

# Burr, Hamilton and the Manhattan Company: Part I: Gaining the Charter

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## BURR, HAMILTON AND THE MANHATTAN COMPANY

### PART I: GAINING THE CHARTER

WHEN Aaron Burr completed his term as United States Senator in 1797, he was an established political leader of national stature among the Republicans (Democrats), who had given him second place on their electoral ticket in the presidential contest of 1796. Blocked by the Federalists from further appointive or elective office in the federal government, after the election of John Adams over Jefferson, Burr turned, with no visible loss of pride or of position in his party, to the relative obscurity of the New York State Legislature. The rôle of assemblyman from New York City had much to commend it as the base of Burr's political operations. Nowhere was partisan activity more lively than in New York City, a Federalist stronghold which had been shaken in the state election of 1797 by the victory of several Republicans, including Burr.<sup>1</sup> If the Republicans were to win in 1800, New York State must move into the Republican column, and New York City must be weaned from its habit of voting Federalist. To these ends, Burr now devoted himself, holding the national objective firmly in view, but also lavishing painstaking attention on local issues.<sup>2</sup>

It was the contention of Republicans that the two banks in Manhattan, the state-chartered Bank of New York and the branch of the federally chartered Bank of the United States, were owned and directed by ardent Federalists, and, as a contemporary Republican pamphleteer, James Cheetham, later described the situation:

The benefit of those institutions was chiefly confined to the adherents of one political sect . . . . Such as were active, or had rendered themselves obnoxious in political pursuits, were certain to be excluded from favour; and it became at

<sup>1</sup> Hammond, J. D., *The History of Political Parties in the State of New York* (Buffalo, 1850), I, 324-25.

<sup>2</sup> Schachner, N., *Aaron Burr* (New York, 1937), p. 145; Myers, G., *The History of Tammany Hall* (New York, 1917), pp. 12-14.

length impossible for men engaged in trade to advocate republican sentiments, without sustaining material injury . . . . As the rage and violence of party increased, Directors became more rigorous in enforcing their system of exclusion . . . . Every man acquainted with the political state of the Southern district, must have been sensible of the pernicious effects of Banking institutions upon the freedom of elections, while they were confined within the hands of a single party.<sup>3</sup>

Purely political discrimination against applicants for bank services, while difficult to prove, was entirely in keeping with the spirit of the times and the vagueness of the line demarcating business from politics.<sup>4</sup> Yet the Republicans could hardly have claimed that the threatened reprisals by the Federalist banks caused them the loss of any vast number of votes, since the clientele of those banks was normally so exclusive, socially and commercially, that even the bulk of Federalist voters would not have qualified for bank services.<sup>5</sup>

Whatever the effects of bank policy on the Republican totals in the ballot boxes had actually been, the impact on Burr's strategy was deep and forceful. If the Republicans had in their hands such a financial weapon as the banks possessed, what power would be added to their campaigns! They could give loans and discounts to good Republicans, attract wavering Federalists to their side, and even assist the propertyless man to qualify as a voter.<sup>6</sup> Furthermore, Burr, a perpetual and hard-pressed debtor, was not unaware of the value of a new source of credit to support his lavish style of living and entertainment.<sup>7</sup>

The utility of a Republican financial agency was far more obvious than the means of its establishment. A chartered bank would offer the most direct competition to the Federalists and would be eminently respectable and financially po-

<sup>3</sup> Politicus (James Cheetham), *An Impartial Enquiry into Certain Parts of the Conduct of Governor Lewis . . . Particularly in Relation to the Merchants' Bank* (New York, 1806), pp. 8-9. See, also, *idem*, *Remarks on the "Merchants' Bank"* (New York, 1804), pp. 33-34; *New York Journal*, May 1, 1799; *American Citizen*, April 28, 1800.

<sup>4</sup> Channing, E., *A History of the United States* (New York, 1920), IV, 114-15.

<sup>5</sup> Hammond, B., "Long and Short Term Credit in Early American Banking", *Quarterly Journal of Economics*, XLIX, 82.

<sup>6</sup> Cf. Myers, *op. cit.*, pp. 15-16; Schachner, *op. cit.*, p. 175.

<sup>7</sup> Schachner, *op. cit.*, pp. 123-26.



tent. But a new chartered bank was virtually unattainable at the time, especially if it was promoted by Republicans. Business corporations were less than a decade old in New York, and up to 1799 only a dozen charters had been granted, each by a special act of the state legislature which weighed the public necessity and benefit of the proposed incorporation.<sup>8</sup> It was Republican dogma to be wary of an increase in business corporations which symbolized, as they had for a long time in England, monopoly power, speculative profit seeking, and moneyed influence.<sup>9</sup> No type of corporation was more suspect than a bank. While the fear of banks fed upon misconceptions and ignorance of the nature of banking functions and an exaggeration of their economic influence, the antagonism was also firmly rooted in the concern of an agricultural people, ineligible for a bank's short-term loans, over the possible diversion of loan capital, by way of banks, from farmers to merchants at the seaport centers.<sup>10</sup> As a matter of principle, some men argued that banks, which were seen chiefly as note-issuing agencies, were a usurpation of governmental powers. The view gained strength, in theory if not in practice, when the Federal Constitution banned the issue of bills of credit by the states.<sup>11</sup>

When the first commercial bank was organized in New York City in 1784 and sought incorporation, its directors, among them Alexander Hamilton, found themselves contending not only against agrarian fear of all corporations in new fields, but also against upstate, debtor clamors for a state

<sup>8</sup> Davis, J. S., *Essays in the Earlier History of American Corporations* (Cambridge, 1917), II, 22-23.

<sup>9</sup> Redford, A., *The Economic History of England* (London, 1934), pp. 166-67.

<sup>10</sup> Miller, H. E., *Banking Theories in the United States Before 1860* (Cambridge, 1927), pp. 3-4, 11-14; Mints, L. W., *A History of Banking Theory in Great Britain and the United States* (Chicago, 1945), pp. 64-67; Redlich, F., *The Molding of American Banking: Men and Ideas, 1781-1840* (New York, 1951), p. 9; Sparks, E. S., *History and Theory of Agricultural Credit in the United States* (New York, 1932), p. 8.

<sup>11</sup> As late as 1829, Governor Martin Van Buren considered seriously the possibility of establishing a state bank to replace the numerous private banks. (*New York, Messages from the Governors* [Albany, 1909], III, 239 *et seq.*) For earlier statements of the agrarian position on private vs. state banks, see John Taylor of Virginia, quoted in Justinian (Thomas Law), *Remarks on the Report of the Secretary of Treasury* (Wilmington, 1820), p. 38, and *Path to Riches*, an influential 1792 pamphlet written by the Attorney-General of Massachusetts, James Sullivan.



issue of bills of credit, as well as a rival proposal for a private land bank. The idea of a land bank was crushed quickly, as had been the land bank rival to the Bank of England a century earlier.<sup>12</sup> But the paper-money advocates secured an issue of bills of credit in 1786, while the Bank of New York suspended its efforts to secure a charter after two rejections.<sup>13</sup> When the legislature finally granted the Bank of New York a charter in 1791, it was moved more by a states'-rights desire to offset the influence of the newly created Bank of the United States than by a breach in the opposition to chartered banks.<sup>14</sup> Nor did the creation of one bank ease the way for successors. The upshot of a speculative bank mania in 1792 was the failure of any of several projected banks to secure a charter, the passage of an act to use part of the state treasury's funds for loans to citizen-farmers, and a law, reminiscent of that which followed the South Sea Bubble in England, "to prevent the pernicious practice of stock-jobbing."<sup>15</sup> Since that time, only two banks had won charters, both outside New York City.

