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BRODERICK-TERRY DUELING PLACE

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BRODERICK-TERRY DUELING PLACE

Few events in California's political history - a narrative generously strewn with hotly debated arguments - have engendered as acrimonious a dispute as that which followed the Broderick-Terry duel. On a sunny morning in September, 1859, two men in the prime of life, both occupying high office, stood ten paces apart with loaded pistols and intent to kill. As the result of the command to fire, one was killed and the other marked for life as a murderer and renegade, much as Aaron Burr had been after his duel with Alexander Hamilton. Ever since that meeting south of Lake Merced, the dispute as to the causes, and even events, of a drama witnessed by more than three score of spectators, has continued.

The duel came as the climax to a decade of violent politics and a particularly exciting, bitterly-fought campaign of 1859. Since the days of '49, California had been controlled by Southern Democrats under the personal leadership of United States Senator William M. Gwin. This Southern clique had not, at the beginning of California's statehood, been too rabidly pro-slavery in their sentiments; they helped to elect delegates to a constitutional convention to frame a charter for a free state. However, California's

admission was long delayed; strife over the slavery question became more bitter in congress; the Southerners found office-holding in the State a lucrative business; and their political acumen and the indifference of the Northerners helped to make a united group. All these explain the strength of the Southerners, a group "... chiefly concerned with patronage, ... (and held together) by the cohesive principles of public plunder."[1]

Their leader was William M. Gwin, born a Tennesseean, in 1805, and trained in law and medicine. As a young man he served in minor federal offices in Mississippi and Louisiana; he declared himself "determined not to make money, but to devote all my energies to obtaining and maintaining political power." Migrating to California in the summer of 1849, he plunged immediately into the State constitution struggle. As a delegate to the constitutional convention of that year, he fought to make California a slave State; but he never allowed his slavery sentiments to overshadow dearer desires - to see his adopted State enter the Union, and to become its senator at Washington. Both wishes were fulfilled; California was admitted in September, 1850, and he served as its

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1. E. O. Powell, Southern influences in California politics before 1864, 211-212.

senator from then until the outbreak of the Civil War in 1861. As a result of his Southern sympathies, Gwin's career as a public office-holder terminated when the North-South struggle was climaxed by open warfare. At the time of his death in New York, in 1885, he had sunk into oblivion and was practically unknown. Of genial and clever disposition, Gwin had a striking personality, but "... in his public career gave occasional indications of a willingness to employ subtle intrigue to further his purposes."[2]

To consolidate his political primacy in California affairs, Gwin had been one of the organizers of the Democratic party in 1850, and had enunciated the policy of party unity which was one of its characteristics throughout the decade. There soon arose, however, another personality who threatened to overthrow Gwin and become the political giant of the young State. This was David Colbreth Broderick.

Born in the national capital in 1820, Broderick came from Irish immigrant stock. His father was a stonemason and taught young David his trade. These humble beginnings were often held up to scorn by his political enemies, and used by his friends to demonstrate his sterling

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2. John D. Wade, "William McKendrie Gwin" in Dictionary of American biography, VIII, 64-65; H. H. Blattner, The political career of William McKendrie Gwin, 1-27.

character; both attitudes, of course, were irrelevant. The family moved to New York, where the father died in 1837, leaving the boy to support his mother and a younger brother. "Industrious, ambitious, belligerent, of strong physique and able to give a good account of himself in a street brawl, he literally fought his way to the front." He became active in Tammany Hall's ward politics, foreman of a volunteer fire-engine company, and owner of a saloon. When the 1849 California boom hit the East, Broderick closed his saloon, emptied his casks in the street, and swearing never again to "sell or drink liquor, smoke a cigar or play a card," he migrated to San Francisco by way of Panama.

With the help of old friends, the 29-year-old immigrant plunged immediately into business and politics. In partnership with an assayer, he became a gold coiner, making "slugs" which passed for five and ten dollar coins, although their intrinsic gold content was only four and eight dollars, respectively. Like Gwin, he also became a delegate to the State constitutional convention, and, in 1851, was appointed to fill a vacancy in the State senate.

