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Allen Morris



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## BEGINNINGS OF POPULAR GOVERNMENT IN FLORIDA

by ALLEN MORRIS AND AMELIA REA MAGUIRE\*

AS A SOLDIER IN FLORIDA, Andrew Jackson asserted powers that stirred international protest. As a civil governor in Florida, Jackson worried about his use of lawful authority. Until Congress would establish a government for the territories of East and West Florida, Jackson took over the interim administration under a commission as governor of the Floridas, exercising "all the powers and authorities heretofore exercised by the Governor and Captain General and Intendant of Cuba, and by the Governors of East and West Florida within the said provinces respectively."<sup>1</sup>

Embracing executive, legislative, and in at least one instance, judicial responsibilities, Jackson's writ was that of a virtual dictator. Although he was no longer a soldier, he could as civil governor use troops based at Pensacola if an emergency presented itself.<sup>2</sup> In President Monroe's commission of March 10, 1821, there were only two exceptions to Jackson's authority: he could levy no new or additional taxes, nor could he grant or confirm any title or claim to land.

Neither of the acts of Congress, passed in 1819 and 1821 providing for interim administration of the Floridas, spoke of a "governor," but vested "all the military, civil, and judicial powers" in "such person, and persons" as the President "shall direct."<sup>3</sup> The 1821 act did provide for a surveyor, commissioners, and staff to effectuate the transfer of sovereignty.

Congress gave the interim government a life to expire no later than the end of the first session of the next Congress (May 8, 1822). With the convening of the Seventeenth Congress on De-

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\* Mr. Morris is clerk of the Florida House of Representatives. Ms. Rea Maguire is research assistant to the clerk of the Florida House.

1. III U. S. *Statutes at Large*, 654-59; commission of Andrew Jackson as governor, March 10, 1821, in Clarence E. Carter, ed., *The Territorial Papers of the United States: Territory of Florida*, XXII (Washington, 1956), 10.
2. *Niles' Weekly Register*, April 20, 1822.
3. III U. S. *Statutes at Large*, 523-24, 637-39.

ember 3, 1821, President Monroe called to the attention of the lawmakers, in his State of the Union message, the need for setting up a government for the Floridas. The matter was referred to the Senate Committee on the Judiciary. Shortly afterward Senator William Smith of South Carolina, as chairman, reported an organization bill to the Senate, where it was taken up on February 6, 1822.<sup>4</sup> The Senate passed the bill on March 8, and concurred in House amendments on March 27. President Monroe signed the act into law three days later.<sup>5</sup>

The bill had moved swiftly through the congressional channels because the chief principles for territorial governments already had been established in the Northwest Ordinance of 1787, and refined in the subsequent laws for the Southwest (1790), Mississippi (1798), Indiana (1800), Orleans (1804), Michigan (1813), Louisiana-Missouri (1812), Illinois (1809), Alabama (1817), and Arkansas (1819) territories.<sup>6</sup>

A significant departure from the other organic legislation was, in the laws for Orleans and the Floridas, the establishment of a legislative council.<sup>7</sup> In the others, only the governor and judges were empowered to adopt or pass laws. Thus, citizen participation in the making of laws was rooted almost from the beginning of American government in Florida.

The act vested legislative power in the governor, "and in thirteen of the most fit and discreet persons of the territory, to be called the Legislative Council, who shall be appointed annually, by the President of the United States, by and with the advice and consent of the Senate, from among the citizens of the United States residing there. The governor, by and with the advice and consent of the said legislative council, or a majority of them, shall have power to alter, modify, or repeal the laws which may be in force at the commencement of this act."<sup>8</sup>

Likely through inadvertence, the governor was not given the

4. *Journal of the Senate of the United States of America*, 17th Congress, 1st session, 115.

5. *Ibid.*, 176, 229, 237-38; III U. S. *Statutes at Large*, 654-59.

6. *Territorial Papers*, XXII, 390, note 50. Secretary of State John Quincy Adams was likely to be sympathetic toward the problems involved in the establishment of the Territory of Florida, since he had been involved in the United States' acquisition of East and West Florida through the Adams-Onis Treaty of 1821.

7. III U. S. *Statutes at Large*, 655, sec. 5.

8. *Ibid.*

authority to veto acts of the Council, a situation remedied the following year. The governor was directed to publish the laws throughout the Territory of Florida, and, no later than December 1 each year, he was to report the laws to the President for the consideration of Congress. Territorial acts were subject to congressional veto.<sup>9</sup>

The law further defined the governor and Council's legislative scope extending to "all the rightful subjects of legislation; but no law shall be valid which is inconsistent with the constitution and laws of the United States, or which shall lay any person under restraint, burthen, or disability, on account of his religious opinions, professions, or worship; in all which he shall be free to maintain his own, and not burthened with those of another."<sup>10</sup> The governor and Council were forbidden to tax the lands of the United States, to dispose of such property, or to interfere with land claims. Congress decreed the Council should meet once a year for a maximum of two months.<sup>11</sup>

The first session was to be in Pensacola commencing on the second Monday in June 1822. Sessions after the first were to convene on the first Monday in May, and be held in "such places" as the governor and Council directed.<sup>12</sup> The inclusion of Pensacola, but omission of St. Augustine by name, caused concern to citizens in East Florida. Since the Spanish provinces had capitals at Pensacola and St. Augustine, the omission of the latter community from the congressional authority to meet in other places could be regarded as early recognition of the impracticality of rotating the seat of government between these two centers of population which were separated by what was then calculated to be nearly 500 miles of wilderness.<sup>13</sup>

Governor Jackson was among those who recognized the problem. In a letter to Secretary of State John Quincy Adams

9. *Ibid.*, 751, sec. 6, 655, sec. 5.