Burr had every reason to believe, as did Judge Hammond, a participant in and the historian of early New York politics, that a new bank proposal would fare poorly, "inasmuch as a majority of both houses of the legislature were federal; and even the republican part of the members were so jealous of the corrupt influence of moneyed institutions that few of them would consent to charter a bank in a city which already was furnished with one institution."<sup>16</sup> In the Republican view, more banks meant a multiplication of insidious monop-

<sup>12</sup> Clapham, J., *A Concise Economic History of Britain* (Cambridge, 1951), p. 273; Spaulding, E. W., *New York in the Critical Period* (New York, 1932), pp. 144, 152. The New York situation was closely paralleled in Pennsylvania at this time; though, in the latter state, the chief issue was the revocation of the charter of the Bank of North America.

<sup>13</sup> Spaulding, *op. cit.*, pp. 148-49; Domett, H. W., *A History of the Bank of New York* (New York, 1884), pp. 4-7, 29-31.

<sup>14</sup> Kent, W., *Memoirs and Letters of James Kent* (Boston, 1898), pp. 41-42; James Watson to Jeremiah Wadsworth, July 16, 1790, Wadsworth Correspondence, cited by R. A. East, *Business Enterprise in the American Revolutionary Era* (New York, 1938), p. 297n.

<sup>15</sup> Davis, *op. cit.*, II, 90; Shannon, H. A., "The Coming of General Limited Liability", *Economic History*, vol. II.

<sup>16</sup> Hammond, J. D., *op. cit.*, I, 324-25.

olies. Federalists, on the other hand, feared that more than one bank in a city would be ruinous to the business of each through unbridled competition and insufficient specie holdings.

Nor could Burr's sponsorship of a bank be calculated to enhance his political standing among Republicans of the rank and file who were not sophisticated enough to see that opposition to banks in general might be pursued by means of the creation of one's own captive bank. Burr also lacked the financial stature and commercial interests expected of a bank director, a post he must occupy if he were to remain in political command.

Even if these objections to a banking corporation had not been weighty, Burr would have had to reckon with the resistance of the entrenched banks. The Bank of New York enjoyed a regional monopoly, sanctioned by practice if not by law and limited only by a division of business with the branch of the Bank of the United States. A recent, intimate association with the finances of the state government gave added status to the Bank of New York, whose directors were in a position to influence the Federalist members of the legislature.<sup>17</sup> Burr might have avoided the conflict with the established banks by creating a private bank which required no act of the legislature, since banking was then open to all as a common-law occupation. Yet, a private bank offered no great advantage over a chartered institution and it had several added drawbacks of its own.

Barred from a straightforward approach to the establishment of a Republican financial institution, Burr had resort to more devious means. Would he have made a water company his gambit if his brother-in-law, Dr. Joseph Browne, had not been independently interested in New York City's water supply?<sup>18</sup> The answer is speculative, but, beyond a doubt, a water company was an excellent choice for Burr's purpose. No one could question the deep need of the burgeoning town for a vastly increased flow of water not only for

<sup>17</sup> Davis, *op. cit.*, II, 46, 81-90; Hammond, B., "Free Banks and Corporations", *Journal of Political Economy*, XLIV, 186; Redlich, F., "Bank Administration, 1780-1914", *Journal of Economic History*, XII, 443.

<sup>18</sup> Dr. Browne had submitted a water proposal to New York City in 1797. Blake, N. M., *Water for the Cities* (Syracuse, 1956), p. 45.



drinking and washing, but for fire-fighting and street sanitation. Some theories of the origin of yellow fever epidemics, one of which scourged New York in the summer of 1798, stressed the impure drinking water and the decaying wastes in the unwashed streets.<sup>19</sup> A water company would be welcomed by the citizens and should encounter no difficulties in obtaining a charter from the legislature.

Of course, a pure and simple water company would hardly provide the Republicans with a source of financial power; more likely, it would be constantly in debt and would have to look to the state government for loans, grants or stock subscriptions, or the right to raise money by a public lottery, as most privately operated public utilities were doing. Burr, displaying great legal acumen and an ability to surmount the prejudices and preconceptions about corporations under which most of his contemporaries labored, secretly devised an added dimension to the water company which he proceeded to promote as though it were nothing but a public service.<sup>20</sup>

## I

The opening shot in Burr's campaign was fired by his brother-in-law, Dr. Joseph Browne, a physician with engineering interests, who submitted an elaborate Memoir on the water situation to the Common Council of the City of New York in July 1798. After expounding its author's theory of the cause of yellow fever, the need for a plentiful water supply, the inadequacy of water sources on Manhattan, and a method of drawing water from the Bronx River, the Memoir proposed that a private water corporation, capitalized at \$200,000, be chartered by the legislature and authorized to implement Dr. Browne's recommendations.<sup>21</sup> Burr's name appeared nowhere in the document, but subsequent events suggest that he had assisted in its concoction.

<sup>19</sup> *Ibid.*, ch. i, pp. 44-45.

<sup>20</sup> Davis, M. L., *Memoirs of Aaron Burr* (New York, 1837), I, 413.

<sup>21</sup> *Proceedings of the Corporation of New York to Supply the City with Pure and Wholesome Water with A Memoir of Joseph Browne, M.D.* (New York, 1799). Dr. Browne anticipated that the stockholders would receive a return of 13 per cent on their investment from the compulsory and voluntary water charges to be imposed by the company. Such optimism was common to promoters of ventures likely to be barely profitable, or debt-ridden.

A special committee of the Common Council reviewed all of the water supply proposals which had been submitted to the city and made its report toward the end of 1798, while the memory of the past summer's devastating epidemic was still fresh and rumors circulated that New York's rival, Philadelphia, was to embark on a municipal water project. Although much of Dr. Browne's technical plan was approved, the committee rejected the idea that a private company should be entrusted with the city's water supply, since private enterprise would not be interested in the project "unless upon the Prospect of considerable Gain; and that such Gain must be acquired at the Expence of the City."<sup>22</sup> Instead, the committee proposed city-owned water works, and the Common Council, accepting this report, voted to seek from the state legislature the necessary legal authority and financial support.<sup>23</sup>

Whatever chagrin Burr felt at this turn of events was allayed by the fact that the Common Council's petition to the legislature, in the normal routine, would be referred to the committee of the thirteen assemblymen who represented the city and county of New York, among whom Burr was a leader.<sup>24</sup> The vigor with which Burr sought to discredit the Common Council's plan for municipal water works and his bluff circumvention of his opponents by the interception of letters or the omission of members from meetings, as was later charged in Federalist campaign material, gave evidence of his prior commitment to the establishment of a private water company.<sup>25</sup> But some of the representatives from New York City were reluctant to override the expressed wishes of the Council; this was particularly true of the three assemblymen who were simultaneously members of the Common Council, and who had themselves voted to ask for legislative authority to create a city-owned water supply.<sup>26</sup> Some doubts

<sup>22</sup> *Minutes of the Common Council of the City of New York, 1783-1831* (New York, 1918), pp. 486-87.

<sup>23</sup> *Ibid.*, pp. 486-87, 490.

<sup>24</sup> Twelve of the thirteen were said to be Republicans. M. L. Davis to Albert Gallatin, June 2, 1798, Gallatin Papers, New York Historical Society.

<sup>25</sup> *New York Commercial Advertiser*, May 1, 1799, "The American".

<sup>26</sup> Two of them, Philip Arcularius and Richard Furman, had attended the Council meeting, while the third, Thomas Storm, had been absent. (*Minutes*



were also expressed that the citizens preferred a private company to public enterprise, as Burr claimed.

