

## THE DUEL: A look back at a once-legal way of resolving disputes.

**Duel.** The word conjures vivid images of elegant swordsmen in contest, or armor-clad knights astride destriers defending a lady's honor. Or perhaps a rendez-vous at first light, pistols at the ready. Romantic and uncomplicated to the contemporary eye, the reality of duelling was neither so romantic nor so simple. Duelling operated under a complex set of rules and customs, legal and social, which determined why, how, and between whom duels were to be fought. A deep-rooted practice in European and American culture for hundreds of years, late in the nineteenth century duelling as an institution found itself weakened by social and cultural changes. Yet the duel lives today in sport and pageantry to remind us of days when combat *mano a mano* resolved individual disputes.<sup>[i]</sup>

A useful working definition of “duel” is “a prearranged combat between two persons, fought with deadly weapons according to an accepted code of procedure...to settle a private quarrel.”

The word “duel” appeared in the late fifteenth century, springing from the Latin *duellum*, the archaic and literary form of *bellum* (war), which in medieval Latin referred to judicial single combat. Accounts differ as to whether duelling existed in ancient Greece and Rome, but certainly it was a fixture in the barbarian Germanic tribes, and later spread throughout Europe and America. A useful working definition of “duel” is “a prearranged combat between two persons, fought with deadly weapons according to an accepted code of procedure...to settle a private quarrel.”<sup>[ii]</sup>

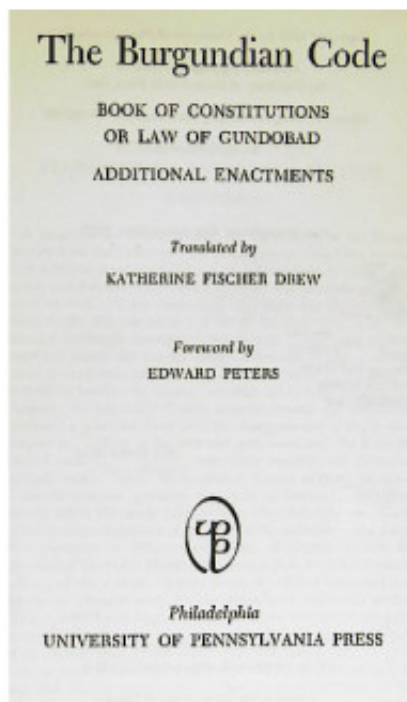
Thus the duel is distinguished from a brawl (which is not prearranged or fought according to rules), a war (a prolonged affair with many combatants), and from a tournament (which although it usually operated by the same rules, and could be deadly, was a game or test of skill which decided no private dispute). The customary duelling weapon was the sword, superseded in the nineteenth century by the pistol.

The duel evolved from its origins as a legal method of resolving disputes into an extrajudicial means of settling private matters which could not be regulated by law: matters of honor and insult. Coincident with the formulation of codes which provided procedural guidance in conducting a duel were attempts by church and state to curtail the practice. The fascination of duelling may have its roots in the curious dichotomy of a prevalent and culturally-accepted yet illegal pursuit, governed by a “code.” Its persistence as a fixture in so many cultures speaks of its universal appeal as the expression of a visceral human response which managed to survive in assorted manifestations for many centuries. But the notion of duelling as an atavistic reaction alone falls short of the mark, since it looks past the reality that duels were fought chiefly by one segment of society: its aristocrats. It is this social ingredient which defines the duel as an institution, and has fixed its status as a legal conundrum.

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**The Judicial Duel.** Although condemnation by government and ecclesiastical authorities progressively increased, duelling originally was a legal means of deciding disputes between two people. The “judicial duel,” or “trial by combat,” was based upon religious belief: that God would protect the party in the right by allowing him to win. The judicial duel had evolved from the earlier “ordeal” where the accused was subjected to exercises such as holding burning objects. If the burns caused by such exposure failed to heal, the accused “obviously” was guilty of the charge against him. Although many combats were arranged to decide criminal matters, combat also could serve as a means for resolving civil disagreements, such as disputes over real or personal property. There were exemptions: women, the infirm, very young, and very old men were not required to enter combat, but could engage champions on their behalf. The judicial duel was a ceremonial affair presided over by royalty who proclaimed the victor.

