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HUNTSVILLE-MADISON COUNTY CELEBRATES THE U.S. CONSTITUTION BICENTENNIAL

Members of the Huntsville-Madison County Historical Society assumed leadership roles in the production of several patriotic events marking the U.S. Constitution Bicentennial. James Record, a former president, served as general chairman, and Bill Sanford was treasurer of the local Bicentennial Commission. Marilyn Morring represented all of the D.A.R. groups on the executive committee and coordinated a special meeting of all D.A.R. chapters in North Alabama on September 8, 1987, at the new public library.

On September 12 a musical program entitled "Our Celebration for the Constitution" that included a cast of several hundred volunteers, was presented in the Von Braun Civic Center Arena. Dr. D. Royce Boyer was chairman and director of this event attended by more than 3,000 patriotic flag-waving citizens.

"We the People." a production portraying the events surrounding the writing of the Constitution was presented in the Concert Hall of the Civic Center on September 17. Lawrence Fine, president of the Huntsville Little Theatre, was chairman and director of the performance. City and county school children attended the 3:30 p.m. matinee and some 2,000 adults enjoyed the evening presentation.

Dean Roy Meek's article, included in this issue of The Huntsville Historical Review was presented by him at the second quarterly meeting of the Huntsville-Madison County Historical Society on July 19, 1987.

THE IMPERIAL JUDICIARY: THE CONSTITUTION AND THE POLITICS OF LEGITIMACY

by Dean Roy L. Meek

I am honored to join in the celebration of the Bicentennial of the Constitution of the United States. This is the celebration of a wedding--the wedding of politics and law that created and sustains a system of government that is our most fundamental birthright as a free people. This bicentennial celebration should be, I believe, an occasion for the remembrance of, and a rededication to, the goals, values, and aspirations of those who established this Constitution. It is a time for taking stock of where we now stand in relation to the achievement of these fundamental principles. We must remember that the founding of the Constitution is the beginning and not the end of the process of self-government. Let us think and consider and reason together.

What is this thing that we refer to simply as "The Constitution"? It is a document that contains the fundamental law that guides the operation of our polity. It specifies the powers that the national government may exercise. It establishes and defines the governmental structures that will exercise these powers. It prescribes the method for the selection of those persons who will make binding decisions within these structures. It describes the processes through which governmental powers are to be exercised, and it specifies the limits that are imposed upon the powers of government. In short, it establishes the criteria for determining political legitimacy within our

political and legal system. The document reflects the character of its creators and it continues to shape the possible futures of a people. Constitution making is the ultimate political act and its product is the organic law of the polity. The United States Constitution is a crystallization of the interests, the understandings, and the prejudices of its framers and it guides our political thoughts and actions. Almost every political controversy of consequence in American politics introduces a constitutional dimension into the debate. Our Constitution is not a powerless symbol; it is the centerpiece of our law and politics.

One of the central debates of American life is whether the original Constitution was intended to establish a democracy. In some most critical ways, it is without doubt based upon eighteenth century versions of democratic assumptions and aspirations. It is clear that the framers saw the people to be the basis for the authority of the Constitution. The preamble clearly asserts that it is the people who have created the document. There can be little doubt that the consent of the governed was accepted as the source of legitimacy of the government created by the Constitution. The members of the convention held themselves responsible and accountable to those whom they represented. They well understood that their work would come to naught unless it was accepted and ratified by the elected representatives of the people in the various states.

The Constitution did not create a definition of the people. It accepted the

various definitions that were present in the existing states. In some cases, those enfranchised included blacks, aliens, persons without property, and in at least one case, some women. It is true that the concept of the people that prevailed in that day was narrower than our current view. Nevertheless, it was at least as broad as that held in the golden age of Greece which is so often proclaimed as our model of "pure" democracy. It was certainly broader than that which generally persisted in the world of 1787. If not democratic in our modern view, it was at least thoroughly republican in nature. All governmental power was firmly fixed in the hands of the elected representatives of the people. Even the most critical view cannot hold that the people who were to share the suffrage were limited to a narrow aristocracy of birth or an oligarchy of wealth and privilege. Although the definition of the people was cramped and narrow by today's standard, it is most important to note that the Constitution established processes that could be, and have been, used to more broadly define the people. These changes have not required any fundamental alteration of the basic conceptions and assumptions of the system.

One of the most fascinating stories of the American polity is the dramatic broadening of our definition of the people. The extension of the right to vote has been the most frequent subject of the amendments to the Constitution. The broadening of the suffrage, i.e., the redefinition of the people, is a central goal of the 14th, 15th, 19th, 23rd, 24th, and 26th amendments. No one of these amendments in itself creates a

democracy; they each represent an extension of the reach of a functioning democracy. Can one really seriously believe that democratic government does not exist today because the vote may be denied to sixteen-year-olds or resident aliens? One should remember that each of the extensions of the definition of the people represents a determination by an extraordinary majority of those who held power to share that power with some broader set of persons. One should not read history backwards in judging the democratic spirit that stands at the foundation of our constitutional system.