Meanwhile, another petition from the Common Council concerning the related subject of drainage and sewage projects for the city aroused criticism from Burr, who felt that the Council was inadequate as an administrative agency for a continuing program.<sup>27</sup> Faced with the two proposed bills in dispute, the committee agreed that Burr should return to New York to sound out public opinion and the views of the Common Council on the alternative of a private company; the Assembly voted Burr a ten-days' leave on February 16, 1799.<sup>28</sup>

Burr's New York visit showed him to be a genius at organization and persuasion. His ulterior motives being confided to only a few chosen political associates, Burr's three-pronged strategy featured the creation of a committee of highly placed, representative citizens to approach the Common Council in favor of a private company; the organization of the Manhattan Company as a water-supply corporation, with an outstandingly successful and respectable board of directors, predominantly Republican in sentiment, buttressed by a list of stockholders drawn from the wealth and great names of the city but balanced to permit a voting majority for the Republican side; and, finally, the presentation to the legislature of numerous memorials and petitions advocating the incorporation of a private water company and bearing the signatures of prominent citizens in both political parties.

Burr's committee of six men to approach the Common Council was a masterpiece of political influence, which was little diminished by the claim that the men appeared as pri-

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of the *Common Council*, II, 486; New York Civil List, 1777-1855.) Elias Nexsen was also mentioned as opposing Burr's plan in the Assembly Committee. *New York Gazette and General Advertiser*, May 1, 1799, "A Citizen"; *New York Commercial Advertiser*, May 23, 1799, "Socrates".

<sup>27</sup> *Minutes of the Common Council*, II, 494-99, 500-8.

<sup>28</sup> *Assembly Journal* (New York), 1799, p. 123; Burr had known as early as February 11 that he was to leave the Assembly session and return to New York City. *Correspondence of Aaron Burr and His Daughter Theodosia*, edited by M. Van Doren (New York, 1929), pp. 49-50; *New York Commercial Advertiser*, May 1, 1799, "The American".

vate individuals.<sup>29</sup> The three Federalists were Alexander Hamilton, the outstanding political leader in the state if not the nation and now a Major-General in the Army, John Murray, president of the Chamber of Commerce, and Gulian Verplanck, president of the Bank of New York.<sup>30</sup> In addition to Burr, the only member of the legislature among the six, the other Republicans were John Broome, an eminent merchant, president of an insurance corporation, war hero, framer of the state constitution, former president of the Chamber of Commerce and holder of many municipal offices, and Peter H. Wendover, president of the Mechanics Society and soon to be Sachem of Tammany Hall.<sup>31</sup>

How did Aaron Burr convince leaders of the political opposition that they should appeal to a Federalist Common Council to reverse itself? As a personal ambassador to the Federalist camp, he was unmatched. His family background, education, military service, legal talents, and social grace opened the doors of Federalists of highest rank; Hamilton and Burr, though type-cast in history as the archenemies shortly doomed to fatal combat, were socially on good terms and served jointly in legal cases at this time and later.<sup>32</sup> Burr's moderate position on political issues and his rejection of party "regularity", on occasion, led some Federalists, not under Hamilton's influence, to seek him out as a candidate for their own party, and Burr was not known for his shocked rejection of such overtures.<sup>33</sup> His political tractability was not an asset in dealing with Hamilton and his close associates, however. Hamilton profoundly distrusted Burr's po-

<sup>29</sup> Hamilton to R. Varick, February 26, 1799, *Minutes of the Common Council*, II, 517.

<sup>30</sup> *Ibid.*, II, 514. Verplanck is incorrectly listed as president of the branch of the Bank of the United States.

<sup>31</sup> Alexander, DeA. S., *A Political History of the State of New York* (New York, 1906), I, 180; Scoville, J. (Walter Barrett pseud.), *The Old Merchants of New York* (New York, 1885), III, 97, IV, 208-15; New York Tammany Society, Membership List, List of Officers (Working Copy), Kilroe Collection, Columbia University, p. 211.

<sup>32</sup> Jenkinson, I., *Aaron Burr* (Cleveland, 1902), pp. 24-25, 74-77; Parton, J., *The Life and Times of Aaron Burr* (Boston, 1876), I, 237; Hamilton, A. M., *Intimate Life of Alexander Hamilton* (New York, 1910), pp. 378-79; Hamilton Papers, Library of Congress, Legal papers.

<sup>33</sup> Schachner, *Aaron Burr*, pp. 95, 103-5, 108, 115.



litical beliefs and tactics, and he saw Burr's amiability, attentiveness to others, tact, and lack of rancor, which so disarmed some of his opponents, as a façade behind which lurked a cunning schemer, unprincipled and inordinately ambitious.<sup>34</sup> The water issue must have appeared to Hamilton as a public welfare measure, devoid of political implications and partisan advantage, in order to have overcome his reluctance to be associated with Burr in anything even vaguely tinged with politics.

A personal factor may have influenced Hamilton's decision to help Burr form a private water company. Hamilton's wealthy English brother-in-law, John B. Church, upon returning to America in 1797 as a permanent resident, had become active in the business and financial world. In the past, Hamilton had served as Church's attorney, business agent and adviser, and had continued in these multiple rôles even during his term as Secretary of the Treasury when Hamilton's purchases of United States securities on his relative's behalf had raised questions of financial security and propriety.<sup>35</sup> Now Church had become a director of Burr's new Manhattan Company. He was not quite as public-spirited and respected as the other men selected for directorships, and it is a fair assumption that Church's appointment was arranged by Hamilton. Perhaps Burr had offered the position to Hamilton directly and had agreed to Church as a substitute. Or Church's selection may have been a condition of Hamilton's coöperation. It is even possible that Hamilton's acceptance of a place on Burr's committee of six, a rôle which Hamilton carefully characterized as that of a private citizen, was largely a business service for Church. In any case, it may be questioned whether Hamilton's participation was entirely governed by disinterested public spirit—as Burr's actions clearly were not.

Burr's greatest strength in his campaign to induce Federalists to reject the action of a Common Council dominated

<sup>34</sup> *Ibid.*, pp. 116-19.

<sup>35</sup> Schachner, N., *Alexander Hamilton* (New York, 1946), pp. 342-43, 347; Mitchell, B., *Alexander Hamilton* (New York, 1957), I, 604, n.28; *New York Directory, 1799-1800*; Hamilton Papers, First Series, XXX, 213, 215; Second Series, IX.

by eminent Federalists was the nature of the issue itself. Whether government or private enterprise should provide the "social overhead capital" of economic development—the roads, bridges, canals, banks, schools and public utilities essential to the settlement of the new lands and the added prosperity of older sections—this was the subject of heated debate throughout the state. Private enterprise, as it was then understood, included "mixed corporations" in which governments owned stock and were represented on the directorates, as well as coöperative associations of citizens which today might be regarded as quasi-public or semi-business in character.<sup>36</sup> If these forms be classed as compromise arrangements, it would have bothered few of the men who promoted the early economic development of New York. They had a pragmatic outlook which scorned theoretical niceties.

When the Common Council proposed municipal water works, it was suggesting a novelty, for, thus far, most of the new nation's public services, and all of New York State's, had been provided by private companies, some of which had received substantial financial aid from governments.<sup>37</sup> The Council did not state its preference for public ownership in very strong terms; the report of the Council's Water Committee acknowledged that each method of operation "is attended with Difficulties".<sup>38</sup> It would have come without shock to the Council members to learn that many citizens, particularly Federalists, believed that government enterprise of any kind was usually more costly, dilatory, corrupt and wasteful than private business.<sup>39</sup> Upstate, the disappointment with the state's road construction program was about to spawn a turnpike craze, based on private companies.

<sup>36</sup> Cf. Goodrich, C., "Public Spirit and American Improvements", *Proceedings of the American Philosophical Society*, XCII, 305-9.

<sup>37</sup> Blake, *Water for the Cities*, p. 63; Krout, J. A., and Fox, D. R., *The Completion of Independence* (New York, 1944), p. 23; *New York Commercial Advertiser*, May 11, 1799, citing *The True American*. The legislature authorized Albany to set up municipal water works in 1796, but nothing had come of it. Davis, J. S., *op. cit.*, II, 248.