The earliest known law which governed the judicial duel is found in the Burgundian Code, an early East Germanic barbarian code promulgated in the late fifth and early sixth centuries under King Gundobad (reigned 474-516).



The date of legal establishment of the trial by combat traditionally is stated as the year 501. Provisions of the Burgundian Code stated an unequivocal faith in the infallibility of God’s judgment (“...God being the judge...”) and encouragement to potential combatants not to shrink from the fray (“...it is just that if anyone shall say without delay that he knows the truth of the matter and shall offer to take oath, he should not hesitate to fight”).[\[iii\]](#)

As trial by combat became an institution in France and England, efforts to regulate it were mounted. The Truce of God, issued by the Roman Catholic Church in 1041, forbade duels on the several days consecrated in honor of the mysteries of Christianity. Other pronouncements included Louis VII’s 1167 prohibition of all duels over claims not exceeding five sous.[\[iv\]](#) Eventually trial by combat was permitted only in cases of serious crimes, such as murder and treason. The right to choose trial by combat existed in England until the early nineteenth century, although the practice actually had died by the late sixteenth century. The last claim for combat in 1817 was by an accused murderer and grudgingly was granted by the court as the defendant’s legal right. Fortuitously, circumstances did not permit the combat, and promptly in 1819 Parliament abolished the “right to appeal to the judgment of God in single combat.”[\[v\]](#)

**The Duel of Chivalry.** The duel of chivalry evolved from the judicial duel, coexisting with it for several hundred years. Historians generally agree that knighthood originated around the tenth century, and duels of chivalry date from approximately that time. These also were events of great ceremony. Two knights on horses with lances engaged in combat to decide questions of law, property, or honor. The duel of chivalry is distinguished from the tournament, which was a “mock duel” or demonstration of a knight’s skill.[\[vi\]](#) These, however, could be as bloody as a duel. In fact, the Church was opposed to tournaments due to the mortality rate of the participants, and the Council of Reims of 1148 prohibited Christian burial for the casualties of such events. Rules governing tournaments and chivalric duels were identical, and uncompromising. For example: “Whosoever keeps up an unreasonable feud with another, and will not refer the difference to law or to a fair battle, but invades his adversary’s land, burning and spoiling it, and carrying off his goods, especially if he has destroyed corn, which has caused a dearth or a famine – if he appear at the tournament let him be put to death.”[\[vii\]](#)

Duels of chivalry declined around the middle of the sixteenth century, giving way to the duel of honor. The duel which is considered the bridge between the duel of chivalry and the duel of honor is the celebrated 1547 French duel between the Comte de Jarnac and the Seigneur de la Chastaigneraye, presided over by Henri II (1519-1559). The evolution of duelling was not a seamless continuum, and this last chivalric duel displayed elements of the ceremonial judicial duel with its royal arbiter, and the duel of chivalry with its pageantry. And because Henri II is considered to have abdicated his role as judge of this contest by hesitating unduly to decide the outcome, he opened the door for duelling to become a private affair between two individuals outside the auspices of the State. The duel of chivalry had faded, giving way to the duel of honor.

### **The Duel of Honor and the *Code Duello*.**

The duel of honor is faithfully described by John Selden (1584-1654) in *The Duello, or Single Combat* (1610):

