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The Florida Executive Council, An Experiment in Civil War Administration

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THE FLORIDA EXECUTIVE COUNCIL

AN EXPERIMENT IN CIVIL WAR ADMINISTRATION

by WILLIAM C. HAVARD

The conduct of a major war, even under favorable conditions of internal stability, often results in a state of organized confusion in the government. For the South in the Civil War, the administration of the war effort was complicated to an unusual degree by the necessity of simultaneously reorganizing the political union which bound the states together. And even within the individual states themselves, the urgency of the war situation demanded the assumption of governmental functions which were new to the states-functions such as external defense, control of the manufacturing and transportation of essential goods, and the financing of these and related war measures. Under such extraordinary circumstances, it is hardly surprising that extraordinary forms of governmental organization should appear.

It was natural, too, that the executive branch of government should have been the object of the most widespread criticism in those uncertain revolutionary times. The importance of the executive is greatly increased in time of war. The successful prosecution of a war is largely a matter of effective administration, with rapid decisions to be made on a myriad of problems requiring immediate settlement. The laborious resolution of issues by deliberation in a popular legislative assembly must give way, through broad legislative delegations of discretionary power, to a combination of administrative planning and execution. When a country is united and confident of its persisting democratic institutions, this transition is easily effected; but when the situation is aggravated by the internal dissension of civil war, it is difficult to make such an institutional adjustment. The establishment, in 1862, of an *Executive Council* for the State of Florida was symptomatic of this difficulty, both in the manner of its creation and in the method of its functioning.

Existing political arrangements were not calculated to help the State adjust to the political impact of secession and war. Governor John Milton, against whose administration the Executive Council was set up as a check, was elected in October 1860 (a month before the election of Lincoln had put the torch to the powder-keg of Southern radicalism), but he did not take office until a year later.[1] Between Milton's election and his assumption of office late in 1861, the State seceded from the Union, entered the Confederacy, and became engulfed in a full-scale war.

The mood of the greater part of the population, too, had changed during this interval from one of anxious waiting to an inflamed belligerency. Governor Madison S. Perry had assumed a very radical position. His message to the Legislature in November 1860 was full of strongly worded exhortations against the North, ending with an appeal for a secession convention; [2] and when the convention met in the following January he had forced its hand on the issue of withdrawal from the Union by sending State troops to take over the Federal arsenal at Chattahoochee, Fort Marion in St. Augustine, and Fort Clinch in Fernandina. [3]

By way of contrast, Governor-elect John Milton, was definitely in the conservative camp. He had earlier been openly opposed to secession, and continued until the beginning of the war to urge moderation. [4] His nomination as Democratic candidate for governor in June 1860, was carried by the narrowest margin of votes in the nominating convention. Milton's home county, Jackson, had the largest group of delegates at the convention and thus aided greatly in securing the nomination for him. Coming from West Florida, which was the more conservative area of the

1, William Lamar Gammon, II, *Governor John Milton of Florida, Confederate States of America,* (Unpublished Master's Thesis, University of Florida), p. 73.
2. The Governor's Message to the General Assembly, *House Journal,* 1860, pp. 8-12.
3. Gammon, *op. cit.,* p. 77.
4. *Ibid.,* chaps. VI and VII.

State, [5] and being a somewhat deliberate man, Milton was not calculated to fill the role of an oratorical inciter to great war deeds, which must have been expected of him in view of his predecessor's actions and the growing popular radicalism.

During the long interval between his election and his inauguration, Governor Milton, whose military experience and conservative predisposition made him aware of the gravity of the portending secession and war, spent some time inspecting the state's defenses. [6] Upon assuming office, he became very dissatisfied with the administration of the State's military organization. He found that direction of the military was in the hands of the radical followers of Perry who lacked the capacities for military organization and leadership. In addition, the laws governing the recruitment, organization, and transfer to the Confederacy of the militia did not, in his opinion, provide adequately for the needs of the State. Accordingly, he began simultaneously to reorganize the state components over which he had authority and to try to influence the Confederate war department in its handling of Florida troops. [7] His appointments were drawn either from the Whigs or from the more conservative ranks of the Democrats, and his efforts with the armed forces were based on the fairly definite military strategy of protecting the Apalachicola River valley which formed the center of communications not only from the Gulf to East and West Florida, but also from Florida into Alabama and Georgia. [8]