10. *Ibid.*

11. *Ibid.*, 655-56, sec. 5.

12. *Ibid.*

13. Evidence of the travel distance between the two capitals may be found in an advertisement by the United States Post Office Department for proposals to carry the mail between Pensacola and St. Augustine: "From Pensacola, by St. Marks, Volusia and Picolatta, to St. Augustine, once a month, 460 miles. Leave Pensacola on the first Wednesday in each month, at 2 p m and arrive at St. Augustine in 14 days on Wednesday by 10 a m. Leave St. Augustine same day at 2 p m and arrive at Pensacola in 14 days, on Wednesday by 10 a m." *Territorial Papers*, XXII, 487.

just before leaving Pensacola for the last time, he wrote: "The vicinity of the Suwany [*sic*] river possesses many advantages for the location of the seat of Government: it is equally central to the country East of the St. Johns-the Escambia and Florida point."<sup>14</sup> Jackson also recommended the consolidation of East and West Florida into one territory, and this was done in the organic act.<sup>15</sup>

Members of the Council were to be paid \$3.00 a day during sessions, plus \$3.00 for every twenty miles in traveling to and from sessions. They were also declared free from arrest, except in cases of treason, felony, or breach of the peace, during sessions and while traveling to and from sessions.<sup>16</sup> Surviving notes indicate congressional debate over the lawmaking provisions of the organization bill touched three areas: Senator John H. Eaton of Tennessee wanted the Council to meet only in Pensacola; an effort was made to reduce the number of members of the Council from thirteen to seven; and the per diem of members was proposed to be raised from \$3.00 to \$4.00. All of these proposals were rejected.<sup>17</sup>

When President Monroe, on April 28, submitted to the Senate the names of thirteen nominees, Senator Smith of the judiciary committee questioned the fact that at least two of the nominees did not meet the requirement that appointments should come from among the citizens of the United States residing in Florida.<sup>18</sup> On May 4 Monroe withdrew and resubmitted the same names, but noted: "Most of these citizens are actually residents in Florida, and the others are moving there, with intention to be present at the time appointed for the meeting of the Council."<sup>19</sup> This justification satisfied Smith, and the Senate confirmed the nominations the same day. Thus, fourteen months after Congress provided an interim government for the Floridas, a lawmaking body largely of its own citizens was created. It in-

14. Governor Jackson to John Quincy Adams, October 6, 1821, *ibid.*, 234.

15. III U.S. *Statutes at Large*, 654-55, sec. 1.

16. *Ibid.*, 657, sec. 8.

17. *The Debates and Proceedings in the Congress of the United States [Annals of Congress]*, 17th Congress, 1st session, 277-78, 226.

18. *Journal of the Executive Proceedings of the Senate of the United States of America*, III, 17th Congress, 1st session, 298; III U. S. *Statutes at Large*, 655, sec. 5; William Smith to Adams, April 30, 1822, *Territorial Papers*, XXII, 417.

19. *Senate Executive Journal*, III, 303.

cluded Henry M. Brackenridge, James C. Bronaugh, Richard Keith Call, William M. Gibson, James R. Hanham, Joseph M. Hernandez, Edmund Law, Thomas Lytle, Edgar Macon, John Miller, William Reynolds, Bernardo Sigui, and Joseph M. White.<sup>20</sup> Bronaugh, Call, Hanham, Law, Miller, Reynolds, and White were the only ones, however, who actually served. The *Pensacola Floridian* defended, perhaps sarcastically, President Monroe's selection of councilmen who were not then residents of Florida: "Why should not this legislative body be of the most respectable kind? For what other cause could the President of the United States have violated the Territorial law in the election of members out of Florida, but that of collecting talents from other parts of the Union to legislate for the good people of Florida? This is a *peculiar concern*, that he has manifested towards us. The result is this: Will the joy of the people of Florida at their good fortune counterbalance the regret that must be felt by the whole country, at the flagrant violation of the law, by the President, whom, we all know, is bound to support the law?"<sup>21</sup> Yet, if there was sarcasm in the *Floridian's* comment, it was tinged with reality for, as originally appointed, Florida had a respectable-to use the *Floridian's* word-legislative body. There were seven lawyers, a physician, two prominent Spaniards, the mayor of Pensacola, the sheriff of East Florida, and a former auctioneer/commission merchant.

Henry Marie Brackenridge (1786-1871), a native of Pittsburgh, Pennsylvania, had set out for Pensacola from St. Louis with "President Monroe's assurance . . . he would not be overlooked in the distribution of . . . [public] offices" in the Floridas. By lucky circumstance, Brackenridge traveled on the same Mississippi River steamer boarded by General and Mrs. Jackson and their staff after their vessel became disabled.<sup>22</sup> Brackenridge knew Spanish and French, was a lawyer and prolific writer, and he had been a district judge of Louisiana, a Maryland state legislator, and had served as secretary for an American mission to the newly-independent Spanish colonies of South America. Learning of Brackenridge's qualifications, Jackson asked him to serve as

20. Commission of Members of the Legislative Council, May 4, 1822, *Territorial Papers*, XXII, 422-23.

21. *Pensacola Floridian*, August 10, 1822.