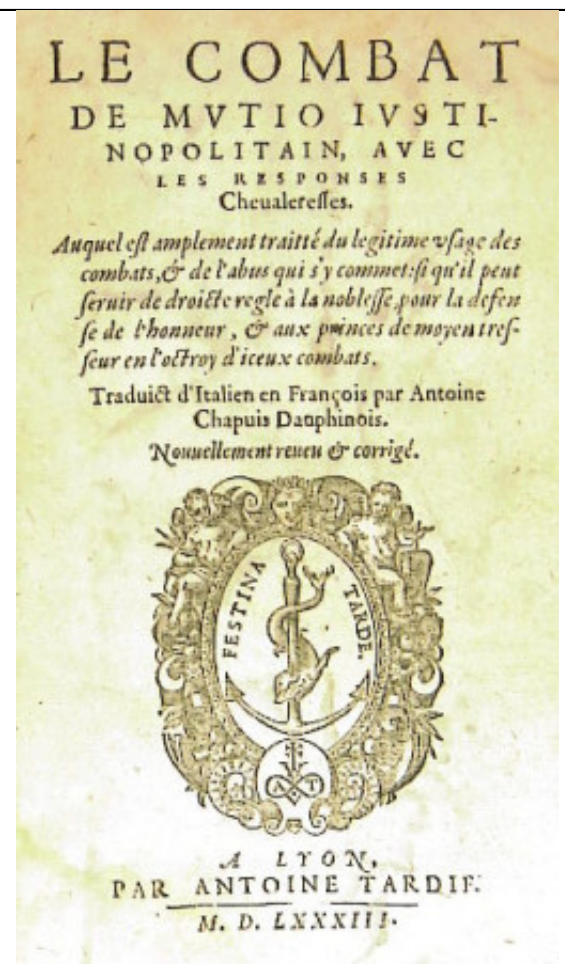
*For truth, honour, freedom, and courtesy being as incidents to perfect chivalry upon the lye given, fame impeached, body wronged, or courtesy taxed... a custom hath bin among the French, English, Burguignons, Italians, Almans and the northern people (which as Ptolomey notes, are always inclined to liberty) to seek revenge of their wrongs on the body of their accuser and that by private combat, seul a seul, without judicial lists appointed them.*[\[viii\]](#)



The duel of honor is the duel most familiar to us. From its cradle in Italy and its flowering in the sixteenth and seventeenth centuries, it faded definitively during the last quarter of the nineteenth century, lingering in isolated incidents into the twentieth century in France, Germany, and the United States.

Duelling had emerged in an era where courtesy and respect between individuals were of supreme moment. As one writer has observed, “duelling was the most efficient means to achieve a high degree of politeness.”[\[ix\]](#) An insult, especially to another’s integrity, courage, or the honor of his lady, easily could provoke a challenge. The gamut of possible grounds for challenge was nearly limitless, ranging from “a look of disdain, a word of disrespect or slight, a haughty step,”[\[x\]](#) to accusations of cowardice or “giving the lie,” considered by many duellists to be the most serious accusation of all. Failing an apology, the potential combatants proceeded to the duel, aided by a duelling code which set out the stringent procedural requirements which gentlemen were compelled to follow. Duelling had evolved into a cultural institution of the aristocracy, and duels generally were fought between noblemen, but at the least duellists were required to be of equal social status; it was considered improper for persons of differing ranks to fight duels against each other.

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Although today this style of extrajudicial personal combat may appear primitive, Selden's duel of honor represents a giant step toward civilizing human behavior in resolving disputes, and curtailing the proliferation of the lethal surprise attacks common in that era, aided by the strict governing codes which multiplied in Europe during the sixteenth through nineteenth centuries.

**The Code Duello.** The *code duello*, or duelling code, provided specific rules for engaging and conducting duels of honor. The earliest known *code duello* was the Renaissance-era *Flos Duellatorum in Armis* ("The Flower of Battle") (Italy, circa 1410). Italy, considered the birthplace of the duel of honor, produced many subsequent duelling codes and manuals, upon which the French modeled their elaborate eighty-four rule code. The most famous code, and the most important for English-speaking countries, was the Irish *Code Duello*, or "the twenty-six commandments," adopted at the Clonmel Summer Assizes, 1777.

Gentlemen delegates of five counties of Ireland drew the code to regulate – legally – the procedural aspects of affairs of honor. At that time, duelling was not identified as a criminal offense in Ireland; those duellists who were prosecuted and received severe verdicts mainly were those who had brushed aside the customary rules of duelling in the course of inflicting grave harm or death to a duelling opponent. So that no one could deny knowledge of the regulations now in place, gentlemen were required to keep a copy in their pistol cases.

The code duello was an essential document which attempted to ensure order, fairness, and opportunity for the duel to be averted in honorable fashion.

This code, which contemplated the use of pistols (the preferred weapons of the nineteenth century), also provided for the use of swords. American duelists frequently relied on the Irish *Code Duello* or on the American version authored by lawyer, duellist, and former Governor John Lyde Wilson of South Carolina (one of the foremost duelling states in America).



The *code duello* was an essential document which attempted to ensure order, fairness, and opportunity for the duel to be averted in honorable fashion. The offended party decided the form of the challenge; from that point, choice of seconds and weapons, and setting the appointment for the duel came to swift resolution aided by traditions of honor and the *code duello*. Choice of the second was perhaps the most important decision, since this friend acted as the principal's agent in communicating with the opposing party.

