to prove it any morning at ten paces.

"Duelling continued for more than half a century. Many of the most eminent Americans, such as Clay, Randolph, Jackson, and Benton fought 'on the field of honor'. In 1820 a resolution against duelling was offered in the United States Senate by Senator Morrill of New Hampshire and was laid on the table."¹⁸

What effect that famous shot that killed Hamilton on that July morning, 1804, had upon American history has been a matter of historical, political, and military speculation. At the time, both were leading members of the legal profession in New York and both enjoyed their first choice, adventure. At the beginning of most careers stands an adventure, and often its nature has had influences on the state, on institutions, and civilization. The adventurer may be summed up as society's benefactor, as well as its pest.

In March, 1805, Burr retired from the Vice Presidency with the accusation of murderer ringing in his ears, and set out for the west for new adventure. As Vice President he had made many friends, including Henry Clay, John Marshall, Harmon Blennerhasset, John Wickman, and Andrew Jackson, that gentle savage, known to us as "Old Hickory" and "An Epic in Homespun." Burr had dreams of an empire beyond the Gulf of Mexico and advocated the invasion of Mexico. (This the

¹⁸ANNALS 16TH CONGRESS, FIRST SESSION, 630-636.

United States later did.) May 2, 1805, with money borrowed from friends, Burr sailed down the Ohio River, all smiles and good nature as are men when embarking upon adventure that offers them certain success and possible fame, and stopped at the island home of Harmon Blennerhassett.

This gentleman from the Emerald Isle came to America in 1796 with considerable wealth. There have been rumors that he married his niece, Margaret Agnew, whose father was lieutenant governor of the Isle of Man. In 1805, Blennerhassett was approximately 40 years of age, eccentric, a mediocre musician, astronomer, chemist and once a lawyer and dabbler, and a fatuous windbag. As an adventurer, he ended as a nervous, prating, banal financier.

The conversations and statements of Aaron Burr to Harmon Blennerhassett and his wife from Ireland fell on very receptive and fertile ears. The Blennerhassetts figured it a patriotic duty to entertain the former Vice President of the United States and readily financed Burr's enterprises in the southwest.

In his journey to the southwest, Burr was entertained by various political celebrities. In Kentucky he was arrested and charged with treason. He was defended by that tall, redheaded, prominent statesman, Henry Clay, who appeared as Burr's counsel without fee, and his friends made a hero of the defendant. This was Clay's initial step in the national arena; he later, for years, represented Kentucky in Congress and was senator from that state when death came in Washington, June 29, 1852. He was a member of the Peace Commission that signed the Treaty of Ghent at the close of the War of 1812.

Burr, after his release from the Kentucky authorities, journeyed southward where he was entertained by Andrew Jackson en route to New Orleans, where was stationed General James Wilkinson, at that time in a receptive mood for any endeavor or adventure that might prove of financial benefit to Wilkinson. It was later proved that Wilkinson, a general in the United States army under four presidents, had been a pensioner of the Spanish government while in the service of the United States, and was carried on the Spanish payroll as "Spy No. 13." All that time he was a Spanish citizen and on the payroll of the Spanish King Charles IV. During the formation of the alleged Burr conspiracy Wilkinson carried on a series of personal correspondence with the then Chief Executive, Thomas Jefferson. Burr knew Wilkinson from the expedition to Quebec under Benedict Arnold years before.¹⁴

"Burr's letter to Wilkinson was used by Wilkinson in a fashion to bring his friend and many honest men to the very edge of execution—a

¹⁴35 THE DIAL (August, 1903), 61 to 63, review of Wm. F. McCaleb's *The Aaron Burr Conspiracy*.

fate from which only the fearless and penetrating mind of John Marshall was to save them."¹⁵

Charges and counter-charges appeared in the newspapers. President Jefferson figured Burr was too dangerous to run at large and the hound dogs of prosecution were set loose upon that once gallant officer of the Revolutionary War. He was arrested after his flight from Mississippi somewhere in what is now Alabama and taken to Richmond, Virginia, where he was tried for treason before John Marshall, then Chief Justice of the United States Supreme Court.