22. William F. Keller, *The Nation's Advocate: Henry Marie Brackenridge and Young America* (Pittsburgh, 1956), 255.

volunteer civilian secretary and translator.<sup>23</sup> In Pensacola, Jackson assigned Brackenridge the local tasks of the transfer of the Floridas from Spain to the United States, and appointed him the alcalde and notary of Pensacola, a Spanish office whose powers Brackenridge was unable to define precisely. For a time before each was appointed to the Legislative Council, he and Richard Keith Call were law partners.<sup>24</sup>

Dr. James Craine Bronaugh (1788-1822), was a native of Loudoun County, Virginia, and a graduate of the University of Pennsylvania School of Medicine. "Hepatitis" was the subject of his graduation thesis. He was appointed an army surgeon during the War of 1812, and he served with Jackson until his discharge in 1821.<sup>25</sup> A Jackson biographer described Bronaugh as "The General's military surgeon, a high-spirited Virginian, a stickler for the code of honor, heartily believing in the pistol as the great social regulator, and always prompt to act in accordance with that faith."<sup>26</sup> Dr. Bronaugh came with Jackson, who appointed him resident physician of Pensacola. He served as president of the Pensacola Board of Health in 1821 and 1822.<sup>27</sup>

Richard Keith Call (1792-1862) was born at Pittsfield, Virginia. His conduct in the Creek War endeared him to Jackson, whose personal aide he was thereafter. He first came to Florida with the general in 1814 as a soldier and returned with him to Pensacola in 1821 to set up the interim American government. Deciding to make Florida his home, Call resigned from the army in 1822. Meanwhile, he served as acting secretary of West

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23. *Territorial Papers*, XXII, 38, note 23; *Biographical Directory of the American Congress, 1774-1971* (Washington, 1971), 624; Keller, *Nation's Advocate*, 425.

24. Temporary Organization of Pensacola by Governor Jackson, July 19, 1821, *Territorial Papers*, XXII, 131; *Pensacola Floridian*, August 18, 1821. After his appointment to the Council, Brackenridge was appointed (during the organization of the territorial government judge of the Western District of Florida (1822-1832). After his judicial service, Brackenridge returned to Pennsylvania and "engaged in literary pursuits until his death in Pittsburgh, Pa., January 18, 1871" at the age of eighty-five. Commission of Henry M. Brackenridge as judge, June 5, 1822, *Territorial Papers*, XXII, 451; *Biographical Directory of the American Congress*, 624.

25. "West Florida, Three Centuries Under Four Flags, Conquest and Disease," *Journal of the Florida Medical Association*, XXXIX (April 1953), 762.

26. James Parton, *The Life of Andrew Jackson* 3 vols. (New York, 1860-1861), II, 653.

27. *Pensacola Floridian*, August 18, 1821, August 17, 1822.

Florida in 1821, and was associated in law practice with Henry M. Brackenridge.

William M. Gibson, a South Carolinian who practiced law in St. Augustine, was described by William DuVal as a gentleman of "ability and integrity."<sup>29</sup> James R. Hanham, a native of England, also resided in St. Augustine. In the reduction of forces after the War of 1812, he was dismissed from the army after some fifteen years of service during which he had attained the rank of captain. Jackson made him the sheriff of St. Johns County in 1821.<sup>30</sup> Joseph M. Hernandez (1793-1857), a native of Florida and a resident of St. Augustine, owned a plantation twenty miles south of St. Augustine. Although he had been active in the affairs of Spanish East Florida, he became an American citizen after 1821.<sup>31</sup>

Edmund Law, born in the District of Columbia, served for twenty-three days (March 1822) as judge of the St. Johns County Court. By appointment Law served also as alcalde of St. Augustine and as notary, recorder of deeds, judge of probates, keeper of the archives, and justice of the peace. Governor DuVal later received complaints concerning Law's negligent management of the public records: it was claimed that he had allowed official papers to be removed from his office, "and that on leaving St. Augustin [*sic*] to attend the Council at Pensacola he turned the papers over to some private individual." Earlier, DuVal had described Law as a "valuable" citizen.<sup>32</sup>

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28. Herbert J. Doherty, Jr., *Richard Keith Call, Southern Unionist* (Gainesville, 1961), 1-15; *Biographical Directory of the American Congress*, 693; *Pensacola Floridian*, August 18, 1821. Subsequent to his appointment to the Council, Call was brigadier general of the West Florida militia in 1823, territorial delegate to Congress (1823-1825), and twice territorial governor (1836-1839 and 1841-1844). He died in Tallahassee on September 14, 1862, at the age of sixty-nine.
29. DuVal to Adams, December 10, 1821, *Territorial Papers*, XXII, 299-300.
30. Register of Public Officials of East Florida, February 1, 1822, *ibid.*, 357; James H. [*sic*] Hanham to Monroe, October 27, 1823, *ibid.*, 777.
31. *Biographical Directory of the American Congress*, 1110; *Territorial Papers*, XXII, 528, note 58. Subsequent to his appointment to the Council, Hernandez served as Florida's first territorial delegate to Congress (1822-1823), as a member and president of the 1824 Territorial Council, and as a brigadier general of volunteers in the army (1835-1838), during the Second Seminole War. He died in Matanzas Province, Cuba, June 8, 1857, at the age of sixty-nine. DuVal and others to Monroe, September 3, 1822, *Territorial Papers*, XXII, 529.
32. Register of Public Officials of East Florida, February 1, 1822, *Territorial Papers*, XXII, 361-62; DuVal to Adams, May 26, 1823, *ibid.*, 687; DuVal to Adams, December 10, 1821, *ibid.*, 299-300.