Financial troubles, of course, added to the trying problems of military organization. The actions of the Convention and the Legislature contradicted one another on the methods by which

5. William Watson Davis, *The Civil War and Reconstruction in Florida.* (New York: Columbia University Press, 1913), p. 63.
6. Gammon, *op. cit.,* p. 76.
7. Davis, *op. cit.,* pp. 142-143.
8. Gammon, *op. cit.,* p. 94.

money was to be raised.[9] Tax-collection was suspended during 1860-1861 [10] and measures of the Legislature and the Convention vesting the Governor and the Quartermaster with authority to expend funds for military equipment were open to varying interpretations. [11] Finally, the state accounts in 1861 were "so badly muddled that it is probably impossible to estimate with accuracy how much was really expended and for what." [12] The 1861 Legislature constituted an additional burden on the Governor because it contained a sizeable number of radical Democrats who demonstrated little willingness to cooperate with him. [13] And the radicals had an even stronger reserve force in the form of the secession Convention, which they could bring into a action to confuse further the already obscure locus of governmental power.

The theory and activities of the secession conventions of the various Southern states comprise some of the most interesting aspects of Civil War history. These conventions operated, implicitly if not always directly, under the sovereignty theory framed by Calhoun. This theory was based on the idea that sovereignty was illimitable, indivisible, and inalienable. Although sovereignty was an attribute of the whole people of the state, it was exercised through a convention especially chosen as a device by which the people could act in a sovereign capacity. The convention itself thus became in fact the sovereign people, exercising unlimited powers.[14] Calhoun apparently was under the impression that this rigid doctrine was necessary to sustain

9. See: "Address by John C. McGehee, President of the Convention," *Journal of the Convention of the People of Florida in a Called Session Begun and held at the Capitol in the City of Tallahassee on Tuesday, January 14, 1862.* (Hereinafter referred to as *Convention Journal,* 1861 or 1862) p. 4. ff.

10. Gammon, *op. cit.,* p. 87.

11. *Convention Journal,* 1862, pp. 6-7.

12. Davis, *op. cit.,* p. 91.

13. Gammon, *op. cit.,* pp. 114-117.

14. Laura A. White, "The Fate of Calhoun's Sovereign Convention in South Carolina," *American Historical Review,* (Vol. 34, July, 1929), p. 762.

the right to secede and his arguments were eagerly seized by Southern radicals.

The Calhoun theory was quite clearly invoked in Florida, although the conditions under which the Convention was called indicate that secession and not extensive State constitutional change was to be its main concern. The application of the idea of a sovereign convention is amply demonstrated by two significant pieces of internal evidence. First, in the act calling the Convention, the Legislature included the dictum that "the ordinances of said Convention shall be the supreme law of the State of Florida, anything elsewhere to the contrary notwithstanding." [15] And second, the Convention, in all its pronouncements, made use of the phrase "the people of the State of Florida in Convention assembled," [16] rather than the pre-and post-war phrase, "We the people of the Territory [State] of Florida, by our Delegates in Convention, assembled . . . ," [17] which implies a representative function rather than an act of transmutation. By these two usages in combination, both the unlimited power of the Convention and the actual translation of the Convention into the sovereign people are substantiated.

The Florida Convention, bolstered by the Calhoun doctrine, first met on January 3, 1861. Before it adjourned in April of the same year, (after having recessed from March 1 until April 18), it had passed the secession ordinance, approved a revised State Constitution, accepted the Confederate Constitution, and passed a number of ordinances which, although not directly concerned with the Constitution, would appear to have had extraordinary legal status by virtue of the sovereign nature of the Convention. In adjourning, the Convention not only left the way open for a future meeting, but also ensured against any other "sovereign"

15. *Laws of the State of Florida,* Tenth Session of the General Assembly, 1860-1861, Chapter 1094.
16. *Convention Journal,* 1861, *passim.*
17. See the *Convention Journal* of 1838-39 and subsequent ones.