Broderick became the local "boss" of San Francisco politics. Applying Tammany strong-arm methods, he built a machine which controlled the lucrative jobs and sold them openly. His biographer excuses this activity by saying that

"when he came there was chaos and he created order. There was no party system in the town and he constructed one.... Yet he never interfered in local affairs nor undertook to influence the city officials on purely civic questions." Within five years after his arrival he controlled considerable State patronage; he had become "the Democratic party of California."[3]

His ambition, however, did not permit him to rest on these laurels. The United States senate was the next goal. Under our then-prevailing system of electing senators by state legislatures, Broderick's position made him a formidable candidate. He was defeated in an effort to win the Democfatic nomination in 1852; thereafter he devoted all his energies to winning Gwin's seat in 1855. His great strength in the legislature induced him to attempt his election by moving it forward to 1854, a project which was at least unusual, if not clearly unconstitutional. He succeeded in having his election bill passed through both houses, but it was called back for reconsideration. This time the bill was defeated by the adverse vote of Senator Grewell, who had been forced to leave town by the Broderick faction but had been

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3. W. J. Ghent, "David Colbreth Broderick" in Dictionary of American biography, III, 61-62; J. Lynch, A senator of the fifties, 69-70.

Kidnapped and brought back by the anti-electionists. Political morality in the fifties needs no better illustration than this.

When the regular election occurred in 1855, Broderick, with the help of the moribund Whigs, was able to prevent Gwin's election. Since he was not strong enough, however, to overcome the Southerners opposition, the seat was left vacant. This condition was allowed to run through 1856 because of the surprising strength of the American, or Know Nothing, party in the elections of that year. The Broderick and Gwin factions combined their strength to prevent the meeting of the convention, looking forward to 1857 when two senatorial vacancies would enable them to elect two Democratic senators.[4]

The next act of the drama was played in 1857. It was this period which saw the political struggle of the two contenders develop into strong personal animosity; theretofore, hard feeling between Broderick and Gwin had not developed.[5]

The campaign of 1857 started off with indications that party harmony could be restored. Inasmuch as Senator Weller's term expired in that year, the two vacancies would

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4. H. H. Bancroft, History of California, VI, 687-693; Blattner, Political career of Gwin, 78-82.
5. J. Lynch, A senator of the fifties, 149-150.

enable both Gwin and Broderick to win their party nominations. Gwin was particularly anxious to reunite the party because of the growing menace of the newly-organized Republican party; a united Democracy was a "consummation devoutly to be wished." Accordingly, an agreement was reached in April, 1856, whereby Broderick was to become candidate for Weller's position, and Gwin to seek re-election to his own seat. The supporters of each would aid the candidacy of the other.

At the party caucus in January, 1857, however, Broderick repudiated the agreement. The Weller vacancy was for a short term of four years, whereas Gwin's seat was to be held for six. Broderick decided he wanted to wear the senatorial toga for the longer period. His reasons were almost entirely political. The success of the American party in 1855 and of the Vigilantes in San Francisco the following year dislodged him from his pre-eminent position. His followers were left with nothing because he had never received any federal patronage; that had been the preserve of the Southerners. With a new Democratic national administration, however, the federal booty would be heavy. Broderick wanted these prizes, and the only way to get them seemed to be to defeat Gwin.[6]

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6. Blattner, Political career of Gwin, 82-86; Lynch, A senator of the fifties, 145-146.

Broderick's strategy in the caucus was reminiscent of the legislative struggle of 1854. It had been customary to ballot for the short term nomination first, and then turn to the other. Stronger than any other single opponent, he was able to reverse this order and win the party's endorsement of his candidacy for the long term. On January 10, 1857, the legislature elected him United States senator for six years, to begin in March.

With this triumph, Broderick took control of the party caucus and could throw the lesser prize to any candidate he wished. He chose Gwin, who was swiftly elected to the short term seat. The reason for the choice is clear. On January 11, Gwin wrote Broderick the famous "scarlet letter" which stated, in part:[7]

> My participation in the distribution of this (federal) patronage...has entailed untold evils upon me, and while in the senate I will not recommend a single individual to appointment to office in the state. Provided I am elected you shall have the exclusive control of this patronage, so far as I am concerned....