RULES  
FOR  
Principals and Seconds in Duelling.  

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CHAPTER I.

**The Person Insulted, Before Challenge Sent**

1. Whenever you believe that you are insulted, if the insult be in public and by words or behavior, never resent it there, if you have self-command enough to avoid noticing it. If resented there, you offer an indignity to the company, which you should not.

2. If the insult be by blows or any personal indignity, it may be resented at the moment, for the insult to the company did not originate with you. But although resented at the moment, you are bound still to have satisfaction, and must therefore make the demand.

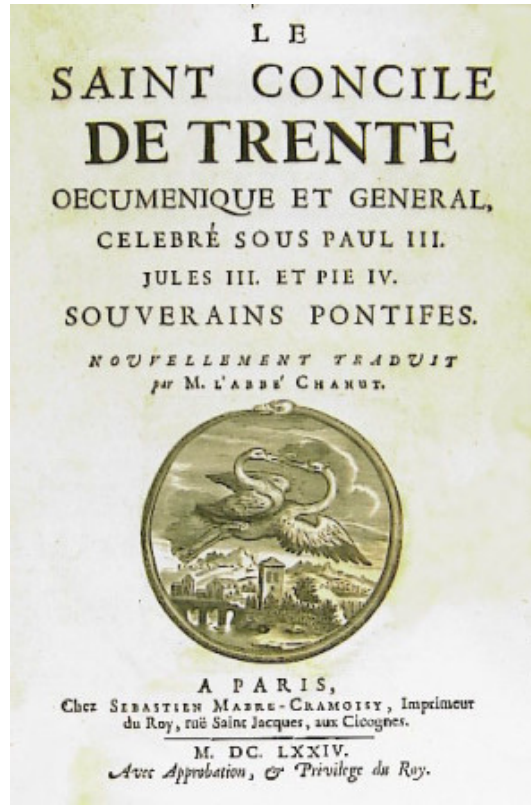
It was common currency that “it is not the sword or pistol that kills, but the seconds,”<sup>[xi]</sup> a sentiment echoed by Abraham Bosquett in his *Young Man of Honour's Vade-Mecum*.<sup>[xii]</sup> A second who possessed impeccable character, discretion, and diplomacy often could by sensitive communication deflate the situation and bring about honorable closure without a duel.

**Participants in duels of honor.** Duellists in Europe as a rule were nobles, or men who carried arms by reason of their profession, typically soldiers. In America where no titled aristocracy existed, duellists mostly came from the ranks of lawyers, government office holders, and sundry gentlemen, groups with much at stake in a duel of honor. Ironically, the first American duel was fought between two servants in New England (Massachusetts, 1621), where duelling was far less common than in the South. Duels were to be fought by persons of the same rank; according to tradition and the *codes duello*, duels between men of unequal social status were improper.

Duelling was a way of life for the upper classes. It was not unusual for a nobleman or a gentleman to fight a number of duels in his lifetime. Records are scarce and anecdotal, and possibly underrepresent the numbers of duels fought by particular individuals. According to reports, scores of men had extraordinary numbers of duels to their credit. For example, in France during the reign of Louis XIII (1610-1643), the Chevalier d'Andrieux was an ardent duellist, said to have killed seventy-two men by the age of thirty. Reports of the duels American President Andrew Jackson (1767-1845) purportedly fought during his life reveal numbers ranging from about fourteen to over one hundred. And even where a person was not a frequent duelling participant, as a gentleman his honor (and in America, perhaps his livelihood) would suffer blemish if he did not handle the challenge properly when called.

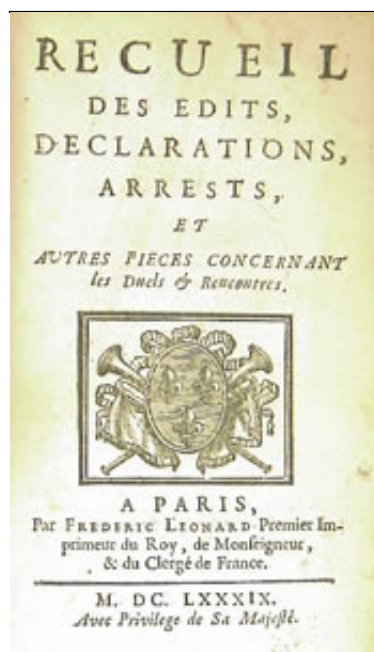
**Legal and Ecclesiastical Opposition to Duelling.** There was no dearth of opposition to all forms of duelling by

either state or church authorities, beginning as early as the eleventh century. As we have seen, the 1041 Truce of God and Louis VII's 1167 prohibition chipped away at trials by combat, and the 1148 Council of Reims denied Christian burial to tournament casualties.