Thomas Lytle had come to St. Augustine from Baltimore for the American takeover from the Spanish authorities. He was identified in the Baltimore city directory for 1822-1823 as a "gentleman." In the 1819 directory, he was listed as an auctioneer and commission merchant.<sup>33</sup> Edgar Macon (1803-1829), a native of Virginia and a nephew of President James Madison, attended Princeton. Known as "colonel," he practiced law and was only nineteen years old at the time of his appointment to the Legislative Council.<sup>34</sup>

John Miller, who had served as a lieutenant colonel under Jackson, was appointed clerk of the county court at Pensacola by Jackson on July 19, 1821. Two months later, he became mayor of Pensacola, an office he held until August 24, 1822.<sup>35</sup> In an editorial regretting the death of Miller's predecessor, the Pensacola paper said its feeling was "only relieved by the certain assurance we have of the zeal and ability of his successor." Writing to Dr. Bronaugh from the Hermitage after his return to Tennessee, Jackson spoke of Miller as "a man of sterling worth-and under all circumstances to be relied on."<sup>36</sup>

William R. Reynolds, a native of Lancaster County, Pennsylvania, served as interpreter and private secretary to Captain John R. Bell of the Fourth Artillery, acting secretary of East Florida, and he subsequently performed the same duties for Bell's successor as Acting Governor W. G. D. Worthington. Congressman James Buchanan of Pennsylvania, in recommending Reynolds for appointment to the Legislative Council, noted that

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33. Samuel Jackson, comp., *The Baltimore Directory* (Baltimore, 1819), unpaginated; C. Keenan, comp., *The Baltimore Directory* (Baltimore, 1822), 175.
  34. Bible of Sarah Catlett (Madison) Macon, Mss6: 4 M265:1, Virginia Historical Society, Richmond. Following his appointment to the Council, Macon was appointed U. S. Attorney for the Eastern Florida district (1823). He established in Tallahassee the weekly *Florida Advocate* in February or March of 1827. He died at Key West on November 11, 1829. Commission of Edgar Macon as U. S. Attorney, May 9, 1823, *Territorial Papers*, XXII, 680; James O. Knauss, *Territorial Florida Journalism* (DeLand, 1926), 103.
  35. Miller received compensation of \$359.78 "being salary for ten months and twenty four days" for his service as mayor of Pensacola. Commission of John Miller as Mayor of Pensacola, October 1, 1821, *Territorial Papers*, XXII, 226-27.
  36. *Pensacola Floridian*, October 8, 1821; Herbert J. Doherty, Jr., "Andrew Jackson's Cronies in Florida Territorial Politics, With Three Unpublished Letters to His Cronies," *Florida Historical Quarterly*, XXXIV (July 1955), 22.

he had "studied law and also is well acquainted with the Spanish language, having resided some years in Spain."<sup>37</sup>

Bernardo Sigui (also spelled Segui), a native of Spain and resident of St. Augustine, had been active in Spanish affairs in East Florida. Prior to appointment as councilman, Sigui served as syndick, or recorder, for the city council of St. Augustine.<sup>38</sup>

Joseph M. White (1781-1839), an attorney and native Kentuckian, married Mary Ellen Adair, whose father, John Adair, was governor of Kentucky. White had sought appointments in the Alabama and Missouri territories without success. Seeking an appointment in Florida, White informed President Monroe that "the strongest motive I have for removing to that Territory is the delicate health of my wife . . . for this cause I am induced to abandon a lucrative Office, and extensive practice in this State [Kentucky] to locate myself in Florida." White sought the office of Commissioner for Land Claims, but said that he was also available for a seat in the Legislative Council.<sup>39</sup>

These thirteen men were Monroe's first appointees to the Council. Five of the men—Bronaugh, Brackenridge, Call, Miller, and Hanham—apparently had been brought to his attention by Jackson in consideration for other Florida public offices. Judge DuVal had suggested Hernandez, Gibson, Law, and Sigui. Congressman Buchanan of Pennsylvania had recommended Reynolds, and Senator Richard M. Johnson of Kentucky had recommended White. Former President James Madison may have suggested Macon. Lytle's sponsor is not known.<sup>40</sup>

Apportionment of the Council as concerned East and West Florida was discussed by DuVal, in a letter written in Washington, the day after his nomination as "Governor of the Floridas" was sent to the Senate, April 15, 1822.<sup>41</sup> "If population, and extent

37. *Territorial Papers*, XXII, 354, note 55; Buchanan to Monroe, April 26, 1822, *ibid.*, 415.

38. Temporary Organization of St. Augustine, July 16, 1821, *ibid.*, 120;

Register of Public Officials of East Florida, February 1, 1822, *ibid.*, 358.

39. *Biographical Directory of the American Congress*, 1911; Joseph M. White to Monroe, *Territorial Papers*, XXII, 406. Later, White was elected territorial delegate to Congress for six consecutive terms (1825-1837). He died at age fifty-eight on October 19, 1839, in St. Louis, Missouri.

40. Doherty, "Andrew Jackson's Cronies," 3-6; DuVal to Monroe, April 16, 1822, *Territorial Papers*, XXII, 406-07; Buchanan to Monroe, April 26, 1822, *ibid.*, 415; *ibid.*, 406, note 21.

41. Commission of William P. DuVal as governor, April 17, 1822, *Territorial Papers*, XXII, 469-70. The error in terminology having been pointed out,

of Territory, will in any degree influence the appointment of the members of the Legislative counsel [*sic*], East Florida would have the majority of the counsel, as their [*sic*] are eight thousand souls in East, and but Five thousand in West Florida. . . . If eight of the counsel is taken from East and Five from West Florida, the representation of each will (as near as it can) be made equal."<sup>42</sup> Monroe's appointments, whether by design or not, fell into DuVal's formula: precisely so if it may be inferred that Macon would have been an East Florida member. Brackenridge, Bronaugh, Call, Miller, and White were from West Florida; Gibson, Hanham, Hernandez, Law, Lytle, Macon, Reynolds, and Sigui from East Florida.