There is little doubt that a political bargain had been struck, that a senatorship had been sold for patronage. This letter, however, was not made public until the bitterness

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7. Lynch, A senator of the fifties, 153-157.

of the '59 campaign brought it into the open. A few days after he wrote the letter Gwin, in a newspaper statement, announced that "from patronage, then, and the curse it entails, I shall gladly in future turn...."[8]

It was the question of federal patronage which split the party. Despite Gwin's promise, Broderick found his wing of Democracy was ignored, while the Southern branch, the so-called "Chivalry Democrats" still enjoyed their former control of federal appointments. It is impossible to determine whether or not Gwin was sincere when he promised to refrain from federal patronage. He later asserted that Broderick, while professing to support his candidacy, had really intended to defeat the nomination; that it was President Buchanan's hostility to Broderick - a supporter of Stephen A. Douglas and an anti-slavery man - which was responsible for the patronage situation. On the other hand, the younger senator's supporters have always charged Gwin with hypocrisy and insincerity when he made that bargain which assured his re-election.[9] In any case, neither of the protagonists can be said to have come into court with clean hands.

The split over patronage was further intensified

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8. San Francisco Herald, January 15, 1857.
9. G. Atherton, California; an intimate history, 239; Blattner, Political career of Gwin, 89-91; Lynch, A senator of the fifties, chapter IX.

by the stirring national movements of the day. The slavery question was fast approaching a climax, and Broderick aligned himself with the free-soil, anti-slavery groups in Washington. He supported Douglas in the fight against the proposed Lecompton slavery constitution for Kansas. On the other hand, President Buchanan and Gwin were pro-slavery. In California, this question assumed larger proportions, with both sides having considerable strength. When an anti-Broderick legislature was elected, in 1858, they censured him severely for his opposition to Buchanan and the Lecompton constitution.

By 1859, feeling ran so high that the much desired Democratic unity was ruptured. The party split into two factions, each of which held its own State convention and nominated a complete ticket. The anti-slavery Democrats had a natural ally in the young Republican party, but Broderick did not formally join forces with them although their friendship was strong.

With such a political alignment, the campaign of 1859 was particularly tempestuous in an era noted for violent politics. For the first time in his career, Broderick canvassed the State for his ticket. Since the election in which he won his senatorship was made an issue, he published for the first time the "scarlet letter." A few days later Gwin retaliated by calling Broderick a "cowardly liar," and

claimed that he had publicly announced his resolution to have nothing to do with federal patronage long before the caucus of 1857. In his memoirs, Gwin later claimed that the letter had been written in a moment of great "irritation" when he was harassed by fierce opposition to his election.[10]

In general, the campaign was bitter with vituperation; no one, from party leader to ward heeler, neglected to use the most abusive language in his vocabulary. The election was won by the Gwin party, but not all the campaign's results were officially recorded at Sacramento. The fire of political struggle lit a train of gunpowder at whose end stood Broderick and David S. Terry.

Terry was born in Kentucky in 1823, and lived as a boy in Mississippi and Texas. When only thirteen years of age he served as a volunteer in the struggle for Texan independence, although he did not participate in any actual fighting. He saw action in the Mexican War, as a lieutenant in a company of Texas Rangers. Meanwhile, he had studied law. He moved to California in 1849 to establish his office in Stockton. He became interested in reform politics, and in the astonishing upset of 1855, by which the American party

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10. Lynch. A senator of the fifties, 166-188, 193-197; Blattner, Political career of Gwin, 90, 94-96.

swept the State, Terry was elected associate justice of the supreme court. Two years later he became chief justice.[11]

Terry was a hot-headed Southerner, quick to take insult and defend his honor. His temper was practically ungovernable when aroused and he was generally conceded a reputation as a "man of violence." At the same time, Terry had the faculty of attracting many friends.[12]