When the Council of Trent (1545-1563) in its nineteenth canon prohibited princes from providing a closed field for combat on penalty of excommunication, and condemned duellists, accomplices, and spectators alike to excommunication, a severe blow was dealt to all forms of duelling in France – in theory, that is. France never recognized the Council's decrees, in great part due to the nineteenth canon.<sup>[xiii]</sup> Isolated French clergy continued the attack on duelling, building support among ecclesiastics, and Church condemnation of the practice continued vigorously throughout the sixteenth and seventeenth centuries.

Opposition by the State in France took the form of "severity in theory and leniency in practice."<sup>[xiv]</sup> Anti-duelling measures were promulgated with increasing frequency. Henri IV (reigned 1589-1610) and Louis XIII (reigned 1610-1643) issued anti-duelling edicts, but also liberally issued pardons (seven thousand in nineteen years by Henri IV alone);<sup>[xv]</sup> during the reign of Louis XIV (1643-1715), at least ten edicts aimed at curtailing duelling were issued, until he found it necessary to issue the *Edit des Duels* (1679) which ordered death and confiscation of property for duellists and their accomplices. The *Edit* also established a Court of Honor to decide penalties for transgressions.



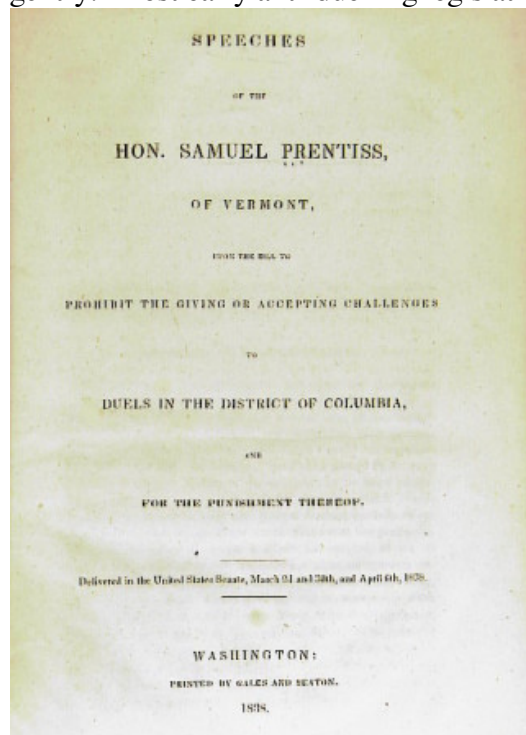
However, Louis XIV, like his predecessors, was inconsistent in support of his own laws, and intentionally disregarded known violations. The practice of duelling in France continued much as it had before.

Duelling always had been illegal under the common law, where the transgression was punished according to which common law offense had been committed. Thus, “A would-be duelist, who merely challenged another to duel, was held to have committed incitement; duelists who fought, but both of whom survived, would be tried for assault; and in the case of a duel where one combatant died, the survivor was held guilty of either manslaughter or murder.”<sup>[xvi]</sup>

The common law approach garnered more prosecutions and convictions than the continental European approach, which targeted duelling directly as a separate offense. Aristocratic offenders sidestepped these laws as often as the state entrusted with applying them.

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In America, duelling intensified during the early nineteenth century, and was principally a tradition of the Southern gentry. Most early anti-duelling legislation sought to deter duelling by barring duellists from public office.



Although enactment of anti-duelling legislation lagged, eventually all states in the Union and the District of Columbia (1839) passed legislation prohibiting duelling. A number of state constitutions, among them Maryland, Virginia, Texas, and California, contained anti-duelling language.