If the President and DuVal thought their concern with the Council was completed for the moment, they were wrong. Hernandez and Sigui resigned; Hernandez because of ill health and the situation of his family, and Sigui also because of family circumstances.<sup>43</sup> Greenbury Gaither and George Murray were recommended as successors with the support of St. Augustine citizens.<sup>44</sup>

Greenbury Gaither, born in Maryland, came to Florida from Kentucky. DuVal, recommending him for appointment as commissioner to decide land titles, called him "a gentleman of excellent legal knowledge . . . and whose standing, as a man of character, is unexceptionable-Mr. Gaither speaks the French language and reads the Spanish with fluency [*sic*]" - He previously had served as judge of the St. Johns County Court and the District Court at St. Augustine.<sup>45</sup> George Murray of Winchester, Virginia, had served in the United States Army as a lieutenant during the War of 1812. Jackson appointed him prosecuting attorney for East Florida on July 24, 1821. His St. Augustine supporters announced their "full confidence in his

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Monroe sent a corrected document recommending DuVal as "Governor of Florida Territory," which the Senate received on April 16 and approved the following day.

42. DuVal to Monroe, April 16, 1822, *ibid.*, 406-07.

43. *Ibid.*, 423, note 64.

44. Gaither and Murray served the Council without the formality of Senate confirmation. Their appointments were finally confirmed by the Senate on January 31, 1823. Recommendation of Greenbury Gaither as councilor, 1822, *ibid.*, 448-49; recommendation of George Murray as councilor, 1822, *ibid.*, 449-50.

45. Register of Public Officials of East Florida, February 1, 1822, *ibid.*, 356-57; DuVal to Adams, November 29, 1821, *ibid.*, 284-85.

integrity, patriotism and talents.“<sup>46</sup> There was one anonymous letter from St. Augustine to the Secretary of State which was highly critical of Murray, but this obviously did not stand in the way of his appointment.<sup>47</sup>

Reynolds, Hanham, Law, and Gaither sailed from St. Augustine for Pensacola on May 30 aboard the sloop *Lady Washington*. Lytle sailed on another vessel.<sup>48</sup> Murray traveled first to Washington to lobby for his appointment as collector of customs at Key West.<sup>49</sup> Macon was still in Virginia, and Gibson was “somewhere in Georgia or S<sup>o</sup> Carolina.”<sup>50</sup>

On Monday, June 10, 1822, the West Florida councilmen then in Pensacola—Bronaugh, Call, Miller, and Brackenridge—gathered in conformity with the act of Congress. Lacking a quorum, the meeting was adjourned until the following Monday.<sup>51</sup> Again there was no quorum. As the Council members marked time, two new problems arose. Brackenridge resigned to accept appointment as judge for West Florida.<sup>52</sup> White planned to leave to accept a position as secretary to the Board of Land Commissioners, but was persuaded by Governor DuVal to remain until the session ended.<sup>53</sup>

The Brackenridge resignation and the impending departure of White from the council enabled DuVal to urge upon the President the desirability of recognizing the Spanish inhabitants of Pensacola who had been passed over in the initial appointments. In a letter to Secretary Adams, DuVal recommended the appointment of Juan de la Rúa and Joseph Noriega as “men of information and integrity” who were “looked up to by the Spanish population as their first men here.” Their appointment

46. Francis B. Heitman, *Historical Register and Dictionary of the United States Army, From Its Organization September 29, 1789 to March 2, 1903* 2 vols. (Washington, 1903), I, 738; recommendation of George Murray as councilor, 1822, *Territorial Papers*, XXII, 449; 133, note 12.

47. Anonymous to Adams, June 18, 1822, *Territorial Papers*, XXII, 461.

48. *Pensacola Floridian*, July 27, 1822; T. Frederick Davis, “Pioneer Florida,” *Florida Historical Quarterly*, XXIV (January 1946), 208.

49. Anonymous to Adams, June 18, 1822, *Territorial Papers*, XXII, 461; David Shannon to Adams, July 22, 1822, *ibid.*, 493.

50. Macon was still living in Virginia in May of 1823. Commission of Edgar Macon as U. S. Attorney, May 9, 1823, *ibid.*, 680; anonymous to Adams, June 18, 1822, *ibid.*, 461.

52. Commission of Henry M. Brackenridge as judge, June 5, 1822, *Territorial Papers*, XXII, 451; Keller, *Nation's Advocate*, 296-97.

53. White arrived in Pensacola on June 20, 1822. *Pensacola Floridian*, June 22, 1822; DuVal to Adams, July 17, 1822, *Territorial Papers*, XXII, 489.