His character is perhaps best exemplified by the events of 1856 which led to his arrest, imprisonment, and trial by the San Francisco Vigilance Committee. Trained in the law and a firm believer in its orderly processes - at least when they did not prevent him from defending his honor if necessary - Terry was strongly opposed to vigilantism. Its methods smacked of mob rule to him. Hence he became one of the organizers of the "Law and Order Party," pledged to prevent the use of extra-legal methods. When Sterling A. Hopkins, one of the vigilante agents, tried to disarm him as Terry interfered with Hopkins' making an arrest, the justice drew a bowie knife and wounded Hopkins seriously. He was immediately arrested, tried, and convicted on two charges after

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11. A. E. Wagstaff, Life of David S. Terry, 29-96; H. H. Hagan, "David Smith Terry" in Dictionary of American biography, XVIII, 379.
12. E. G. Waite, "An estimate of the life and character of David S. Terry" in Overland monthly, XIV, (second series), 434-435; Wagstaff, Life of David S. Terry, 145-152.

an imprisonment of several weeks; but Hopkins' recovery, and Terry's judicial position, moved the executive committee of the Vigilantes to discharge him with a resolution demanding that he resign his position.[13]

In the fateful election of 1859, Terry naturally allied himself with the Gwin faction, although he was not given the nomination he sought as candidate for the supreme court bench. He was a Southerner and therefore pro-slavery. Furthermore, he was bitterly opposed to the political methods by which Broderick ruled San Francisco. The heat of the party battle and the strength of the personalities involved led directly to the fatal duel.

It has already been noted that the Democratic party split into two factions and held two conventions in 1859. At the Gwin convention in Sacramento, Terry was called upon, as a defeated candidate, to define his position. In the ensuing speech he referred to the Broderickites as:[14]

> ... a party based on no principle,
> ... a miserable remnant of a faction
> sailing under false colors, trying

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13. H. H. Bancroft, Popular tribunals, II, 292-296, 402-418; Trial of David S. Terry by the Committee of Vigilance, San Francisco, 3-73; Wagstaff, Life of David S. Terry, 97-136.
14. Wagstaff, Life of David S. Terry, 158-159. Frederick Douglass was a well known colored abolitionist and orator.

> to obtain votes under false pretenses. They have no distinction they are entitled to; they are the followers of one man, the personal chattels of a single individual, whom they are ashamed of. They belong heart and soul, body and breeches, to David C. Broderick. They are yet ashamed to acknowledge their master, and are calling themselves forsooth, Douglas Democrats, when it is known ...that the gallant senator from Illinois ...has no affiliation with them, no feeling in common with them. Perhaps ...I am mistaken in denying their right to claim Douglas as their leader. Perhaps they do sail under the flag of Douglas, but it is the banner of the black Douglass, whose name is Frederick, not Stephen.

To Broderick, this was not only abusive but also displayed the basest ingratitude. Had he not been one of Terry's defenders at the time Terry was held by the Vigilance Committee? Had they not both opposed the Committee, Terry because he wanted to stamp out extra-legal practices, and Broderick because the vigilantes' campaign was directed against his political machinations?

At breakfast in a San Francisco hotel two days later, Broderick read the account of Terry's speech. He became angry and told a friend at the table how he had aided Terry's defense. "I have said," he continued, "that I considered him the only honest man on the supreme bench, but I now take it all back." This was overheard by an intimate friend of Terry's, D. W. Perley, who approached the senator

and asked if he were speaking of Terry. In the course of the conversation, Perley took personal offense at some remarks of Broderick's, later sending him a challenge.

Broderick refused the dare. He dismissed Perley contemptuously by writing that he could accept only from a "gentleman holding a position equally elevated and responsible" as his own. Furthermore, he was aware that some such attack "...for the purpose of accomplishing a political object or to obtain public notoriety" was probably being prepared by his enemies. He would therefore "take no notice of attacks from any source" during the current campaign.[15]

These events occurred at the end of June. For the next two months, the campaign of personal abuse was waged by Broderick and Gwin - an exasperating war which piled recrimination upon crimination. The people were sure that duels would be an inevitable result, especially between the two leaders. But that meeting never occurred.