<sup>38</sup> *Minutes of the Common Council*, II, 486-87.

<sup>39</sup> Adam Smith had made the classic case against governments as spend-thrifts; he also gave guarded approval to joint-stock companies, without exclusive privileges, for such function as "bringing water for the supply of a great city". *The Wealth of Nations*, Modern Library ed. (New York, 1937), pp. 329, 713.



The particular circumstances which prevailed in the New York City government were used with good effect by Burr to buttress general prejudices. Even more than the state government, the New York Common Council was a part-time body, politically oriented and subject to a high rate of turnover in personnel, due to annual elections for all posts and the attractions of other offices. For several years Republicans had expressed dissatisfaction with the quality of the Federalist administration of the city and with the record of the Council in disbursing public funds.<sup>40</sup> The ability of the city government to handle the relatively huge sums involved in a municipal water-supply system might well be doubted in view of the small scale of previous expenditures and the weak administrative and accounting methods in force.<sup>41</sup> The temptation, even to honest men, to mingle public funds with private was potent; the disbursing and accounting methods of all levels of government encouraged it, and the shortage of means of payment in the pioneer society forced essentially honest men into what they hoped were temporary private uses of government funds.<sup>42</sup> Hence there arose a preference for men in government whose wealth and solvency would raise them above the common frailty and would protect the treasury.

There were other handicaps to government enterprise, whether recognized explicitly or not, which account for part of the early prejudice against it, even in fields which today are its exclusive province. If a government were to operate a public utility on a continuing basis, it would need a corps

<sup>40</sup> Pomerantz, S., *New York: An American City* (New York, 1938), p. 120; *New York Gazette and General Advertiser*, May 1, 1799.

<sup>41</sup> Pomerantz, *op. cit.*, pp. 266-71. Total city expenditures about this time were around \$250,000 a fiscal year (*ibid.*, p. 256); Sowers, D. C., *The Financial History of New York State* (New York, 1914), p. 42; Durand, E. D., *The Finances of New York City* (New York, 1898), pp. 28-30.

<sup>42</sup> One such case that escaped public notice because of Alexander Hamilton's intervention concerned the highly respected Josiah Ogden Hoffman, while he was New York's Attorney General. Hamilton persuaded Governor John Jay to give Hofmann time to straighten out his financial affairs. "Tis not merely temporary embarrassment that will justify the removal of an officer of this description", wrote Hamilton to Jay. "Something permanent and unequivocally irretrievable ought to appear as the basis of the procedure." Hamilton to Jay, November 8, 1798; Jay to Hamilton, November 10, 1798, John Jay Papers, Columbia University.

of trained, full-time personnel, selected on the basis of merit rather than political connections, hired with some security of tenure, and paid adequately to discourage side-line occupations, acceptance of bribes or other financial abuses.<sup>43</sup> But the post-Revolutionary emphasis on a weak executive and a strong legislature, as *The Will of the People Incarnate*, discouraged the creation of administrative bodies accountable to the executive. Government service, apart from the few elective positions, was appointive on a political basis, with no semblance of a civil service. To pay low salaries to officials was a matter of principle and economy.<sup>44</sup> Where an appointment was temporary and part-time, as in the case of a commissioner of roads, no compensation was offered. For contrast, there were some sought-after, appointive positions which carried only nominal salaries, but permitted the jobholder to retain for his own personal use all the fees paid by citizens when they were making applications or obtaining licenses or permits.<sup>45</sup>

However difficult the situation was at the state level, it was worse at the local level, and it was particularly conspicuous when the project was within the means of the citizens in their private capacities. In New York City, it was the contrast between the collective wealth of the citizens and the dependent financial condition of the city which made the most telling point against municipal water works. Under the city's charter, a law had to be passed in Albany before a tax could

<sup>43</sup> The state was struggling with this issue twenty years later when the Erie Canal was undertaken. Joseph Ellicott, recommending to De Witt Clinton that full-time superintendents of construction be appointed, a novelty at the time, suggested that their salaries be fixed between \$2,000 and \$3,000 a year, a sum he thought sufficient to keep them from looking for other sources of employment, but not so much as to make the public think they were aggrandizing themselves at public expense. J. Ellicott to De Witt Clinton, April 2, 1818, Clinton Papers, Columbia University, VIII, 27.

<sup>44</sup> Commenting sarcastically on the salary cuts dealt out by the legislature, in 1800, Robert Troup wrote of the comptroller, who was reduced from \$3,000 a year to \$2,500, that it was feared he would "cut a dash & set an example of extravagance that would be injurious to the morals of the community." Troup to Rufus King, December 12, 1799, Rufus King Papers, XLVII, New York Historical Society.

<sup>45</sup> As late as 1836, Justice Sutherland of the New York Supreme Court resigned his seat on the bench to accept the clerkship of his own court, a post which provided considerably more in fees than the judge's salary. Hammond, J. D., *The History of Political Parties in the State of New York*, II, 455.

be levied or a loan raised. Even if taxes were not then regarded as worse than death, rather than of comparable inevitability, it was doubtful that the state would authorize a sufficiently large new tax, since its own tax receipts from New York City would be affected.<sup>46</sup> However, the Common Council sought another means of financing the proposed water works. Without making any estimate of the total cost of the project, the Council asked that the duties on sales at auction in New York City, which normally formed a good part of the state's revenues, be turned over to the city for a number of years.<sup>47</sup> If the total cost of the water works were to reach \$1 million, as Burr and his committee held, the burden on the state treasury would be excessive, particularly in view of the normal reluctance of upstate representatives to provide large appropriations for New York City, the new allotments for the encouragement of schools, and abnormal state expenditures on the fortification of New York harbor against an anticipated French attack. That year, for the first time, the state had imposed a general property tax.<sup>48</sup> Hamilton, as a Major-General on special duty, might well have opposed any large-scale financial commitment by the state to municipal water works at this time.

Thus, without going into the virtues or deficiencies of private enterprise, the Federalists approached by Burr could have held a good case against municipal enterprise; and, on grounds of public welfare or private interest, they were ready to support him before the Common Council.<sup>49</sup> The committee of six, headed by Burr, made its first public appearance at the office of Mayor Richard Varick on February 22, 1799. After talking with the group, the Mayor asked that its views be presented in writing, and an unsigned memorandum was delivered to him. When the Mayor reported

<sup>46</sup> The city had for years been permitted to collect less in taxes than it desired. Pomerantz, *op. cit.*, p. 362.

<sup>47</sup> *Minutes of the Common Council*, II, 486-87. A considerable portion of the foreign imports passing through New York harbor were sold by auctioneers, licensed and limited in number. Their profitable business was taxed by the state, in proportion to the value of the goods sold.

<sup>48</sup> Sowers, *op. cit.*, p. 114.

<sup>49</sup> With much the same background, Philadelphians decided on a municipal water supply. For specific differences, see Blake, *op. cit.*, ch. 5.



on his visitors at the next Council meeting, the members asked that the memorandum be signed and the objections to the Council's plan outlined.<sup>50</sup> Burr's next triumph was the bringing forward of the man most likely to persuade the Council, Alexander Hamilton, as the author of the memorandum, which was a digest of the entire committee's views. "I have no objection", wrote Hamilton to Varick on February 26, "to authenticate them by my Signature—and I freely add that the changes in the Plan . . . which they suggest have the full concurrence of my Opinion."<sup>51</sup>

The memorandum stressed the financial obstacle. A proper water supply would cost \$1 million, Hamilton wrote, but the city's proposed financing, even if granted, would furnish only a small part of the required sum. It was

doubtful whether the Legislature, diminished as are some of the resources of revenue, on which it has for some time relied, will be willing to grant the fund arising from Auctions, for the *profit* of the Corporation, for such a term as will make it go far towards accomplishing the object . . . . The Amount of the revenue to result from the supply of the Water must be for some time uncertain and . . . extensive loans on this basis ought not to be counted upon. To raise what may be wanted by taxes to carry on the enterprise with vigour might be found so burthensome on the Citizens as to occasion the operation to languish.<sup>52</sup>

Hamilton's figure of \$1 million was much higher than Dr. Browne's 1798 estimate of \$200,000 or the \$220,000 spent in 1799-1800 on the Philadelphia municipal water works.<sup>53</sup> Had the estimated cost of the water supply been placed at \$400,000 or slightly more, the financial argument against a municipal project would have been difficult to sustain. However, Hamilton did not depend entirely on Burr for his estimates, for he had talked with William Weston, the English canal engineer, who had been retained by the Common Council as a water consultant, and who had recently come to

<sup>50</sup> *Minutes of the Common Council*, II, 514.