Convention being called during the remainder of the year. Its adjournment resolution stated:

> "Resolved, that this Convention now adjourn *sine die,* unless convened by the President on or before the 25th of December next." Adopted April 27, 1861. [18]

Nothing further was heard of the Convention until John C. McGehee, its President, visited Tallahassee on December 10, 1861; at which time, he reports, he had not the slightest expectation that the Convention would reassemble. However, according to McGehee, many people, including members of the Convention, urged him to act because of "circumstances of difficulty and embarrassment in the affairs of . . . [the] Commonwealth, which could not be relieved by any other than *the sovereign power of the State* . . . " Accordingly the President issued a call, dated December 13, for the Convention to reassmble on Tuesday, January 14th, 1862 in Tallahassee. [19]

This call and the subsequent actions of the Convention, including the establishment of the Executive Council, raised serious questions as to the legitimacy of this session of the Convention. In the first place there was a question as to whether, in scheduling a meeting of the Convention for a date later than that established by its own adjournment resolution, the Convention was not acting illegally. And secondly, the even more important question of the powers of the Convention itself were reopened.

The President of the Convention lightly dismissed the matter of the late date of its meeting with a semantical argument. He construed the word "convene" in the adjournment resolution to mean "call" or "convoke", so that by issuing the call before December 25, even though the actual meeting was later, there was no abrogation of the intent of the Convention as expressed in the resolution. [20] The issue on the larger question was not thor-

18. *Convention Journal,* 1861, Resolution 33.
19. *Convention Journal,* 1862, p. 4 ff.
20. *Ibid.,* pp. 4-5.

oughly debated until the Convention's actions were complete.

The *Florida Sentinel*, published in Tallahassee, was one of the leading radical newspapers and had actively pressed the case for calling another session of the Convention. On the opening day of the session the paper argued that the motives of the Convention in reassembling were of the highest and, contrary to opinion in some quarters, the Convention did not meet solely for the purpose of criticising the Governor's acts and policies "and to pass ordinances abridging his power under the Constitution as an Executive." The editorial writer went on to argue, however, that the administration of Governor Milton certainly could claim the Convention's attention. Even more, the paper expressed itself as willing "to trust to their [the members of the Convention's] wisdom if they abridge the power of the Governor to the narrowest limit consistent with the Constitution and the interests of the State." The *Sentinel* also was careful to reiterate the fact that the Convention stood on completely legal grounds in practically anything it did because of the wording used in calling the Convention. As a capstone to its strong stand on this matter, the paper suggested that it would be a very good move should the Convention decide to establish by ordinance, as the State of South Carolina had just done, an Executive Council to assist the Governor in the administration of the war effort. [21]

The parallels between the action of the South Carolina Convention and the Florida Convention are too striking to be ignored. South Carolina, home of nullification, secession, and of Calhoun the theorist of both, certainly was in a position to set the precedents to be followed by the other seceding states in making provision for their independent governments. And on the points which concern us here, no Confederate state was more zealous in following South Carolina's lead than Florida.

The South Carolina Convention had set its first precedent for

21. *Florida Sentinel*, January 14, 1862.

Florida to follow when it reconvened itself in a called session on December 27, 1861. It set the second when it created by ordinance an Executive Council, which was to become "the source of the greatest political controversy in the civil war history of the state." [22] The South Carolina Executive Council was composed of the Governor, the Lieutenant Governor and three other members selected by the Convention. The Council so organized was vested with almost unlimited war powers, including full control of the state military organization, the power to declare martial law, extensive powers of arrest and detention of disloyal persons, appropriation (with compensation) of private property, broad powers of appointment, and additional general powers with respect to finance. The Council went far beyond a mere cabinet system; it was a Council of Safety of which the Governor was merely another member. The appointed members were influential political figures and were possessed of great ability. They rapidly seized the initiative from the elected officials and, because the Convention had earlier abolished nearly all state cabinet posts, they were able to create and assume the headship of departments in the state administration. The members of the South Carolina Executive Council, being paid a full annual salary, became extremely active not only in planning, but in administering the affairs of the state as well. [23]

By contrast with the South Carolina Council which it imitated, the Florida Executive Council was somewhat pallid in function and membership, if not in its legal basis. It was created by Ordinance 52 of the Convention, entitled "An ordinance for strengthening the Executive Department during the exigencies of the present war." [24] The Council was composed of four members elected by the Convention. Although the text of the ordinance

22. Charles Edward Cauthen, *South Carolina Goes to War, 1860-1865*, (Chapel Hill: University of North Carolina Press, 1950), p. 144.
23. *Ibid.* pp. 142-144.
24. *Constitution and Ordinances of the Convention*, (as revised), 1862, p. 31ff.

did not include the Governor in its membership, the implication was plain that he was to act for all purposes as a member of the Council. From the wording of the ordinance it is clear that the Council was to share fully in "the discharge of the duties imposed and in the exercise of the powers conferred upon . . . " [25] the Governor. In other words, the Convention had decided that extraordinary powers had of necessity to be vested in an administrative authority of the State, that the Governor was not to be the sole and unchecked depository of these powers, and that an instrumentality of the Convention's own creation should be set up which would, in effect, act as a thorough check on the Governor by sharing directly in the exercise of these powers. The Convention created in legal form a plural executive, and conferred upon it some of the Governor's traditional powers and many additional war powers as well.