"would have an excellent effect in attaching the Spanish inhabitants to our Government; I have found those people much more orderly than the Americans who are here, and I do not believe I ever have seen a more moral or better people, they can be easily governed, if treated with kindness and confidence."<sup>54</sup>

De la Rúa was a colonel in the Spanish army who had elected to remain in Florida after the transfer of sovereignty. Noriega was a brickmaker. The output of his kilns was reported to be one of the chief exports from Pensacola. Both were appointed by Monroe in mid-August, but neither served in the council of 1822 since the commissions did not reach Pensacola until mid-September, possibly on the day the council finished its labors. Their appointments were confirmed by the Senate on January 31, 1823.<sup>55</sup>

Bronaugh, writing from Pensacola to an agent of the state department, noted, "The Legislative Council has not yet proceeded to business, only five members being present. We have not heard a word from the other eight, it is therefore uncertain when we shall form a quorum." Three days later, DuVal voiced his concern in a letter to the Secretary of State: "The members of the Legislative counsel [*sic*] from East Florida have not yet been heard from there are but five members of the counsel [*sic*] here . . . . If the counsel [*sic*] should not meet, great confusion and dissatisfaction will prevail-much now exists [*sic*]"<sup>56</sup>

On July 17, DuVal advised Secretary Adams that the *Lady Washington* had been engulfed by a three-day storm off the entrance to Pensacola harbor and "has never been heard of since. I have but little doubt the Sloop and every soul perished-"<sup>57</sup>

What really had happened to the *Lady Washington* was described in a *Mobile Register* account reprinted in the *Pensacola Floridian*: "After experiencing an alternation of calms and squalls, she put into Matanzas [Cuba] on the 22d of June, to get a supply of wood, water and provisions. She proceeded on her voyage the 26th, and made the first land at Cape St. Blas [between Apalachicola and Port St. Joe] on the 4th inst. and

54. DuVal to Adams, July 17, 1822, *Territorial Papers*, XXII, 490.

55. *Ibid.*

56. James C. Bronaugh to Fontaine Maury, June 27, 1822, *ibid.*, 475; DuVal to Adams, June 30, 1822, *ibid.*, 478-79.

57. DuVal to Adams, July 17, 1822, *ibid.*, 489.

Pensacola on the morning of the 7th. The gale increasing, she was unable to enter the port, and obliged to lay too [*sic*]. On the morning of the 9th, she shipped a heavy sea, which stove in her companion way, and threw the sloop on her beam ends, and took in a considerable quantity of water. She righted immediately, and it was considered prudent to scud her, as it appeared that she had not sufficient ballast to enable her to lay too. This was accordingly done, and after scudding three and a half hours under bare poles, (the captain and mate at the helm) she gave a lee lurch and upset. In this perilous situation she remained about 15 or 20 minutes, the crew and passengers clinging for safety to the side of the vessel, when she righted, and two hours after she run on the beach of Ship Island [off Biloxi, Mississippi]. All on board were saved.“<sup>58</sup>

These East Florida members reached Pensacola July 20, which increased the number to nine. Thomas Lytle, who had left St. Augustine in a separate ship, was not as fortunate as his colleagues. His vessel was lost in a storm, and Lytle perished.<sup>59</sup>

So, forty-two days late, the first meeting of the first Legislative Council of Florida convened at twelve noon on Monday, July 22, 1822. Likely the session was held in the residence of Juan de la Rua, situated northeast of Pensacola on Escambia Bay. De la Rua's three-story home probably was chosen not only because of its size and comfort but because neither funds nor a public building was available for the meeting.<sup>60</sup>

Governor DuVal, writing the Secretary of State, explained: “The Government-house and the few public buildings, which belong to this City are in possession of the Military There are no funds here to meet any of the expenditures of the Legislative Council-to provide and furnish a house for their use-to pay for printing the Laws and for the Stationary [*sic*] and Clerk hire &c-“<sup>61</sup>

Adams informed the governor that “No appropriation having been made by Congress at thier [*sic*] last Session to defray the necessary expenses [*sic*] of the territorial Government of Florida,

58. *Pensacola Floridian*, July 27, 1822.

59. *Ibid.*, July 20, 1822; Shannon to Adams, *Territorial Papers*, XXII, 493; Davis, “Pioneer Florida,” 208.

60. The proceedings of the Legislative Council may be found in the *Pensacola Floridian*, July 27, August 3, 10, 17, 1822.

61. DuVal to Adams, June 21, 1822, *Territorial Papers*, XXII, 470-71.

such indispensable charges, as will not admit of delay have been, and will continue to be paid from the balance remaining of the appropriation of the preceding [sic] year for carrying into effect the Florida Treaty.“<sup>62</sup>

Under Article I, Section 5, of the United States Constitution, and Section 6 of Jefferson's *Manual of Parliamentary Practice*, a "majority" constituted a quorum. This would have been seven of the Council. Yet, as the *Floridian* reported on June 22, there were those who read Florida's organic law differently. "The doubters, doubtlessly, doubt-with considerable forcefainess [sic] of doubting-as thus, the Legislative Council consists of thirteen members, by the act of Congress-and thence it is concluded-that when the act recites 'The Legislative Council'-its intent and meaning is, that there are *thirteen* members of the Legislative Council-this is certainly very clear-and it establishes most satisfactorily, that were the whole council present and in session to day-if on Monday next, any act should pass - *absent one member*, from any cause whatever, that act, would not be *law*-and all the rights secured by it, of no avail, because, *twelve* cannot constitute-the Legislative Council.“<sup>63</sup> Fortunately for the organization of the territorial government, that view did not prevail.

Of more significance was the non-appearance of a quorum on June 10, 1822. Section 5 of the organic act allowed a maximum session of two months from the convening date of the council. Doubts concerning the legality of continuing in session beyond two months, or after August 8, created problems for the members present in Pensacola. DuVal asked John Quincy Adams to determine "whether the Council, under the Law, (when they shall meet) can from that time continue in session two months or must the time be calculated from the 2nd Monday in June as fixed by Law?"<sup>64</sup> The Council members had decided the matter for themselves. Convening on July 22, they continued in session for fifty-nine days to September 18.

The first order of business for the Council was the election of a president. This was accomplished on the second day, July 23, when Dr. Bronaugh was elected. In his acceptance remarks,

62. Adams to DuVal, August 20, 1822, *ibid.*, 510.

63. *Pensacola Floridian*, June 22, 1822.