<sup>51</sup> *Ibid.*, p. 517.

<sup>52</sup> *Ibid.*, pp. 517-18.

<sup>53</sup> *Proceedings of the Corporation of New York to Supply the City with Pure and Wholesome Water with A Memoir of Joseph Browne, M.D.*; Blake, *op. cit.*, p. 34.

Hamilton with a note of introduction from the latter's father-in-law, General Philip Schuyler.<sup>54</sup>

Hamilton outlined a substitute proposal for a private water company whose most significant feature was the rôle assigned to the Common Council. Declaring that the city should own one third of the stock in the private company, Hamilton proposed that the purchase of this stock should be financed by the grant to the city for a number of years of the duties arising from the sales at auction. This provision could not have satisfied Burr, since it would have placed the city in a dominant position in the company, raising the danger of a strong Federalist bloc of votes to oppose his wishes. It also appeared to have solved the financial problems of a private water company, destroying Burr's opportunity to create a bank.

Next, Hamilton stressed to the Council that it had the important duty of preserving the city from pestilential disease. The stagnant pools of water dotting the city should be drained, filled or submerged, and underground drains and sewers should be installed under Council sponsorship, but with seven appointed commissioners rather than the Council itself as the administrative body for the first two years.<sup>55</sup> This distrust of the Council's administrative capacity repeated Burr's earlier objections, and appeared to be unrelated to the main project of a private water company.

Hamilton concluded his memorandum with a suggestion: "It is believed, that the main object will be promoted, if the Corporation [of New York City] will signify to the Legislature . . . that alterations in their plan corresponding with the changes here suggested, if more agreeable to the Legislature, will not be unacceptable to them."<sup>56</sup>

The Federalist Council, weighing Hamilton's suggestions, could not fail to be impressed either with his eminence or with the doubts he had cast on the financial capacity of the city. They were sensitive, also, lest it be thought that the municipal water works had been sought in order to give the

<sup>54</sup> Schuyler to Hamilton, January 3, 1799, Schuyler Papers, Misc., New York Historical Society.

<sup>55</sup> *Minutes of the Common Council*, II, 517-20.

<sup>56</sup> *Ibid.*

Council influence or patronage, and they pointed out that they would have been assuming more work for no additional pay.<sup>57</sup> Perhaps, too, Hamilton's recommendation that the city recorder would be an *ex officio* director of the private company allayed the Council's earlier fears of inadequate service, profit-seeking and monopolistic control.

Without devoting more than a single session to the subject, the Council complied with Hamilton's request on February 28, 1799, resolving:

That this Board is truly anxious that the Measures . . . which may promote the health and welfare of the City, be pursued in the way that may be most likely to secure these important Ends; And altho' the members of this Board have not been unwilling to subject themselves to great trouble and responsibility from a sense of Duty, Yet having no private motives to wish for any peculiar Agency in this Business, they will be perfectly satisfied if the objects in View are pursued in any Way that the Legislature may think proper by which their fellow Citizens may be benefitted . . . and the Charter rights of the City remain inviolate.<sup>58</sup>

Burr could breathe a sigh of relief. The first obstacle to his scheme had been removed. To Hamilton he owed this victory, for it was Hamilton who effectively neutralized the Federalist Common Council, the one body whose opposition Burr could not have ignored and whose wishes the legislature would not easily have overridden.

## II

The good fortune Burr had in recruiting his committee was duplicated in the group of directors he assembled for the Manhattan Company. A total of twelve directors, rather than the seven Hamilton had proposed, permitted Burr to give representation to the Federalists and to the three distinct factions within the Republican party—the Clintons, the Livingstons and the Burrrites. For the Federalists there were three wealthy and prominent men: John B. Church, Hamilton's brother-in-law; John Watts, formerly speaker of the State Assembly, recorder of New York City, and director of the Bank of the United States, and active in civic and chari-

<sup>57</sup> *Ibid.*, p. 520.

<sup>58</sup> *Ibid.*



table causes; and John B. Coles, a flour merchant who was said to have been connected with almost every "benevolent society or moneyed corporation."<sup>59</sup> Coles was a particularly valuable acquisition, for, as an alderman, he had served on the committee of the Common Council which drew up the report against a private water company.<sup>60</sup>

The Republican contingent contained men of such wealth and influence that their Republicanism was noted only when it became vital to tally the political affiliations of the directors. No less than six of the nine Republican directors were founders of or original shareholders in the Tontine Coffee House, in whose halls only the cream of the merchant class was welcome.<sup>61</sup> Daniel Ludlow, William Edgar, William Laight and Paschal N. Smith ranked high among the affluent and active merchants of the day and they were directors of other corporations as well. Samuel Osgood, a man of property and position in the community, had an impressive war and public service record which culminated in his term as George Washington's Postmaster-General. As De Witt Clinton's stepfather-in-law, Osgood entered the directorate of the Manhattan Company as a Clinton man. John Broome, of Burr's original committee of six, had an illustrious past (and future) in New York State, which named a county for him in his lifetime.<sup>62</sup>

Representing the Livingstons and the landed interest, a group which had hitherto found few places in the city's business corporations and had been defeated in its attempts to establish banks in 1784 and 1792, were the noted lawyer, Brockholst Livingston, a cousin of Chancellor Robert R. Livingston, the head of the clan, and John Stevens, landed squire of Hoboken, brother-in-law of the chancellor, partner in his early steamboat ventures, and transportation entre-

<sup>59</sup> Scoville, *op. cit.*, II, 41-45, 68-71, V, 44; Fox, D. R., *The Decline of Aristocracy in the Politics of New York* (New York, 1919), pp. 18, 108; N. Y. *Genealogical and Biographical Record*, IV, 174.

<sup>60</sup> *Minutes of the Common Council*, II, 486-87.

<sup>61</sup> Scoville, *op. cit.*, IV, 218-25.

<sup>62</sup> *Ibid.*, I, 161, II, 63, 249-50, III, 164, IV, 226-36, 107-9, 111, 112-14, 208-15, V, 71; Appleton's *Cyclopaedia of American Biography* (New York, 1888), I, 390; *Dictionary of American Biography*, D. Malone, ed. (New York, 1934), XI, 490, XIV, 81-82; *New York Directory, 1799-1800*.

preneur extraordinary.<sup>63</sup> Aaron Burr was the ninth Republican director, the only member of the legislature among the twelve, and the least respectable financially.

The board of directors enlisted by Burr would instill great confidence in the private water company among members of the legislature and would mask the company's political potentialities. The directors, in turn, were moved by more than a desire to serve their fellow citizens; some of the Republicans knew that they were to be directors of more than a public utility; and any directorship in a business corporation not only carried great prestige, but was attractive and valuable to a merchant engaged in trade on his own account, since it offered access to credit and business opportunities.

