

The Burr Treason Trial

Federal Trials and Great Debates
in United States History

Case Summary:

- The 1807 treason trial of former Vice President Aaron Burr was one of the most sensational trials in nineteenth century America.
- The case involved many of the great figures of the early Republic and conjured the specter of outlandish plots against the nation by one of its founding fathers.
- At a broader level, the case also helped to clarify the law of treason and demonstrated the importance of the separation of powers.

History of the Case:

After serving with distinction in the American Revolutionary War, Aaron Burr became a rising star in the political and legal worlds of the early republic. He was selected by the state legislature to represent New York in the U.S. Senate before twice running as the Jeffersonian Republicans' vice presidential candidate.¹ In the 1800 presidential election, Burr tied with his running mate Thomas Jefferson in the Electoral College due to a quirk in the original design of the election system. The tied vote left the result in the hands of the House of Representatives.² Although Burr publicly announced he had no intention of claiming the presidency for himself, he did little to discourage allies who attempted to do so on his behalf. On the 36th ballot, the House finally broke the impasse and selected Jefferson as president.

Though Burr served a full term as vice president, Jefferson never trusted him after the election and isolated him politically. In the 1804 election, Burr unsuccessfully ran for governor of New York. He blamed his loss on slurs cast by political adversaries, especially his long-term rival Alexander Hamilton. In one of the most infamous incidents in American political history, he challenged Hamilton to a duel and killed him. Burr was charged with murder in both New York and New Jersey, but avoided trial.

His political career in tatters, Burr looked to revive his fortunes in the newly acquired western territories. It is unclear exactly how far Burr's plans went. Some observers believed he intended to invade the Louisiana Territory and break part of it away from the U.S. Others believed he intended to go to Texas (then part of Mexico) and begin a war of conquest. Whatever his exact plan, Burr gathered men and secured financial backing from Harman Blennerhassett, a wealthy Irish immigrant in modern-day West Virginia. As the group began to assemble at Blennerhassett's property, Burr wrote a coded message to General James Wilkinson, the governor of the Louisiana territory, saying he planned to move an army down the Mississippi River. Wilkinson revealed the message to Jefferson, who believed it proved Burr a traitor. After several false starts, Burr was indicted for treason in federal court in Virginia in 1807.

U.S. Circuit Courts served as the primary federal trial courts in the early eighteenth century. These courts were staffed by a district court judge and a Supreme Court justice "riding circuit." The justice riding circuit in Virginia at the time of the Burr case was Chief Justice John Marshall. Though Marshall is now widely regarded as one of the greatest justices in Supreme Court history, he was a controversial figure at the time, advocating as he did a strong role for the federal judiciary at a time when the courts were unpopular with Republicans.

Burr's lawyers attempted to portray the prosecution as a political vendetta instigated by Jefferson. The president did little to dispel this theory by pronouncing to Congress before the trial that Burr's "guilt is

¹ The Jeffersonian Republicans, sometimes called "Democratic Republicans," should not be confused with the modern Republican Party, which rose to prominence in the 1850s.

² At that time, electors cast two votes for president with the second-place candidate becoming vice president. This system was changed by the Twelfth Amendment in 1804, which required electors to cast one vote for president and one for vice president.

placed beyond question.” Marshall would have been aware that the case posed a meaningful threat to his own judicial independence. Although he and Jefferson were distant relatives, their dislike for one another was well known. House Republicans had previously impeached Marshall’s colleague Samuel Chase for his conduct of other politically charged trials (ironically, Burr had presided over Chase’s trial in the Senate, which had acquitted him). At an early stage in the proceedings, Jefferson also hinted that the Constitution should be amended to allow for the easier removal of judges like Marshall.

Despite the political pressures to convict Burr, moreover, the legal issues in the case were far from straightforward for Marshall. The Constitution sets a high bar for treason, requiring two witnesses to an overt act of either “levying war” against the United States or providing “aid and comfort” to its enemies. It was far from clear that assembling a group of men and intending to take them to the western territories rose to the level of “levying war.” Moreover, Burr himself was not even present when the group gathered at Blennerhassett’s property. At a critical phase in the trial, Marshall ruled that the government had produced “no testimony whatever which tends to prove that the accused was actually or constructively present when that assemblage did take place; indeed, the contrary is most apparent.” Marshall also expressed doubt as to whether Burr’s “procurement” of men and supplies could meet the government’s burden of proof. Though Marshall’s ruling did not formally decide the case, it left the jury with little to deliberate. The jury returned a verdict of “not guilty by the evidence presented,” instead of the more familiar “not guilty.” This verdict might have suggested doubts over Burr’s actual culpability while it acknowledged the lack of concrete evidence against him.

Though Jefferson sent a record of the trial to Congress hinting that Marshall might be impeached, the latter survived in office and eventually saw the Supreme Court grow in power and prestige. Burr’s political fortunes were not saved by his acquittal, as negative press coverage and rumors surrounding the case made his name synonymous with treachery. While the case was important for establishing a high burden of proof in treason cases, the trial’s significance was mostly symbolic. Despite the trial taking place at a time of heated political tensions and persistent rumors about Marshall’s motives, the case suggested that it was possible to conduct a high-stakes trials of public figures without undermining the independence of the judiciary.

Legal Issue:

- Did Burr’s activities constitute treason as defined by Article III of the Constitution?

Questions for Discussion:

- Burr was a former U.S. Senator and Vice President who had killed one of the founding fathers and was accused of betraying his country. Is it possible for famous or notorious defendants like Burr to receive a fair trial? What special challenges might cases involving such figures pose for the judicial system?
- Treason is the only crime defined by the Constitution. What might account for this prominence? Why would both the Constitution and Marshall set a higher bar for proving treason than most other crimes?
- President Jefferson clearly thought Burr was guilty and distrusted his rival Marshall. However, he did not interfere with the case beyond sending some pertinent evidence to the court. What institutional restraints and political forces might have prevented him from doing so?