The campaign resulted in the defeat of Broderick and the Republicans. Immediately after the returns were in, Terry resigned his judgeship (because he did not want to violate the State anti-dueling law while holding a judicial position) and demanded satisfaction of Broderick. He had

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15. Lynch, A senator of the fifties, 201-204; Wagstaff, Life of David S. Terry, 159-162.

waited until the end of the campaign in accordance with the senator's declaration that he would accept no challenges until the battle was over. He now asked for retraction of the insulting remarks. Broderick replied by calling attention to the provocation, namely Terry's Sacramento speech, and let the judge make the next move. Terry's answer demanded satisfaction and named Calhoun Benham his second. J. C. McKibben was appointed intermediary by Broderick and arrangements were made for the meeting.[16] The duel was then inevitable.

The combatants' seconds arranged for a meeting on September 12, near Lake Merced, but the police interfered. It was well known that, despite the law, a duel was to be fought. However, inasmuch as the law had not as yet been broken, no action could be taken against the principals. They were therefore discharged, to make arrangements to meet the following day.[17]

The field of battle was a small vale about a mile and a half south of the eastern tip of Lake Merced, just over the county line between San Francisco and San Mateo. The day dawned raw and foggy, and, as the combatants arrived, shortly

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16. Wagstaff, Life of David S. Terry, 183-189.
17. Alta California, September 13, 1859; Evening Bulletin, September 12, 1859.

after six o'clock, they shivered and pulled their overcoats closer around them. Already, there were many spectators present, a crowd estimated between sixty and eighty. Each of the duelists was represented by two seconds and a surgeon. Dr. Hammond, for Judge Terry, had nothing visible about him to indicate his profession. Broderick's man, Dr. Loehr, "... had brought with him a large sack, containing surgical instruments and a lot of bandaging stuff, and from the mouth of this sack protruded a long saw - the whole paraphernalia suggestive of desperate operations in surgery."[18]

The preliminaries were quickly over, and the men took their places at 6:45. The sun, breaking through the fog, saw two of California's foremost public officials opposed to each other. Terry was a powerfully built man, standing well over six feet, broad-shouldered and large-framed. Broderick was also of good physique and powerful in appearance, but on that morning was ill. Each wore the formal dueling costume then in fashion - full black suit, the frock coat tightly buttoned, and no collar. Broderick had a soft hat pulled over his eyes. Both were examined for possible coats of mail; then they advanced to position, ten paces apart, armed with light dueling pistols. At the com

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18. Wagstaff, Life of David S. Terry, 197.

mand to fire, Broderick's shot was premature, striking the ground between them. Terry, slower to shoot, struck his opponent in the chest, wounding him mortally.[19]

The wounded man was taken to a nearby farmhouse, where he died on Friday, September 16, the vanquished in California's most famous duel. On Sunday the city united to give Broderick the greatest funeral in its history. Through black-festooned streets, his body was carried from the plaza, at the head of a procession which required forty minutes to pass one point, to Lone Mountain Cemetery for interment.[20]

To his friends and supporters, to the anti-slavery cause he fought so strenously, Broderick's death was probably the most helpful single event which could have occurred. Although a duel between the two leaders, Broderick and Gwin, had been anticipated for months, and the death for three days, San Francisco professed to be "startled and horrified." The press of both factions united in sentiment to mourn the fallen leader. The Evening Bulletin, a Gwin paper, published the following letter: "Whatever may have been the faults of Mr.

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19. Atherton, California, 249-258; Lynch, A senator of the fifties, 209-222: Wagstaff, Life of David S. Terry, 198-205.
20. Atherton, California, 260; Alta California, San Francisco, September 19, 1859.

Broderick, his bow of promise was broad; his sky, despite the clouds that often swept over it, was becoming more and more clear; and, cut off in the very prime of his career, no man as yet could write his epitaph."[21]

This rather cautious praise was drowned in the loud protestations of regret and criminal charges which appeared in the opposition press. The editor of the Alta California wrote bitterly: "The lion hunt is over. The jackals that long hung howling upon his track are at rest after their feast of blood, while in the cold majesty of death sleeps the great victim of their murderous deeds."[22]

The Broderickites built up a case of circumstantial evidence which pointed to their leader as a martyr slain in the cause of human freedom. Two years later his party swept back into power, with the aid of his enhanced posthumous stature, and the Southerners were routed. Terry, as the agent for the "plotters," became an outcast, never again to hold public office in California.