Besides selecting its first directors, Burr organized the Manhattan Company to the extent of securing a large number of subscribers to its stock, without, however, requiring any payment in advance of incorporation, or binding the subscribers afterwards. Attracted by the distinguished sponsorship of the company, its worthy objectives, and the possibilities of good dividends or speculative profits, many outstanding Federalists signed their names or those of their business partnerships, reserving shares for themselves. Such a subscriber was Nicholas Low, close friend of Hamilton, business agent for Rufus King, and an important merchant and insurance company president, who signed up for 100 shares, a large number in terms of his other business commitments, "on Condition of my approving the Charter."<sup>64</sup>

The pattern of stock subscriptions by Republicans revealed a definitely political allocation of power. The chief stockholders, whose influence was almost as great as that of the directors, represented the three Republican factions: De Witt Clinton (1,000 shares), John Swartwout, Burr's loyal lieutenant (2,000 shares), and Chancellor Robert R. Livingston (2,000 shares). These were the largest individual subscriptions, but many other well-known Republicans were represented by heavy ones. Unlike those of the Federalist

<sup>63</sup> *Dictionary of American Biography*, XI, 312-13, XVII, 614-18; Alexander, *A Political History of the State of New York*, I, 6, 79, 90; Gregg, D., "John Stevens", in Miller, W., ed., *Men in Business* (Cambridge, 1952), pp. 120-52.

<sup>64</sup> Low to King, April 17, 1799, King Papers, XXXVII.

subscribers, their names were unfamiliar on the rosters of corporate stockholders. Still newer to the investment world were the rank-and-file Republicans who signed up for two or five shares each.<sup>65</sup>

As the final achievement of his whirlwind trip, Burr obtained petitions to the legislature, one of which was drafted by Hamilton, showing public support for a private company.<sup>66</sup> Armed with the signatures of prominent men of both parties, the resolution passed by the Common Council, and an organized water company, impressive on paper, Burr returned confidently to Albany. A few weeks later, Thomas Tillotson, a member of the legislature, wrote to his brother-in-law, the chancellor: "There will be no opposition to any reasonable proposition for conducting the water into New York."<sup>67</sup>

Yet no bill to charter a water company was introduced, even when adjournment was but a few days off. Enough unfinished business remained in the Assembly to justify an extension of the session from March 28 through April 1, and it was this that made it possible for Burr's bill to get a hearing that spring.<sup>68</sup> Why had he waited so long? Granted that a long and complicated bill had to be drafted and that it would be desirable to catch the legislature in the haste and confusion of the closing days, surely it was risky to hold back the bill so long. The explanation seems to lie in Burr's desire to see another issue settled first.

The State Senate sent to the Assembly, on March 9, a bill the Senate had passed dealing with New York City's sewage and drainage problems. The legislative draft followed the original request of the Common Council and did not reflect the criticisms Hamilton had presented to the Council.<sup>69</sup> In

<sup>65</sup> *A Collection of Rare Autographs Commemorating the 120th Anniversary of the Bank of the Manhattan Company, 1799-1919* (New York, 1919).

<sup>66</sup> Hamilton Papers, First Series, LXXXIV, 226. This undated draft memorial has been incorrectly filed with 1802 papers and has been so dated in the J. C. Hamilton edition of Hamilton's *Works* (New York, 1850-51), VII, 837-38.

<sup>67</sup> Tillotson to Livingston, March 15, 1799, Livingston Papers, New York Historical Society.

<sup>68</sup> *Assembly Journal*, 1799, pp. 250-51.

<sup>69</sup> *Senate Journal*, 1799, pp. 47, 68, 71; *Minutes of the Common Council*, II, 517-20.



the Assembly, this bill was referred to the committee which was drawing up the Manhattan Company charter under Burr's leadership. Burr's committee amended the sewage and drainage bill in several respects. The chief amendment reported by Burr to the Assembly on March 14 would have granted to New York City the duties arising from auctions. On the credit of these funds, the city would be empowered to borrow not more than \$100,000 to expedite the sewage and drainage projects and to support the foreign poor of the city.<sup>70</sup> Here was Burr's way of disassociating the auction duties from the private water company, a link which Hamilton had originally created. To keep the city from owning as much as one third of the water company and to make a case for special financial powers for the Manhattan Company, it was vital that these auction duties should not be available. If the legislature voted them to the city for its health program, the city would be pleased and the funds could not be applied either to municipal water works or a private water company. If, on the other hand, the legislature refused New York City these funds for sewage and drainage purposes, then Burr could maintain, as he later did, that the legislature could not be counted on for financial support of a New York City water company, whether it was municipal or private.<sup>71</sup>

The only flaw in this strategy was its consumption of time. After the Assembly passed an amended bill on March 15, in which it accepted Burr's recommendations, the measure was returned to the Senate where, ten days later, the Assembly's first four amendments, including the one dealing with auction duties, were rejected after much discussion.<sup>72</sup> Yielding to the upstate disinclination to give New York City any special funds not already allocated, the Assembly on March 26 retreated from its own amendments, and the health bill was enacted without any financial provision for its execution, save

<sup>70</sup> *Assembly Journal*, 1799, pp. 190, 193, 210. In 1798, the legislature had voted to grant the proceeds of a special tax on auction sales to New York City to aid in the care of the foreign poor. *New York Laws*, chapter 89, 1798.

<sup>71</sup> *New York Commercial Advertiser*, May 1, 1799, "The American".

<sup>72</sup> *Senate Journal*, 1799, pp. 94, 101. The rejection of the amendment to grant the auction duties was on sectional lines, 26-11, with six votes not to reject coming from senators from the Southern District, three of them Federalists.

that the owners of property might be assessed for drainage, filling, etc., on their own property.<sup>73</sup>

As soon as the threat of the auction duties was neutralized, and the Senate had returned to the Assembly the approved bill on health measures for New York City, James Fairlie rose in the Assembly to report that the requests of memorialists for a private water company had been approved by the committee of assemblymen from the city and county of New York.<sup>74</sup> The bill introduced by Fairlie differed very little from the final act to charter the Manhattan Company, signed a week later by the Governor.<sup>75</sup> It spelled out the powers of the Manhattan Company in its water operations, as Hamilton's memorandum had not done. Closely resembling the powers granted to the two incorporated canal companies in New York with regard to the right of eminent domain, the Manhattan Company charter was as favorable as any that had ever been voted in New York. It included the right (interpreted as exclusive) to bring in water from a wide area surrounding the city, the company's freedom to set its own rates, and perpetual life for the corporation. Unlike the water companies of other states, the Manhattan Company was not required to furnish free water for fighting fires or to put the streets back in order after pipes were laid.<sup>76</sup> The sole limitation on the company's power was a proviso that the charter would be forfeited if the company did not, within ten years, "furnish and continue a supply of pure and wholesome water sufficient for the use of all such citizens . . . as shall agree to take it on the terms to be demanded by the said company."

The bill before the legislature was different in several respects from the plan originally submitted to the Common Council by Hamilton. Burr had increased the company's capital to \$2 million, enlarged the board of directors, reduced the number and percentage of shares to be allocated to the city, and, most important, eliminated the duties on auction sales as a source of financing and substituted an entirely new

<sup>73</sup> All of the assemblymen present from New York City and County voted against the majority and in favor of granting the auction funds to the city. *Assembly Journal*, 1799, pp. 256, 257; *New York Laws*, ch. 70, 1799.

<sup>74</sup> *Assembly Journal*, 1799, p. 261.

<sup>75</sup> *New York Laws*, ch. 84, 1799.

<sup>76</sup> Blake, *op. cit.*, p. 51.

concept. Buried at the end of the charter was a clause permitting the company to use its "surplus capital", which was not further defined, "in the purchase of public or other stock, or in any other monied transactions not inconsistent with the constitution and laws of this state, or of the United States, for the sole benefit of the said company."<sup>77</sup>

This simple, subsidiary clause would, Burr believed, give his company financial powers—to operate a bank, insurance office, real estate business, trading company, or all of them simultaneously—beyond the wildest dreams of any existing corporation, and there would be no need to come before the legislature again to secure an extension of the charter; for, just as the water function might be exercised in perpetuity, so could all the auxiliary powers.<sup>78</sup> Whether Burr informed Hamilton or the Federalist directors of this change in the bill is not known.