64. DuVal to Adams, June 21, 1822, *Territorial Papers*, XXII, 470-71.

he said: "As the first Legislative body assembled in this Territory, we are called upon to perform a task of great importance to its future welfare; we are required to lay the foundation of the laws and government of a Territory, which at present, although but little known, is perhaps destined at no very distant day, to become one of the most wealthy and respectable members of the American confederacy."<sup>65</sup>

John Coppinger Connor was named clerk and Jabez N. Brown sergeant at arms. Both men were Pensacola residents. Connor had served as clerk of the executive court, and Brown as city jailer. Jackson, writing from Tennessee, was pleased with Connor's appointment: "I feel happy to see him noticed by the council. I think him a [*sic*] excellent young man."<sup>66</sup>

In his message to the Council, Governor DuVal listed the legislation that would be needed for the organization of the territory. He proposed division of the courts into Superior and Inferior courts, adoption of the common law as the "basis of our Code, engrafting upon it such provisions of the civil law, as are best calculated to secure to our citizens. . . speedy and certain redress for any injuries they may sustain," and taxation for revenue necessary "to meet the expenses which must arise in the execution of our local laws." He called on the Council to "tend to the harmony and prosperity of our new country," and to "encrease [*sic*] the respectability and wealth . . . by inviting into our Territory a population active, and enterprising, and by promoting her agriculture and commerce."<sup>67</sup>

Parts of the governor's message were referred to committees; so much so as related to the judiciary was sent to a committee of four (Law, Gaither, Call, and Murray) and that relating to revenue was committed to another committee of four (Gaither, Miller, Reynolds, and Hanham). Each committee was clothed with authority to report by bill or otherwise.

Even though there usually were only eight or nine members present, the Council from its start set up several committees. There were two four-man committees to handle judiciary matters and revenue questions. A three-man committee was appointed to draft rules and regulations for the House. There

65. *Pensacola Floridian*, July 27, 1822.

66. Doherty, "Andrew Jackson's Cronies," 23; *Pensacola Floridian*, July 27, 1822.

67. *Pensacola Floridian*, July 27, 1822.

seems to be no surviving record of these rules, but it is safe to assume these were based upon those governing the United States House of Representatives. Other committees were appointed to draft legislation, consider petitions and report on specific bills. Most of the committees had three members, but others ranged from two to five. Among the matters brought before these first committees were charters for churches and for the cities of Pensacola and St. Augustine, the conduct of marriage ceremonies, licensing of lawyers, creation of Escambia, Jackson, Duval, and St. Johns counties, establishment of courts, and definition of crimes and penalties.

Determining how Florida's delegate to Congress would be elected was still another responsibility of the Council. Determining the ground rules for this stirred up a divisive debate among the members. The issue was whether military personnel stationed in Florida could vote. Dr. Bronaugh and Richard Keith Call were rival candidates for election as delegate. Bronaugh wanted the soldiers to have the vote; Call was opposed. Bronaugh, as president, cast the deciding vote for soldier-voting when the Council tied.

The history of the first bill passed by the Council shows that some of the twentieth-century practices of the Florida legislature date back to territorial period. That early body struck everything after the enacting clause of the bill, "an act to regulate the Counties, and establish Inferior Courts in the Territory of Florida," as reported from committee and inserted a new text. There were motions to recommit to committee, followed by a motion to postpone further consideration until a date beyond sine die adjournment. The bill had its third reading and passage on August 6, 1822, and was approved by the governor on August 12.<sup>68</sup> All laws enacted by the governor and Council had to be approved by Congress also.

Yellow fever appeared in Pensacola in August, and it was believed that it had been brought in by a ship from Havana. Two crewmen had died en route. The ship was laden with twenty-five tons of rotting fruit which was spread on the shore to salvage

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68. An Act to regulate Counties and establish Inferior Courts in the Territory of Florida, August 12, 1822, *Acts of the Territorial Legislature, 1822*, Florida State Archives, Acc. P68-01.

what remained of the oranges, pineapples, and plantains. Some blamed the putrid fruit for the fever outbreak.<sup>69</sup>

Dr. Bronaugh, as president of the Pensacola Board of Health, issued a statement which appeared in the *Floridian* August 17. It said: "For my own part I have no hesitation in declaring, that my confidence in the healthiness of Pensacola, has not been impaired, that the cases of a more malignant kind, may be ascribed to causes of a local nature exclusively, and that those of a milder type may be attributed in a great measure, to the unusual dryness and heat of the season, and to imprudence in eating unripe fruit." The *Floridian* also sought to calm the fears of the citizens: "It is utterly inconceivable, how any infection can rage here, as long as our bay continues salt and the Gulph [*sic*] stream breeze continues in its daily luxurious office."<sup>70</sup>

The fever raged throughout Pensacola. Chief Clerk Connor died about August 28. He was succeeded by Robert Mitchell, who had been serving as the engrossing clerk.<sup>71</sup> Dr. Bronaugh succumbed on September 2, and was succeeded by Law. The Council then decided to transfer its deliberations to Fifteen Mile House, the residence of Don Emanuel Gonzalez. Governor DuVal, writing from there to President Monroe on September 10, informed him "with deep sorrow" of the deaths of Dr. Bronaugh and of the United States attorney. "The best and most inteligent [*sic*] part of our American population has already fallen victims to this destructive [*sic*] fever-No hope is entertained of its abatement untill [*sic*] frost, which will not commence untill the last of October."<sup>72</sup>

The records show that when the Council adjourned on September 18, it had enacted a total of fifty-six bills. Despite the delayed start and the toll of yellow fever, it had met the mandate of Governor DuVal and the federal government to provide the territory with a foundation of laws. At the time of adjournment, six members were present: Law, Miller, Murray, Call,

69. Celia Myrover Robinson, *The Crown Jewel: Fabulous Families of Old Pensacola* (Pensacola, 1948), 46.

70. *Pensacola Floridian*, August 17, 1822.