The powers of the Florida Council were precisely those which the South Carolina Convention had granted to its Council. The Governor and Council of Florida acting together had the power to declare martial law, to arrest and detain all disloyal and disaffected persons whose being at large they deemed inconsistent with the public safety, and to order and force the disposition or appropriation of private property for public uses subject to the owner's right of just compensation. In addition, the Council and the Governor could make and cause to be executed all orders, regulations and amendments (which they found expedient in view of eminent danger) for bringing into public service the whole or any part of the population. They could maintain the police; make, secure and employ arms and munitions of war for the defense of the State; constitute agencies and appoint the agents necessary to carry out their powers; and draw money from the treasury on warrants from the Comptroller for effecting these measures. The Council was given the power of appoint-

25. *Ibid.*, p. 31.

ment over military offices which had previously been in the hands of the Governor, as well as certain other appointive powers. The Council was also allowed to fill vacancies in its own membership, although Ordinance 58 amended this provision by providing that the president of the Convention could fill the vacancy if caused by death or failure of one of the members to accept the position.

The Governor was authorized to consult the Council in the discharge of all other duties and powers of his office, and if the need arose he could require the Council's advice in writing.

The first meeting of this new executive body was to be held, upon call of the Governor, within twenty days of the adjournment of the called session of the Convention. If the Governor did not issue the call, the Council was to assemble on February 28 and thereafter would set its own times of meeting. The Governor and any two of the Council were to constitute a quorum, and a majority vote of all those present was sufficient for action. The Council members were required to take the same oath of Office as the Governor, and they were subject to the same disabilities as the Governor for malpractice in office. Their pay was equivalent to that of the members of the Legislature.

Some checks were established against the use of arbitrary power by the Council. A full record of its proceedings was to be kept by the Governor's private secretary, who was to act as secretary to the Council without additional compensation. The records were especially to show the reasons for every arrest made by the Council's authority. These proceedings were to be presented to the Legislature on the opening day of its meetings, and were subject to legislative review, even to the extent of modification or repeal of the Council's actions. Nothing in the ordinance was to be construed as constituting a basis for the suspension of the writ of Habeas Corpus.

Having enacted this sweeping ordinance and several others

pertaining to the military and fiscal affairs of the State and having elected the Executive Council members, the Convention was ready to adjourn. Although it never actually met again, it was not prepared to surrender its sovereign status by adjourning *sine die.* Curiously, or perhaps appropriately enough, the ordinance creating the Council also established the conditions under which the Convention might meet in future called sessions. Such a meeting could be held on call of the President, and it would be mandatory for him to issue such a call if petitioned to do so by any thirty-five members. A special committee of five members was created to issue the call in the event of the death, resignation or disqualification of the President.

The members of the Executive Council were elected individually by the Convention: James A. Wiggins of Marion County won on the first ballot, M. D. Papy of Leon was the second member selected, polling a clear majority of the Convention votes on the eighth ballot; W. D. Barnes of Jackson won on the tenth ballot and Smith Simkins of Jefferson on the eleventh. [26] Among these men only M. D. Papy remains as something of a lasting name in Florida political history, having served as Attorney General of the State from 1853 to 1860. [27] He also was one of the five commissioners sent to Washington after the surrender of the Confederacy to inquire as to the status of the State in the Union. Later he participated in the framing of the "Black Code." Simkins served as the first sheriff of Jefferson County [28] and Barnes was nominated by the Democratic Party for Congress in 1868, but was defeated in the general election. [29] Beyond these efforts, the Council members seem not to have been particularly influential in the long-range political affairs of Florida.

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26. *Convention Journal,* 1862, pp. 100-102.
27. Rowland H. Rerick, *Memoirs of Florida* (Atlanta: The Southern Historical Association, 1902), Vol. II, pp. 91 and 94.
28. "Smith Simkins," *Biographical Souvenir of the States of Georgia and Florida,* (Chicago: F. A. Battey and Co., 1889), pp. 738-739.
29. Davis, *op. cit.,* p. 611.