**The Decline of Duelling.** Duelling in America did not enjoy the degree of widespread popular favor accorded it in Europe, possibly because although it flourished in the South, residents of the Northern states never internalized it as part of their culture. Historians have linked the decline of duelling in America to the finale of the Civil War, consistent with defeat of the Confederate gentry and extensive destruction of the South; Reconstruction left little time for duels, and the upper crust was left largely impoverished by the war's depredations.

It is clear that duelling, over its lifetime as a robust social phenomenon of the aristocracy, mastered most legal attempts to contain it.

Cash, to a significant extent, came to replace social standing and even pushed honor aside, opening the social structure to those able to pay. Moreover, the universal tendency of duelling to ebb during and in the wake of war, with its surfeit of slaughter and bloodshed, would have been at play, both in America after the Civil War, and Europe after World War I. People simply tired of seeing, living with, and hearing about carnage every day.

Some writers have cited the presumed efficacy of ever more stringent duelling laws; however, it is uncertain to what extent the worldwide and prolonged anti-duelling efforts, both legal and ecclesiastical, contributed to the decline of duelling. It is clear that duelling, over its lifetime as a robust social phenomenon of the aristocracy, mastered most legal attempts to contain it.

Not to be dismissed is the steady evolution of firearms, from flintlock to percussion-cap weapons to rifled barrels and eventually to revolvers (not "approved" in many situations and mainly used in German duels). With each improvement came enhanced shooting accuracy, and a greater likelihood that one of the parties would be hit. The increased odds of being killed or wounded tended to reduce participation in duels.

The twentieth century saw sporadic episodes in the United States, yet duelling had passed its zenith and ceased to be a powerful social custom. Europe saw periods of late-blooming duelling, notably in Germany among students (the "*mensur*") during the 1920s and 1930s, and then briefly when the Nazis encouraged duelling for members of the SS and certain other official groups, establishing courts of honor to supervise duels. Italy and France also saw a resurgence of duelling, mainly also in the 1920s and 1930s.

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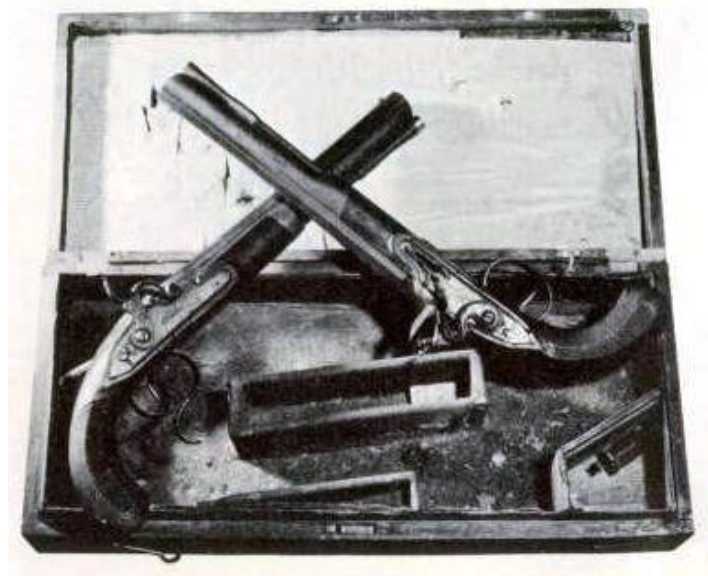
Duelling disappeared as a result of this collection of factors, and perhaps others, operating over time and across societies. Its disappearance as a dynamic custom for righting private wrongs suggests a link to the wholesale democratization of the world's societies, rather than a sudden or gradual capitulation to the law. Duelling withered, then perished. What remains today are stylized derivative games such as fencing and jousting. They remind us of the other way disputes were settled, outside court, before the twentieth century.

## FAMOUS AMERICAN DUELS

### **Hamilton-Burr (1804).**

Without doubt, the 1804 Hamilton-Burr duel is recognized as simultaneously the most famous and the most distressing duel in American history. The "interview at Weehawken" matched the sitting Vice President and lawyer Aaron Burr against the popular former Secretary of the Treasury and lawyer Alexander Hamilton.