It was unprecedented in English or American corporation practice of the eighteenth century for such sweeping privileges to be granted in a charter. Ever since 1720, when the Bubble Act outlawed unincorporated joint-stock companies, the incorporation process had been strictly regulated in England; the practices spread to the American colonies and survived for quite a while in the new states. Along with a reluctance to issue large numbers of business charters went "the doctrine that a corporation's activities were limited to the purposes and powers specified in its charter", since "One of the evils the Bubble Act was seeking to curb was the use of charters for other purposes than those for which incorporation had been granted."<sup>79</sup> It was a feature of these English charters, repeated in New York, that they merely implied the positive or specific business powers of a corporation (except for a certain amount of detail in canal, bridge and turnpike charters), but they were full of limitations on the scope of a company's activities and its internal organization.<sup>80</sup>

<sup>77</sup> *New York Laws*, ch. 84, 1799.

<sup>78</sup> Davis, M. L., *Memoirs of Aaron Burr*, I, 413-16; *New York Laws*, ch. 84, 1799.

<sup>79</sup> DuBois, A. B., *The English Business Company after the Bubble Act, 1720-1800* (New York, 1938), pp. 24, 26, 39-40, 105, 107-8.

<sup>80</sup> *Ibid.*, pp. 108-9. Until 1825, it was difficult to discern in banking charters what the functions of banks were, although the limitations were clearly cited. Cleaveland, J., *The Banking System of the State of New York* (New York, 1857), p. xvi.



Now Burr appeared with a charter which sanctioned a vast number of interlocking businesses and omitted the usual proscriptions or regulations. It may be assumed that Burr knew how unusual his "surplus capital" clause was; perhaps he expected to compromise, to reduce the all-embracing powers to a specific banking privilege, a form not yet in use in the United States and assumed illegally by some Scottish corporations.<sup>81</sup>

But Burr had no occasion to surrender even an inch in his frontal assault on the traditional corporation; his bill was passed virtually unaltered. How did it happen that the Federalist legislature allowed such a clause to be enacted when, within a few weeks, it was to be so plain to all Federalists that the Manhattan Company represented the grossest violation of all the rules which governed the erection of corporations?

One excuse, offered later, was that many legislators had already returned to their homes or were absent from the legislative chambers during the taking of votes.<sup>82</sup> Unless the Federalist absences were greatly in excess of the Republican, this factor would be of no significance; indeed, it would reflect on Federalists' fidelity to duty if their absentees had conspicuously outnumbered those of the Republicans. Matthew L. Davis, Burr's loyal friend and biographer, suggested that some of the legislators considered the entire water project "chimerical and visionary";<sup>83</sup> they voted for it with the same indulgence one might now extend toward a salesman for land rights on the moon. The breath-taking boldness of Burr's "surplus capital" clause fitted in with a water-supply scheme too ambitious to be realized; it may have alarmed the legislators less than an outright request for banking privileges would have. Some assemblymen and senators, particularly from the upstate areas, were so relieved that the Manhattan Company was not seeking state funds, that they were careless

<sup>81</sup> DuBois, *op. cit.*, pp. 108-9; Davis, J. S., *op. cit.*, II, 318-19, 327, indicates only restraints on banking rights.

<sup>82</sup> *New York Commercial Advertiser*, April 29, 1799, "Anti-Revolutionist IV".

<sup>83</sup> Davis, M. L., *op. cit.*, I, 416. This legislative session had granted enormous powers to Chancellor Livingston and a few other individuals; they were to have exclusive rights to put steamboats on all the navigable waters of New York State for twenty years, provided that within two years they operated a boat weighing at least twenty tons at a speed of four miles an hour.

about inquiring into the self-financing methods that might be used.

However adequate these explanations may be for some of the individual legislators, they can hardly be accepted for the few Federalist leaders whose duty it was to sound a warning to the ordinary members when a questionable piece of legislation came before them. Why did this not happen to Burr's "surplus capital" clause? Assuming that the Federalists in responsible positions in the legislature and the Council of Revision were not bound to Burr by any private commitment and were not under heavy pressure to accede from New York City Federalists, involved in Burr's company, on what grounds could they have accepted so unusual a charter?

At that time, and for forty years afterwards, many people sincerely believed that a bank could not be established in the slapdash manner Burr was employing; it would be an illegal usurpation of powers. The ritual surrounding the award of a bank charter was so complex and formal that it did not seem possible to circumvent it. Banking was not yet an ordinary line of business; it had quasi-public functions and qualities.<sup>84</sup> To initiate the request for a charter, the promoters should present a formal petition stating the need for additional banking facilities, the public benefits to be realized, and the advantage to the incorporators. A legislative inquiry would then be undertaken and a charter might at length be granted as a special privilege after many of the details of the internal organization and operation of the bank had been specified.

If the Federalist legislators had reason to doubt that a bank could be set up under Burr's charter, they also had reason to doubt that there was any political danger in the new company. So well was the company camouflaged behind its noble purpose and its Federalist directors and supporters that the Federalist legislators may well have believed they were sponsoring a charter for a nonpartisan group, or, as had previously been the case in New York corporations, for a group predominantly Federalist, as the natural outcome of the political affiliations of important business men. Know-

<sup>84</sup> Hammond, B., "Long and Short Term Credit in Early American Banking", *Quarterly Journal of Economics*, XLIX, 85.

ing Republican animosity toward banks, Federalists could not imagine one to be their object. Federalists, usually on the petitioning side, were unfamiliar with the rôle of challenger of corporate invasions of new fields or changes in form; it was the Republican fear of corporations which usually agitated the legislative chambers. Without that disturbing force, the Federalists were swept along by the haste attending the close of the session, by the worthiness of the cause, by doubts as to the power of the charter, by the eminent backing of the company, and, above all, by Burr's consummate skill in stage directing the truncated legislative hearings.<sup>85</sup>

The Assembly, where the bill originated, had a nominal Federalist majority, but it had been whittled away during the session by a switch to the Republican side on the part of ten or so upstate Federalists, who had been carefully cultivated and flattered by Burr's attentions.<sup>86</sup> Still, Burr was very cautious. When the Manhattan Company bill received its second reading, he arranged that it should be referred to a committee of three, headed by himself, instead of going to the Committee of the Whole House as was customary.<sup>87</sup> Thomas Storm, a member of the committee which drafted the charter, was reported to have heard the "surplus capital" clause for the first time on the floor of the Assembly.<sup>88</sup> On the afternoon of March 27, Burr reported that his special committee approved of the bill, and it was later charged that he had called the bill "a trifling act" of a private nature which required no discussion or even another reading of its provisions.<sup>89</sup> The next morning, less than twenty-four hours after its introduction, the charter was approved by the Assembly.

The Senate presented a somewhat more difficult situation,

<sup>85</sup> Robert Troup, the friend of Washington and Hamilton, slyly observed of the charter that Burr had "begotten it on the body of the Legislature when it was lulled into a profound sleep by his arts and misrepresentations." Troup to Rufus King, June 5, 1799, King Papers, XLVII.

<sup>86</sup> Hammond, J. D., *op. cit.*, I, 123-25.

<sup>87</sup> *Assembly Journal*, 1799, p. 261. The other members were Jeremiah Lansingh of Albany and Henry M'Neil of Oneida County.

<sup>88</sup> *New York Commercial Advertiser*, May 1, 1799, "The American".