The circumstantial evidence which, in the popular mind, convicted Terry of murder at the instigation of the Chivalry Democrats, has been fully summed up by Mrs. Gertrude Atherton. When Broderick published the "scarlet letter"

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21. Evening Bulletin, San Francisco, September 16, 1859.
22. Alta California, San Francisco, September 17, 1859.

revealing his bargain with Gwin, he signed his own death warrant. "He knew that his death must have been resolved upon, and he expected a challenge from Gwin. But either the stately Southern Senator moved to slowly or it was agreed in council that the honor should be relegated to another." In short, a low plot to get rid of an enemy was planned by the Southerners.

The agent chosen was David S. Terry because he "...could be trusted to spout fire upon a moment's notice" and because of his violent pro-slavery sentiments. Broderick, "...whose magnificent self-control had been strained to the breaking-point by the long campaign..." took offense at Terry's Sacramento speech, as was calculated. The Perley challenge was merely the attempt of a nobody to get into the public eye.

At the same time, the senator's health was shattered by the strain of the campaign, but, like a "fractious child where his health was concerned," he elected to carry on his fight. When Terry challenged him, he was "... undoubtedly in the first stages of pneumonia." His seconds could have postponed the duel, but out of sheer fatalism or eagerness for the spectacle they let the drama be played.

The Broderick seconds were not only remiss, but acted positively criminal. The night before the duel, they drove him to a road-house where the cold, raw night and

vermin-infested mattresses prevented their principal from sleeping. They were unable, on the fatal morning, to get even a cup of coffee, so that when they drove to the appointed spot in a jolting hack, they shivered from the cold, "...depressed as only men can be before breakfast...." In general, concludes our author, "his seconds might have been in league with the enemy, so little did they watch his interests."

One of the most important aspects of the case deals with the pistols. Broderick was one of the best shots in the State, but was accustomed to the long, heavy dueling-pistol then in common use. His seconds, however, permitted the contestants to use a pair of pistols which belonged to a friend of Terry's and with which the judge had practiced. These pistols were very small and hair-triggered, not easily to be handled by Broderick with his large hand. The fallen hero was presented the more delicate of the two weapons, while Terry knew beforehand that his was the better. This explains the premature firing of Broderick's weapon. Furthermore, Terry's second had indulged in an insultingly thorough investigation when searching Broderick for a coat of mail, whereas the latter's man had merely tapped the judge's clothing.

The mismanagement charged against the handlers continued after the shots were fired. "Broderick's surgeon lost

his head, and nothing was done to relieve the dying man until Terry's surgeon volunteered his services. Then Broderick was put into the same old lumbering hack in which he had suffered tortures already, and jolted out to Black Point."[23] Fates and men - all were obsessed in favor of Terry, concludes our author.

This, of course, is an extremely rabid partisan account. On the other hand, Terry's defenders categorically deny the existence of a plot of criminal intention. The Sacramento speech, they pointed out, attacked Broderick's party, rather than the man himself, whereas Terry's character as a citizen and uprightness as a judge had been directly attacked by his opponent. He had sufficient provocation, as a man of honor, to demand a retraction of the remarks, and expected that Broderick would recognize that he had made an error in a "moment of petulancy" and would make a "... retraction such as honorable men feel bound to make for language used in an impulsive moment...." Unfortunately, the counsels of prudence did not prevail; the aggressive, reckless friends of the senator induced him to persist in his firm course, probably counting on his extraordinary accuracy with a pistol to bring him victory.

The actual duel, it is further stated, was a fair

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23. Atherton, California, 249-259.

fight. There was no difference that had ever been discovered in the shooting qualities of the two pistols, and Terry had not had access to them for practice. After the shots, Terry sent his surgeon to assist in ministering to the wounded man. In short, it was an affair between men of honor, and honorably acted.[24]

With such a mass of charges and counter-charges, it is difficult to determine the explanation on which would fit the facts most closely. Extravagant, even preposterously incongruous, statements have clouded the whole dispute. It is the opinion of the present writer that the case made out by Terry's defenders is more credible. That he could have lent himself to a murderous plot is hardly believable. At the same time, Terry was a hot-headed, intemperate individual, and it is more consonant with his entire career to judge that he lost his head in the campaign battle and needed but little provocation to challenge. The whole affair was a mixture of party and personal conflict.