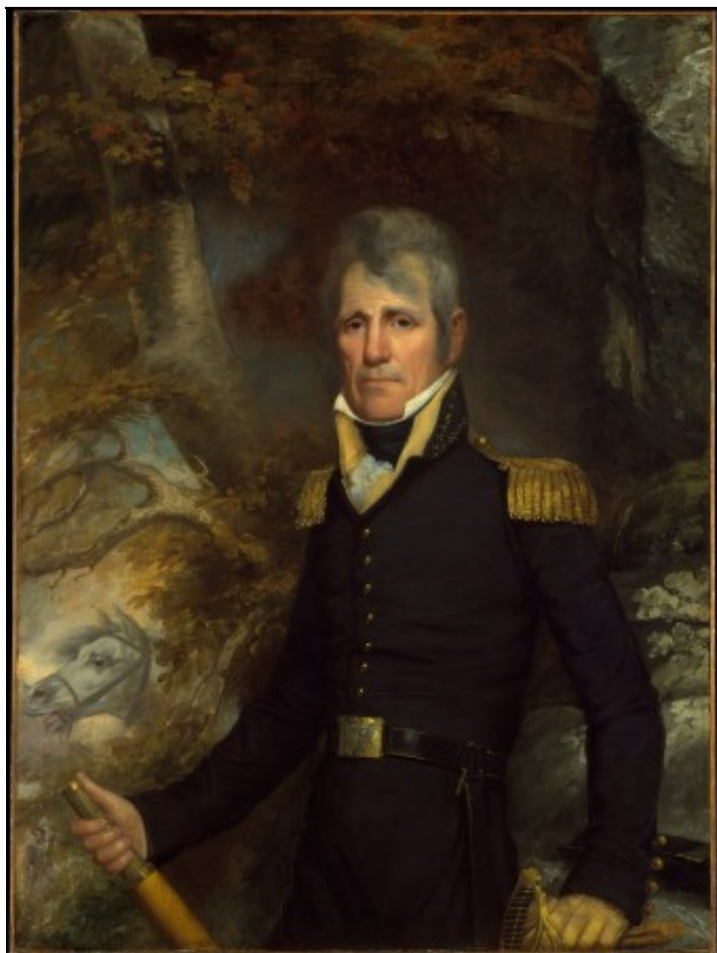


The two men never had been congenial personally, and combined with political differences of long standing they were led inexorably to duel after an exchange of letters initiated by Burr. Burr took issue with Hamilton's purported use of the word "despicable" in describing his opinion of Burr. Hamilton's cocksure yet evasive response vexed Burr even more, and after further exchanges a challenge was issued by Burr's second, Van Ness, and accepted by Hamilton's second, Pendleton. Hamilton's last writing before the duel was a declaration stating his opposition to dueling, but explaining his inability to decline this duel, citing reasons of honor and politics:

To those who, with me, abhorring the practice of dueling, may think that I ought on no account to have added to the number of bad examples, I answer, that my *relative* situation, as well in public as in private, enforcing all the considerations which constitute what men of the world denominate honor, imposed on me (as I thought) a peculiar necessity not to decline the call. The ability to be in the future useful, whether in resisting mischief or effecting good, in those crises of our public affairs which seem likely to happen, would probably be inseparable from a conformity with public prejudice in this particular.[\[xvii\]](#)

### **Jackson-Dickinson (1806).**

Future President and lawyer Andrew Jackson and Charles Dickinson, a prominent Maryland landowner and horse breeder, similarly entertained a longstanding antipathy, beginning over a bet on a horse race. Both were sportsmen and crack shots.



When Dickinson slandered Jackson's wife, Rachel, a duel was inevitable, and both intended to kill the other and expected to be wounded as well. Dickinson fired first at the signal. Jackson took the bullet in the chest, but this was not apparent to the men assembled. He stood firm, took aim, but his pistol stopped at half-cock. Jackson adjusted the pistol, took aim again at Dickinson, and fired. The shot wounded Dickinson mortally. Jackson's own wound was serious, breaking ribs and bleeding copiously; it necessitated a prolonged recovery. His wound never healed properly, causing him pain for the rest of his life. This Kentucky duel, although it did not prevent Jackson from eventually being elected President, caused transitory damage to his reputation, since he was considered to have coldly murdered Dickinson.