71. Act for the payment of the Clerks, September 18, 1822, *Acts of the Territorial Legislature, 1822*.

72. Tipton B. Harrison of Lynchburg, Virginia, was U. S. Attorney for West Florida. Interestingly, Richard K. Call and Joseph M. White each had had congressional support for this office. *Territorial Papers*, XXII, 414, note 43; DuVal to Monroe, September 10, 1822, *ibid.*, 531.

White, and Gaither. Bronaugh was dead, Hanham had left in mid-August to campaign in East Florida for the election of Bronaugh as delegate to Congress, and Reynolds had departed on September 17.<sup>73</sup>

Of the bills enacted, thirty-six likely were adapted from the laws of other states and territories. The Spanish civil code, on which titles to real and personal property were founded, was supplanted by the common law of Great Britain, likely to the dismay of the Spanish population. There were acts regulating descents, assigning of bonds and notes, concerning awards and arbitrations, regulating proceedings in chancery, concerning usury, regulating conveyances, concerning guardians and wards, masters and apprentices, concerning wills, providing for alimony, prohibiting unlawful gaming, concerning dower and jointure, prohibiting frauds and perjuries, directing the mode of suing out and prosecuting writs of habeas corpus. Other laws regulated criminal and civil actions. There were also laws regulating the counties, establishing inferior courts, incorporating the cities of Pensacola and St. Augustine, providing for the payment of postage on communications directed to the governor and the secretary of the territory, establishing boards of health in Pensacola and St. Augustine to provide against the introduction of contagious diseases, raising revenue for the territory, and providing for the compensation of clerks and messenger of the Council and for other expenses of the lawmakers.<sup>74</sup> The device of laying a bill "on the table," in lieu of killing it, was used to dispose of a proposed charter for St. Peter's Protestant Episcopal Church of St. Augustine.

The Council drafted a 3,485-word memorial to President Monroe for transmission to Congress. It stressed Florida's need for roads: "as we are at present situated the nearest practicable road from one to the other (Pensacola-St. Augustine) by land, is seven hundred and fifty Miles, through Alabama and Georgia, and the water communication round the Cape is as difficult as a trip to Liverpool or Bourdeaux [*sic*]." <sup>75</sup> The memorial also ex-

73. Settlement of Accounts of Territorial Officials, February 25, 1823, *ibid.*, 629-32. News of Bronaugh's death was slow in reaching East Florida; Hanham and others continued to campaign for him as late as September. Anonymous to Adams, October 15, 1822, *ibid.*, 544-45.

74. *Acts of the Territorial Legislature, 1822.*

75. *Ibid.*

plained the need for lighthouses, control of piracy and ship wrecking, repression of crime by reorganizing the judiciary, stimulation of immigration by settling land claims, and harbor development. Pensacola's advantages as the site of a military depot and fortifications were also set forth.

Assisting the Council were John Coppinger Connor, who served as clerk until his death; Robert Mitchell, who succeeded Connor; Alfred W. Hynes, an engrossing clerk; and Jabez Brown, the messenger or sergeant at arms. The Council authorized the payment of \$114 to Connor's estate, which represented a rate of \$3.00 a day from July 22 to August 28. Mitchell was paid \$110 as clerk for the period from August 28 to September 18 at \$5.00 a day. He also received \$87 as engrossing clerk from July 30 until August 28, which was figured at \$3.00 a day. Hynes was paid \$281 for his services as engrossing clerk from July 24 to August 28 at \$3.00 a day, and \$8.00 a day from August 28 to September 18 for the additional duties which he acquired upon the death of Connor. Brown was paid \$106, representing \$2.00 a day from July 22 to September 12.<sup>76</sup>

The members of the Council were allowed their per diem of \$3.00 and mileage of \$3.00 based on each twenty miles traveled. For the St. Augustine members, this meant one-way mileage of \$129. The majority of the members received per diem from \$174 to \$177. Joseph White, however, apparently gained a month through some clerical error. He was paid \$261 for the period from June 22 through September 18, although the Council did not convene until July 22.<sup>77</sup> In addition to these per diem and travel payments, the Council was also responsible for printing and distributing the laws, paying the clerks, printing stationery, and the hiring of a room and tables. It came to \$3,300 and Governor DuVal requested this amount from the state department.<sup>78</sup> Reviewing the work of the Council, the governor noted that "the code of Laws enacted by the Legislative Council, I believe well calculated for the situation of the Territory."<sup>79</sup>

The second annual session of the Legislative Council was held in St. Augustine and the third in a log building at the newly

76. Ibid.

77. Settlement of Accounts of Territorial Officials, February 25, 1823, *Territorial Papers*, XXII, 629-33.

78. Acting Governor Walton to Adams, November 5, 1822, *ibid.*, 561-62.

79. DuVal to Adams, September 22, 1822, *ibid.*, 536.

designated capital of Tallahassee. Popular election of the Council began in 1826. Congress on July 7, 1838, substituted a legislature for the territory with a House of Representatives and a Senate.

Florida's present House of Representatives is the direct successor to the Legislative Council of 1822, which first gave the people of Florida a voice in the making of the laws governing them.