The Governor was unalterably opposed to the establishment of the Council, and adopted something of an attitude of passive resistance. When Papy, Wiggins, and Simkins presented themselves to him on February 28, 1862, in accordance with the directives of the ordinance establishing the Council, he registered his dissent in cogent terms. [30] His arguments against the legitimacy of the Convention were grounded in the idea that the Convention was created for limited purposes - in particular to decide on the matter of secession. At no time did the people, in his view, invest the Convention with ordinary legislative powers. Apparently Milton believed that the cause by which the Convention's ordinances were made the "supreme law" had reference only to a secession and constitutional actions by the Convention, and not to the many matters which they additionally brought into their purview by ordinances and resolutions. He went on to say that even if the people did intend to invest the Convention with sovereign powers and with powers of ordinary legislation, these powers were yielded when the secession Constitution was promulgated on April 27, 1861.

He further noted that he believed the Convention to hold two erroneous opinions on which it based its claims to the powers enunciated by it. First, there seemed to be an idea that when the State seceded its own organic govermnent ceased. If this were true, said Milton, Florida could not have made the claim to be an independent sovereign state and had no right to secede. Second, the notion had been fostered that the people of Florida were indebted to the Convention for the Constitution. If this were true, it would merely be an incident of the first argument and the actions of the Convention were invalid on the grounds just noted. Actually, according to Milton, the Convention only republished the Constitution of an already sov-

30. Governor Milton's arguments, from which the following summary is derived, are included in "Proceedings of the Executive Council," *Senate Journal*, 1862, Appendix: "Documents Accompanying the Message of the Governor," pp. 53ff.

ereign state, after dissociating the State from the Union.

Governor Milton also raised the question as to where the Constitution fitted into the particular structure of laws on which the Convention acted. In creating the Council (as well as in other of its actions) the Convention was overriding the basic law itself. In reality it was violating the principle of the separation of powers by creating two legislative bodies-the Executive Council and the Convention - in addition to the General Assembly, and only the latter could be said to be under the control of the Constitution.

In brief, it was Milton's opinion that "the late 'Convention' had no right as a political body claiming to represent the people to have assembled, and no right after the constitution had been adopted and promulgated, and the officers of the State, civil and military, had been sworn to support it, to amend it."

He next noted that he did not arrogate to himself the authority to decide upon the powers of the Convention and that, although he considered these powers a matter for the judiciary to settle, the times called for harmony so "he would cheerfully cooperate with them (the Council) so far as he could do so consistently with the Constitution and laws of the State which as Governor he had sworn to preserve, protect and defend. . ." He hoped that they could counsel together harmoniously and accomplish some benefit for the State, without infringing obligations of the Constitution, "while at the same time he did not admit any power claimed by them derived from the Convention. . . . "

The Governor apparently cooperated only in the discussion phases of the meetings, and did not vote when decisions were made. On one occasion, with two members present, the vote was split and the Governor was called upon to cast the deciding ballot. He refused, reiterating his previous stand and making the additional point that he was forbidden by the Constitution

to legislate and had no power to violate the constitution. [31]

Just as the arguments on behalf of convention sovereignty in Florida echoed those of South Carolina, so also did the Governor's arguments repeat, in part, the anti-sovereignty views of the Charleston *Courier*. The *Courier* had strongly opposed the sovereignty idea, holding that conventions were merely representative bodies composed of extraordinary delegates assembled on extraordinary occasions to discharge functions for which ordinary government was inadequate or unsuited. Constitution making in itself was not a sovereign function nor, for that matter was any governmental function illimitable. The Convention exercised derivative, not original, responsibility - the people were still sovereign. And even closer to the arguments of Milton were the *Courier's* statements that the Convention had violated the separation of powers principle, which was the accepted legal method of distributing those governmental powers which were vested in the agents of the sovereign people. [32]

The Florida Executive Council, then, began its life under a condition of strained relations and it never achieved the prominence of its counterpart in South Carolina. It had been created by a convention whose vote on the question was divided 26 to 17. The regular cabinet posts were not abolished in Florida as they had been in South Carolina, so no opportunity was given the Council members to take over the departmental positions. For the most part the Council acted as an advisory body to the Governor and, more specifically, its members gave their sanction, in the form of resolutions, to a number of administrative actions which the Governor was left to carry out.