#### **Other famous American duels.**

Of the countless duels fought in America, those with prominent participants include the 1777 Button Gwinnett-Lachlan McIntosh duel in Georgia (Gwinnett, a signer of the Declaration of Independence, was mortally wounded), the 1820 James Barron-Stephen Decatur duel (naval hero Commodore Decatur was mortally wounded), and the 1850 David Terry-David Broderick duel in San Francisco. Broderick was a U.S. Senator from California, and Terry was the former Chief Justice of the California Supreme Court. Their duel was sparked by opposing views of slavery, Broderick as a critic, and Terry as a proponent. Broderick was mortally wounded. Terry was indicted for murder and arrested, and ultimately was acquitted at trial. The reputations of the victors of all these duels suffered damage from which they never recovered fully.

#### **Our own local dueling grounds.**

The Bladensburg Duelling Grounds, just over the District of Columbia line in Prince Georges County, Maryland, saw many duels, including the fatal Stephen Decatur duel of 1820. The son of Francis Scott Key, Daniel Key, also was killed in a duel at Bladensburg 1836).

Although this measure assuaged public demand for a ban on duelling, like most duelling laws it proved ineffective, and duellists continued to meet at Bladensburg, usually under cover of darkness.

The famous Cilley-Graves duel (1838) between two members of the U.S. House of Representatives took place here. The death of Representative Jonathan Cilley of Maine, a highly-regarded man of honor, was the impetus to Congress for enactment of Washington D.C.'s anti-duelling law (1839). Although this measure assuaged public demand for a ban on dueling, like most dueling laws it proved ineffective, and duelists continued to meet at Bladensburg, usually under cover of darkness. Ghosts of the dueling dead are reputed to haunt the Bladensburg Duelling Grounds, which are designated by a historical marker on Route 450 in Maryland, near Fort Lincoln Cemetery. Only a small section of the grounds remains, development over the years having claimed the greatest part of the land.

### **And the winner is...woof! History's most unusual duel: man versus dog.**

In 1400, the last trial by combat (judicial duel) of note was fought in France. This contest pitted man against dog, and legend has it that it unfolded as follows.

The dog's master, Montdidier, had been murdered by an ill-meaning "friend," the Chevalier Maquer. Maquer buried the body and departed. The dog, masterless and hungry, journeyed to Paris and sought out the Chevalier Ardilliers, a friend of his dead master Montdidier, and led him back to his master's grave.

The loyal dog scratched the dirt covering the grave until Ardilliers dug up Montdidier's corpse. Later the dog spied the malefactor Maquer, and attacked him viciously. The dog renewed his attacks at each encounter with Maquer, soon arousing suspicion since heretofore his nature had been gentle. Friends recalled that Maquer had shown hostility to Montdidier, and reported this situation to the king. The king ordered trial by combat between Maquer and the dog to uncover Maquer's guilt or innocence.

At combat, Maquer was unable to contain the frenzied attack of the dog, who focused on Maquer's throat. Maquer, undone by the dog's fervor and tenacity, confessed to his crime and was duly hanged.

The fate of Montdidier's faithful greyhound, and his name, remain unknown.

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[i] Throughout this article, the traditional and still correct (as well as current British) use of the double "l" for the various forms of "duel," such as "duelling," "duelled," and "duellist," is used, since these forms were spelled with the double "l" in the traditional literature on duels; this is generally what researchers find in the course of their historical research. Contemporary American spelling of the various forms of "duel" has dropped one "l;" therefore, it is best to check both forms when researching.

[ii] *Random House Dictionary of the English Language*, Second edition, s.v. "duel."

[iii] *The Burgundian Code*, at 52.

[iv] Baldick, at 17.

[v] *Ibid.*, at 20.

[vi] Sabine, at 15.

[vii] From the regulations which determined who could enter the lists (make or accept a challenge), reprinted in Baldick, at 23.

[viii] John Selden, *The Duello, or Single Combat* (1610), in *The Works of John Selden, Esq.*, vol. 3 at 64.

[ix] Peltonen, at 10.

[x] Sabine, at 6.

[xi] Quote from a "famous fencing master" in Baldick, at 38.

[xii] "[T]here is not one case in fifty where discreet Seconds might not settle the difference and reconcile the parties before they come to the field." Abraham Bosquett, *The Young Man of Honour's Vade Mecum*, at 16, quoted in Yarn at 69.

[xiii] Billacois, at 84.

[xiv] *Ibid.*, at 110

[xv] Baldick, at 54.

[xvi] Wells, at 1813.

[xvii] Alexander Hamilton's last writing, reprinted in Sabine, at 203.