<sup>89</sup> *Ibid.*



for it was more staunchly Federalist, less rushed, and less under Burr's personal influence than the Assembly. Burr did not turn to De Witt Clinton or any other Republican senator from New York City; instead he made good use of two Federalists and an apostate Federalist. He approached Thomas Morris, a Federalist from the Western District who was growing too close to Burr for Federalist comfort, and asked that Morris move the Manhattan Company bill to a select committee

to report complete, which would supersede the necessity of its going to a Committee of the Whole. The senator replied, that though he had no objection to make the experiment, yet that he was persuaded that the motion would not prevail, because the Senate, not having a press of business before them, uniformly refused thus committing bills to select committees. . . . Colonel Burr then suggested, that perhaps if the mover would intimate, while on the floor, that the honourable Samuel Jones was contemplated as chairman of that committee, the confidence which the Senate was known to repose in him, and on his uniform attention to everything relating to the City of New-York, would perhaps induce the Senate on this occasion to depart from its accustomed mode of proceeding.<sup>90</sup>

Burr's strategy succeeded and the Lieutenant-Governor, Stephen Van Rensselaer, as presiding officer appointed Jones, Morris, and Ambrose Spencer, a Federalist until the preceding year and just that year voting with the Republicans.<sup>91</sup> Spencer subscribed to 100 shares of Manhattan Company stock.<sup>92</sup> The key man on the committee was Samuel Jones, Sr., a Tory in the Revolution, a distinguished lawyer dubbed "The Father of the New York Bar", the comptroller of the state since 1797 and simultaneously a Federalist state senator.<sup>93</sup> His approval of the charter virtually insured passage

<sup>90</sup> Davis, M. L., *op. cit.*, I, 413-16.

<sup>91</sup> *Senate Journal*, 1799, pp. 109-10; Hammond, J. D., *op. cit.*, I, 125.

<sup>92</sup> *A Collection of Rare Autographs . . . of the Bank of the Manhattan Company*.

<sup>93</sup> Hammond, J. D., *op. cit.*, I, 104-5; Fox, *op. cit.*, p. 12; Pomerantz, *New York*, p. 108. William A. Duer thought Jones "mistook his vocation when he became a politician." *Reminiscences of an Old Yorker* (New York, 1867), p. 23.

in the Senate; his opposition could wreck Burr's plans. Jones and his committee held the bill for two days before reporting favorably on it to the Senate, yet Jones's only published explanation of his conduct, a month later, was that he had not been in the Senate when the bill was voted.<sup>94</sup> Burr's choice of Jones to head the committee suggests that he thought him amenable to influence; perhaps it was the Federalist directors of the Manhattan Company who had convinced Jones that he should go along with Burr. Even if this had occurred fairly recently, it was still possible that the people in New York City, cut off by the great traveling distance and difficult communications with Albany, knew nothing of the addition of the "surplus capital" clause. It appears from Matthew Davis' accounts that one member of the committee, very likely Jones, thought that the "surplus capital" clause should be stricken out. His objections were overcome, it was reported, when he heard from another committee member, probably Thomas Morris, that Burr desired the clause because a water company would not remunerate the stockholders and because the directors needed the freedom to set up a bank, an East India Company, "or anything else that they deemed profitable".<sup>95</sup> Whatever the true sequence of events actually was, it is clear that Jones missed the opportunity to thwart Burr's ambitions, and so bore an important responsibility for Burr's success.

The next step in the legislative process took the charter to the Council of Revision, which heard, on April 2, a major criticism of the bill from Judge John Lansing, a Republican who had either been overlooked by Burr or had been deemed unapproachable.<sup>96</sup> He disapproved:

Because the bill creates a corporation with a capital of \$2,000,000 vested with the unusual power to divert its surplus

<sup>94</sup> *Senate Journal*, 1799, pp. 110, 117; *New York Commercial Advertiser*, May 1, 1799, "The American".

<sup>95</sup> Davis, M. L., *op. cit.*, I, 415-16.

<sup>96</sup> The New York Constitution of 1777 established an unsalaried Council of Revision consisting of the Governor, the Chancellor and the Judges of the Supreme Court. They were to review all the bills passed by the legislature for conflicts either with the Constitution or with the public good. A two-thirds majority of each house was required to override the Council's veto. The Revised Constitution of 1821 abolished the Council.

capital to the purchase of public or other stock . . . which surplus may be applied to the purpose of trade or any other purpose which the very comprehensive terms in which this clause is conceived may warrant. This . . . as a novel experiment, the result whereof, as to its influence on the community, must be merely speculative and uncertain, peculiarly requires the application of the policy which has heretofore uniformly obtained; that the powers of corporations relative to their money operations, should be of limited instead of perpetual duration.<sup>97</sup>

When the Council of Revision considered Judge Lansing's objection, the important Federalist Judge Egbert Benson joined Chancellor Robert R. Livingston, who already was the largest single stockholder in the Manhattan Company, in a rejection of the opinion of Judge Lansing. Governor John Jay was said to have supported Lansing but "had no vote".<sup>98</sup> Benson, considered the most likely nominee for governor by the Federalists if John Jay declined to run again, shocked many people by his vote and forfeited his nomination, after his action was viewed with hindsight by Federalists who had been uninvolved in the legislative proceedings.<sup>99</sup> Judge Benson's old friend, Rufus King, the American Minister to England, writing also with the advantage of time, declared that it was mysterious to him "that our friend Judge B. should have approved a charter so unprecedented, and the Powers and influence whereof were so obviously intended for mischievous purposes—".<sup>100</sup>

In the same vein, Federalists privately criticized individuals and groups in the legislature. Robert Troup wrote to Rufus King that the "monied interests of the City . . . attach much blame as well to the council of revision as to the assembly & senate."<sup>101</sup> So hard-pressed were Federalist newspapers to find any of their own party to admire in connection with the legislative history of the Manhattan charter

<sup>97</sup> Street, A. B., *The Council of Revision* (Albany, 1859), p. 423; Davis, M. L., *op. cit.*, I, 415-16.

<sup>98</sup> Troup to King, June 5, 1799, King Papers, XLVII. The constitutional provision of 1777 did not deprive the governor of a vote.

<sup>99</sup> *Ibid.*

<sup>100</sup> King to Troup, July 15, 1799, *ibid.*, VIII.

<sup>101</sup> Troup to King, April 19, 1799, *ibid.*, XLVII.



that they several times praised Republicans who, for their own reasons, temporarily were on the outs with Burr.<sup>102</sup>

As for the Republicans, they might shower praise on Burr for his various skills, but they would have been less than honest had they not acknowledged the assistance of Federalists at every stage. The Federalist willingness to shelve municipal water works in favor of a private company was crucial at the opening of Burr's campaign. When he altered the character and potentialities of the Manhattan Company on the eve of the presentation of the proposed charter to the Assembly, the Federalists who had lent their names to the project did not withdraw their support. Whether they were ignorant of the changes in the proposed charter, eager for the business opportunities implied in the "surplus capital" clause, or convinced that Burr had adopted the only practical course in view of the legislature's adverse position on the grant of the auction duties to New York City, the net effect of the continued backing of the Manhattan Company by leading Federalists was to dull the critical faculties of the Federalist legislators. They approved a serious departure from the accepted ground rules for chartering business corporations, and failed to realize that their laxity might benefit Republicans rather than Federalists. Without Federalist help, Burr could not have achieved his legislative triumph.

The mixed reactions of Federalists, once the new company was launched, forms another episode in the early years of a corporation destined in its long life to exert an influence on political and economic affairs in New York State beyond the scope of other business companies, banks, or water works.\*

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<sup>102</sup> *New York Gazette and General Advertiser*, May 1, 1799, "A Citizen"; *New York Commercial Advertiser*, May 23, 1799, "Socrates". Thomas Storm, Philip I. Arcularius and Elias Nexsen, the three Republicans singled out by the Federalists in 1799, all ran as Republicans under Burr's leadership in 1800. Schachner, *Aaron Burr*, p. 171.

\* A second article on the Bank of the Manhattan Company will appear in the March 1958 issue of the *QUARTERLY*.—Ed.