From March 26, 1807, until the trial actually opened on Monday, August 3, subsequent to his indictment by a grand jury which charged him with treason, Burr was a prisoner in Richmond. He entered the courtroom on the arm of his son-in-law, Joseph Alston, Governor of South Carolina, and bowed to the wonderful legal battery comprising those appearing for the government of the United States and those who entered their appearance in defense of the former Vice President.

A few high spots of the trial by that celebrated correspondent, Washington Irving, will prove interesting. Richmond, always the scene of much social activity, was teeming with excitement, hotel space was a matter of importance and prices subject to advance without notice. Taverns and bar rooms were doing an enormous business. Andrew Jackson, who had been subpoenaed as a government witness from Tennessee, was spending his time in violent harrangues to the crowd on the State House green, awaiting the arrival of General Wilkinson from New Orleans. Jackson, proclaiming Colonel Burr innocent, denounced Mr. Jefferson's "political persecution." People hardly knew what to make of this fiery, uncouth frontiersman with his hair all over his face and his queue tied in eel skin, but his eloquence was having effect and the government, which had brought Jackson from Tennessee to Richmond to testify, was wishing him back again in Tennessee. As for the jury, they were dismissed early in June for several days so that "they might go home, see their wives, get their clothes washed and flog their negroes."

Burr's appearance before Marshall for trial was an historical event of first importance. The world has rarely seen two men so able, one a judge, the other charged with treason. Almost of the same age, both had been nurtured in the best grade school our country provided—the Revolutionary War.

John Wickman, one of the leading members of the bar of Richmond, was chief of defense counsel. During the trial of Burr and Blennerhassett, using that homespun phrase, "a lot of dirty linen was

¹⁵3 BEVERIDGE'S LIFE OF JOHN MARSHALL, 309.

aired before a jury." When Wilkinson took the witness stand, he stared white-eyed at Burr as a colt might eye a bear-cub. Wilkinson was at times extremely lackadaisical. All the jurymen, however, appeared to have believed him to be a scoundrel and he escaped indictment at the hands of the grand jurymen by a narrow margin of seven to nine.¹⁶

Accusations, innuendoes, and inferences regarding Burr's land transactions in western New York, more particularly the acquisition of certain military tracts were echoed and re-echoed during the trial. However, Burr was acquitted by the jury and after the trial left America to spend several years in Europe.

And so ended America's perhaps most famous trial for treason.

¹⁶ANNALS 10TH CONGRESS, FIRST SESSION, 667.

Tire and Gas Ration Survey

The Colorado Bar Association, as part of a nation-wide effort supervised by the American Bar Association, is undertaking a survey of the lawyers within the state to determine to what extent tire and gasoline rationing would apply to lawyers. Edward L. Wood of Denver, president-elect of the Colorado Bar Association, is in charge of making a survey of Colorado lawyers to determine their attitude upon this question. The American Bar Association's committee on the coordination and direction of the war effort is making a national survey of the picture in an effort to get all-over response to the problems engendered by the tire and gasoline rationing.

After the material has been assembled, the national association will present the data to the Office of Price Administration with a view to securing for the bar and the bench an adequate weighing of their requirements in balance with the needs of other groups in the community. Many lawyers, especially in the western areas, are so dependent upon the use of the automobile in the practice of their profession because of the lack of transportation facilities that curtailment threatens not only their livelihood but their capacity to perform the function which society expects of them. The same argument applies to district judges who have to travel from county seat to county seat within their district to hold court. The problem is an especially serious one in the western area which has a surplus of gasoline and which is more dependent than the east upon the automobile as a means of transportation.

Members of this association who are interested in the problems presented by tire and gasoline rationing should write to Edward L. Wood, University Building, Denver, expressing their views upon this subject.