In all, the Executive Council met five times; ordinarily the sessions lasted for two or three days. Papy and Simkins were more conscientious in attending the meetings than Wiggins and

31. *Ibid.* Council meeting of April 26, 1862.
32. White, *op. cit.*, p. 763.

Barnes, Papy being present on all five occasions, Simkins on four, Wiggins on two, and Barnes on only one, and then not for the whole session. The beginning dates of the five meetings were February 28, April 3, April 11, April 26 and May 1; all, of course, in 1862.

By far the greatest part of the Council's activities were devoted to the approval of resolutions designed to allow the Governor to prosecute the war effort more vigorously. A comparison of the Council's resolutions with the Governor's attitudes on the war and his subsequent requests to the Legislature gives strong indications that the Council was largely engaged in ratifying the decisions which the Governor had arrived at independently.[33] With only two exceptions the council acted unanimously on all matters.

Not many of the Executive Council's actions can be construed as broad policy decisions. Approval of appointments, authorization of vouchers in small amount and similar resolutions occur most frequently among the records of the agency's business. In addition, various individual measures of war administration were sanctioned, including the right of the Governor to employ the Coast Guard as needed until it could be turned over to the Confederacy or until other Confederate services were substituted for it, authorization for the Governor to take up and use elsewhere specific railroad and telegraph installations which might otherwise fall into the hands of Union troops, authorization for the Governor to purchase or to have made such items as gunpowder and Pierson knives, and approval of the raising or disposition of certain bodies of troops.

Larger and more controversial issues than these, however, came before the Council. Perhaps the most important of all was the resolution reorganizing the state militia, which was

33. *E.g.*, The Governor's Message to the General Assembly, *House Journal*, 1862, p. 20ff.

passed on April 4, 1862. One of the most unfortunate earlier actions of the Convention in January, 1862, had been the approval of a motion disbanding the militia as of March 10 - [34] more than a month before the Confederate Conscript Act of April 16. The carrying out of the Convention's orders came at a disastrous moment. The shortage of Confederate troops had forced a withdrawal of units from the deep South in order to protect the northern borders of the Confederacy at the very time when the Convention's action on the state militia compelled Governor Milton to abolish the only military forces with which the State could make any defense against the pressing Federal invasion. In the attempt to forestall the complete collapse of state defenses and to provide a systematic method of supplying the Confederacy's requisitions of troops, the Executive Council passed its short-lived resolution reorganizing the militia.

Under the militia plan approved by the Council all non-exempt able-bodied males between the ages of 16 and 60 were subject to military duty. Among those exempt were the Governor and the members of the Executive Council, most of the state executive and judicial officials, persons exempted by the Confederacy, railroad operating personnel, and those engaged in manufacturing salt. Regimental and battalion commanders were to enroll, with the assistance of the sheriffs, tax assessors, and tax collectors, all the men within their various Beats. Elections for officers were to be held and the returns sent to the Adjutant General. The units were to be required to drill as companies once a week, and as battalions or regiments at least every two months; and weekly reports were to be made by the company commanders to the Adjutant General. Men between 18 and 50 years of age were subject to detachment for active service in the Confederacy, with the various companies bearing an equal share of the men required for such active service. The older and younger men

34. Davis, *op. cit.,* p. 143.

were to remain organized for home defense when those subject to Confederate duty had been called. Fines were levied for failure to comply with the reorganization. [35]

Objections were quickly raised to this plan. The *Florida Sentinel,* previously so eager to give full credence to the extravagant claims of power made on behalf of the Convention, now raised the strongest objections to the Council's action. Actually, the *Sentinel* was beginning a gradual change from its previous outspoken opposition to the Governor to a more moderate position of support for the chief executive. Oddly, the arguments of the paper were exactly those which the Governor had put to the Council at its first meeting. "Where," asked the *Sentinel,* "does the Executive Council gets its authority to reorganize the militia? Where does it [get] the power to legislate at all?" And a little later the writer asserts that, "It may be contended that the Council claim their authority from an ordinance of the Convention, and that by virtue of the assumed or arrogated omnipotence of that body, they, their creatures, can do what they please. This argument is not sound; for, even if the Convention had the right to legislate, which is extremely doubtful, they could not delegate that right to any other than that branch of government which they themselves, by the Constitution of their own creation, had made the depository of *all* legislative power." It should be added that in the midst of these theoretical arguments, the paper also made it clear that it was piqued at the fact that the Council had included its own membership in the list of those exempt from compulsory militia service. [36]

The Council heeded the arguments of the opponents of the militia and on April 26, after having amended the resolution slightly at the previous meeting on April 11, repealed the militia

35. "Proceedings of the Executive Council," *op. cit.,* Meeting of April 4 (wrongly dated April 14 in the *Journal).*
36. *Florida Sentinel,* April 15, 1862.

reorganization measure. [37] From that time until late in the war, the Governor had to work within the framework of volunteer military organizations for any uses necessitated by the war.