The actual provocation on both sides was slight. In his Sacramento speech Terry's attack was directed against the opposing faction as a whole rather than Broderick the man. The remark applied by the senator about Terry's honesty

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24. Wagstaff, Life of David S. Terry, 181-205.

was a mild one in a campaign characterized by bitter vituperation. Yet those statements led to the duel. Perhaps the editor of the San Francisco Herald was most correct when he took the press to task for having "sedulously cultivated the grossest tastes," for setting a tone of bitterness and invidious personalities which engendered "malice, hatred and all uncharitableness."[25]

Judging the affair legally, both men were criminals in breaking the State anti-dueling act. But from the social background and environment of the day, they cannot be called altogether black. Dueling was common in California, and both contestants had participated in their share.

Temperate counsels about the affair, however, were not welcome in that day, or for many years afterward. Terry returned to his law practice, and seems to have been rather successful, but he was never again to hold public office in California. During the Civil War, he served with distinction in the Confederate armies, and later returned to California to resume his practice. He became a member of the State constitutional convention of 1878, but when he stood for presidential elector in 1880, the spectre of Broderick was successfully conjured up by his opponents to help defeat

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25. San Francisco Herald, September 18, 1859.

him. He became involved in the notorious Sharon divorce case in the eighties, and as the result of an altercation with Stephen J. Field, a justice in that case, he was shot and killed by a federal officer acting as Field's bodyguard.[26]

The opinion of his most recent biographer is perhaps as fair an estimate as can be made: "While he was a man of rash judgment and violent impulses, his honesty was as unquestionable as his courage and his ability as a judge, lawyer, and political leader was not inconsiderable. Much of a derogatory nature that has been written of his career will not bear critical scrutiny. For the duel with Broderick, he cannot, according to the standards of the day, justly be blamed; and for his final offense he paid tragic penalty."[27]

If Terry's career and reputation were irreparably damaged as a result of the duel, Broderick's stature and influence were enhanced by his death. He became the California martyr of the abolitionist cause, and as such played an important part in determining the course taken by the State in the Civil War. His grave faults were forgotten or excused as "...the faults of the big men of history." Despite the defeat of his party in 1859, his great strength "...could be

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26. Wagstaff, Life of David S. Terry, 214-513.
27. Hagan, "David Smith Terry" in Dictionary of American biography, XVIII, 380.

crushed only by a combination of factions and enemies. It was decreed that he must die lest he emerge from defeat stronger than ever, and mount to the highest places in the land over the bodies of his foes. So he died.... He is still immovable on his lofty and solitary pedestal in the history of California. He remains in death as in life the greatest of her sons."[28] Despite the hesitation one would naturally have in adhering to the categorical statement that he was the greatest of Californians, Broderick must have been a remarkable man to rise from his humble antecedents to the position of which such a statement can be penned.

The dueling place where the dramatic climax was played remained for many years unmarked. About 1915, it was decided to fix the exact location of the encounter, but many difficulties were in the way. "The absolute obliteration of the 'Lake House' and the 'Ocean House' (two contemporary landmarks), the change in the level of the lake, the obliteration of some of the old roads, the multiplication of new ones, the drifting sands, the vagueness of contemporary description of what was then a far-outlying district, the dying off of all eye-witnesses in so comparatively short a time..." - all combined to make the problem a difficult one. Finally,

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28. Atherton, California, 260-262.

through the research of Herman Schussler and the coöperation of the Native Sons of the Golden West, the spot was accurately fixed at "...the westerly end of the first small ravine, which connects with the easterly shore of Lake Merced, just south of the county line between San Francisco and San Mateo," where a monument now stands to commemorate the duel. Here, close to the Lake of Our Lady of Mercy, the embittered politicians stood to "shoot it out."[29]

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29. Davis, "Location of the Broderick-Terry duel;" Schussler, Locality of the Broderick-Terry duel.

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