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CURIOSITIES OF THE LAW

THE MISUNDERSTOOD MR. BURR: HIS DUEL WITH HAMILTON

Fifty years ago anyone attempting to defend Aaron Burr of criminality in his duel with Alexander Hamilton would have aroused immediate and vicious antagonism. It was a settled conviction of all men that Burr was a dastardly murderer, and that his part in the lamentable affair with Hamilton was one of the most atrocious crimes ever committed in this country. People profoundly believed that Burr was thoroughly bad—as Benedict Arnold was bad—and anyone who tried to change that belief was himself either an ignomineux or a perjurer of truth. Few, of course, gave reasons why Burr was wrong and Hamilton right, but reasons were not necessary. The truth was so evident that it needed no philosophic demonstration.

Of late, however, people seem less disposed to condemn a man to eternal ignominy upon the doubtful evidence of legend, and prefer to study for themselves the reliable documents of our early national life, so that they may decide with a greater probability of being correct, whether Burr really was so base as he has been depicted. And the consensus of modern opinion seems to be that he was not; Wandell, Minnigerode, Jenkinson and Beveridge agreed that Burr was not the murderer of Hamilton, and that according to the ethics of that period, the former's challenge was the inevitable consequence of a persecution both merciless and unjustified.

The lives of Aaron Burr and Alexander Hamilton ran in parallel paths. Both men had served in the Revolutionary Army, and each had retired with distinction. After their service in the Army was no longer necessary, both began the practice of law in New York City, where they rapidly became recognized as the most brilliant lawyers of the city, and perhaps of the State. All during the period of their practice the most cordial relations prevailed between them, and each frequently dined at the home of the other. It was not until 1791 that the enmity began. In that year Burr, without

any knowledge on his part, and then only thirty-six years old, was chosen United States Senator by the legislature, instead of Philip Schuyler, the only announced candidate, and the father-in-law of Hamilton. The election of Burr was considered a deliberate personal affront by Hamilton, and then and there resolved to thwart all further political advances of his rival. The following year the determined Secretary of the Treasury prevented Burr from being elected governor of New York. Later, when Burr was still in the Senate he was being considered seriously for the French Mission, but Hamilton soon aroused opposition sufficient to make the appointment impossible. And in 1801, when it developed that Burr and Jefferson had received an equal number of electoral votes for the Presidency, the vigilant Hamilton once more savagely opposed the choice of Burr in the House and was instrumental in converting a majority to Jefferson. Hamilton preferred a mere political enemy to a man who had been a personal annoyance for ten years.

All of these sparks finally started a flame. The friction generated by Hamilton became so intense that a fire at last began—a fire not to be quenched until it had destroyed the incendiary, and was suffocated by his own falling body. . . . In 1804 Burr ran for governor of New York, opposed by Clinton, who desired to succeed himself. It was in this campaign that Hamilton voiced the utterance which led to his death. He used every effort in his power to secure the defeat of Burr, and exhorted all of his friends and acquaintances to cast their prestige with Clinton. The campaign was venomous; Hamilton went from one place to another, and frequently addressed the same audiences who a few minutes before had heard Burr. At times the two men met; when they did, they politely bowed, and Burr did not for some time suspect that the opposition of Hamilton was anything but political. And many things are permitted in practical politics which would not be tolerated anywhere else.

One day, however, Burr noticed in a newspaper a letter written by one Charles D. Cooper. In this letter Cooper reported a conversation with Hamilton, in the course of which Hamilton had publicly professed a despicable opinion of Burr, admitting in the same breath that he (Hamilton) had previously uttered an opinion even more despicable. Burr's patience was at an end; there is a limit even to political utterances. He sent Hamilton a note, calling his

attention to the objectionable phrase and asked him whether or not he had publicly voiced a "despicable opinion" of Burr. Hamilton refused either to affirm or deny, and remonstrated with his questioner (by correspondence) for quibbling over a single word. Burr was not satisfied with the evasion, and demanded a categorical answer. When it was finally evident that a retraction was not forthcoming, Burr challenged his defamer to a duel. Hamilton accepted the challenge, and met Aaron Burr on the "field of honor" at Weehawken, on the New Jersey shore, at seven o'clock on Wednesday morning, July 11, 1804. Each principal had a second, and these agreed upon the formalities to be observed. The opponents stepped to a distance of ten paces, loaded their pistols in the presence of each other and of the seconds, and were to fire after one of the onlookers had said "present". The word was uttered, and each man fired in succession. The fire of Colonel Burr took effect, and General Hamilton fell to the ground. After advancing to the fallen man with an expression that appeared to Hamilton's friend to be one of regret, Burr withdrew and left the field. Hamilton died the next day at two o'clock, and was buried with military honors on Saturday, the fourteenth of July.

Hamilton's second signed a document testifying to the above facts, but insisted that Hamilton's shot was fired into the air, and that he had never intended to kill his opponent, or even wound him. The inference the friend wished to have drawn from this was that only one of the parties wished to fight to the death, that Hamilton was the only one whose life was threatened, that he had no ambition to save himself, and that since he was at the mercy of his opponent, Burr was therefore a murderer. But the conclusion was strained, and is not at all logical. Burr went into the duel firmly believing that all the rules were to be observed, and that Hamilton was bent on killing his antagonist. Burr could not know that Hamilton did not seek a mortal wound, and entered the duel upon the reasonable assumption that one of the principals must fall. So far as Burr knew, either Hamilton or himself must die. To all external evidence Burr was taking a chance as much as Hamilton was. Burr could not be held to have had a knowledge of Hamilton's secret and belated resolution.

To judge Aaron Burr fairly, it is necessary to recall the violence of all of Hamilton's methods. Hamilton did not have the faculty