Several other important problems were handled by the Council. On April 4, the Governor was authorized to take the necessary measures to prevent efforts to ship cotton from the State without his special leave. On the same date, he was permitted to establish martial law in East Florida. On April 28, the Council passed a stern resolution restricting the sale of alcoholic beverages, and on the following day they passed an even stronger resolution requiring the discontinuation, under pain of suppression, of distilleries. Finally, on April 29, the Council authorized the raising of a volunteer company, including a squad of cavalry, "to operate as a police force on or near the coast between the Apalachicola river and St. Andrews' Bay."

During its lifetime, the Council passed a total of about thirty resolutions or ratifications of gubernatorial orders and approved several appointments, including that of the Adjutant General. When it adjourned on Thursday May 1, at the end of its fifth session, the Council scheduled a meeting for the first Monday in July, unless the Governor should call it into session sooner. On May 15, the Governor received a message from M. D. Papy, directed to him and to the Council, in which Papy tendered his resignation without stating the grounds for his action. When the first Monday in July came, none of the Council attended the meeting and neither the Governor nor the Council called a subsequent one.

The legal demise of the Council did not occur, however, until the legislative session of November, 1862. At that session, the Governor's message contained a repetition of his arguments against the Council. Accompanying the message was a copy of all

37. "Proceedings of the Executive Council," *op. cit.*, meeting of April 26, 1862.

the ordinances and resolutions passed by the Convention. Particular attention was called to Ordinance 63 which declared thirty Convention ordinances and three resolutions to be "of a permanent character and not repealable by ordinary legislation." The other ordinances were declared to be temporary and repealable when circumstances required such action. Included among the latter was Ordinance 52, the ordinance creating the Florida Executive Council. [38] Acting on the Governor's strongly argued case against the Council, the Legislature repealed Ordinance 52. [39] Florida's experiment with a plural war executive was at an end.

The experiment had never been a real success. The members of the Council did not take the bit in their teeth and run away with the Florida executive as the South Carolina Council had done, probably because the Florida Convention had done less to disrupt the existing machinery of government than had the South Carolina Convention. At the same time the Council managed, through such actions as their resolution on the militia, to incur the antipathy of the supporters of the Council idea. Although the Governor did not wage a continuing fight against the Council, he was outspoken in his opposition to its creation and repeated his views on its inadvisability frequently. It was, after all, something of a slap in the face of his administration. Besides this, his conceptions of the legal structure of the State did not admit of its legitimacy, and he naturally preferred to choose his own advisors to assist in administering the affairs of the State. Once the highly emotional state of the population in the early days of secession and war had passed away and cooler appraisal of events was possible, it became obvious that Milton was a competant administrator and that his planning and execution of the affairs of the State were adequate, especially in the

38. The Governor's Message to the General Assembly, *House Journal*, 1862, p. 42. Also "Documents Accompanying the Message of the Governor," p. 71.
39. *Acts and Resolutions*, Twelfth General Assembly of the State of Florida, 1862, Chapter 1357.

light of the adverse conditions under which he worked. The radicalism of the Convention, too, had worked a hardship on the State in fiscal and military matters; the public and the Legislature had not forgotten the difficulties of validating currency and bond issues and the debacle attendent upon the dissolution of the militia. In short, the time had come to give up extraordinary remedies applied under conditions of unprecedented change and to revert to traditional constitutional practices.

It is interesting to note that the South Carolina Executive Council was dissolved in practically the same manner as its Florida counterpart. But by contrast, its dissolution was due largely to the popular enmity aroused by the aggressive use of its powers, [40] whereas the Florida Council passed from the scene without having made a great impact either on the structure or the policies of Florida government. However, the tradition of a collegial executive did not die in 1862; even today Florida's cabinet system represents an extreme example of the sharing of executive power between the governor and a body of administrative officials independent of the governor.

40. Cauthen, *op. cit.*, pp. 159-161.