The founding fathers, like all of us, were the product of their place in the flow of history. They had some notions of the lessons of history and some understandings of the political ideas that history provided to them as tools. They had experience as practical men of affairs with the consequences of tyranny and political and economic instability. They had aspirations for a secure, prosperous, orderly, and free future for themselves and their posterity. They had the ambivalence about government that weighed so heavily on most of the children of the enlightenment. Government was accepted as necessary for order, security, and liberty to prevail and yet, government was understood to be the greatest single threat to the destruction of these very values. From this perspective, the founding fathers added their efforts to the historic search for the golden mean. They chose an instrument that was consistent with their experience to achieve their goals. The instrument was a written Constitution that would establish and limit a government without limiting the ultimate power of the people.

The Constitutional Convention was marked by both consensus and conflict -- consensus enough to make the task they had undertaken possible and conflict enough to continually remind them throughout that summer of 1787 that it was important. There was a broad consensus that a stronger central government was necessary to sustain the nation's independence in a hostile world and to develop an acceptable level of internal social and economic harmony. There was consensus that the power and influence of the states must be preserved and that unanimity must be achieved within the Convention on the final product if the document was to have a chance for acceptance and ratification. There was conflict among various theories of good government. There were competing notions of what elements should be contained in the document. There was very significant disagreement over which political and economic interests were to be served. It was the consensus that it was critical that they be successful and the real differences in interests and opinions made the Constitution a "bundle of compromises."

The product of this convention was a rather typical political document created in a democratic polity when no single interest has the power to prevail. It represented a set of compromises among a complex set of conflicting political goals. These were made possible by a shared determination by the participants that they should all remain a part of a common political community. The provisions of the document were hammered out on the anvil of intensely held political interests by those who were dedicated to

maintaining and extending their own political power. As a product of intensely fought political struggles, the Constitution was well suited to guide the politics of a nation. It did not represent a clear set of detailed substantive policy conclusions; it did provide a process and structure through which a free people could continue to struggle for justice and advantage in an orderly fashion over time. It was flexible enough to provide vitality to the politics of a growing and developing nation.

There were some core conceptions that were widely shared and that were clearly embedded in the document. Legitimate government rested on the consent of the governed. There was to be a sharing of political power by national government and the states. Government was to be limited and guided by the rule of law. Change in governmental power must be possible; but it should be relatively difficult to achieve. They sought to balance stability and change by requiring that a broad consensus of the people and their representatives be developed before major change could occur. Conversely, they did not attempt to provide any significant limits on the consensual preferences of the people. To do so would be inconsistent with the concept of a free and self-governing people.

The fear of excessive power of the new central government was, and is, a central dimension of the American constitutional system. There was an understanding that no mere written document could preserve liberty. The fundamental principles embedded in its provisions must be internalized by the

people. Its goals could only be achieved if the people were provided with formal mechanisms for the preservation of their liberty. The central feature of the Constitution that was designed to achieve this goal was a complex and delicate balance of power among the various structures that were empowered by the Constitution.

Liberty of the individual was to be preserved. Government was to be limited. The fundamental concept was that no person's life, liberty, or property could be legitimately taken by government unless there were reinforcing decisions taken by each of the three branches of government. In the simplest terms, there must be a general law enacted by a majority vote of each of the houses of a bicameral legislature that was representative of the people and the states. There must be an application of law by the executive branch headed by the president indirectly selected by the people. There must be a finding of a violation of the law by an independent judiciary composed of judges appointed for a term of good behavior and, finally, any actual burden must be imposed by the executive branch and it could be removed by a pardon of the president. Each of these activities was to be guided by the Constitution as the supreme law of the land. Changes in the Constitution could only be made by an amendment approved by a two-thirds majority in each house of the Congress and the ratification by three-fourths of the states. Thus, the whole structure of the system was designed to preserve liberty by requiring a broad consensus before the government could act. This kind of system could lead to stalemate and inaction. But,

to the framers, better governmental inaction than tyranny. There was a constitutional mechanism for achieving integration of the system. The Congress could, by a majority vote in the House and a two-thirds vote of the Senate, remove any executive and judicial officer through the process known as impeachment.

The political nature of the Constitution results in much of the document being written in general terms, and its use over two centuries has rendered the modern implications of even some of its more specific language unclear. Therefore, one of the most central issues of this and any written constitution is, how will it be interpreted and applied? Perhaps, more importantly, who shall have the ultimate authority to interpret its words and provisions in a final way? This has always been an object of concern and conflict in the American polity. This is the most important operational issue of any written constitution and the central focus of this paper.

The debate over constitutional interpretation in the United State has revolved around the concept of judicial review. From the earliest days, there has been dispute over whether the courts should be able to hold actions of the legislative and executive branches to be unconstitutional, and thereby, null and void. There were proposals in the Constitutional Convention to formally institute some form of this doctrine. Hamilton clearly argues that this concept is included in the Constitution in Federalist Paper #78. The Constitution is silent on the issue. This important issue was one of those many

significant elements that the framers simply left to be worked out in another day through the political processes they had established in the Constitution. However, there has been general agreement that the courts should play some role in the process of constitutional interpretation. There has been much less agreement on the nature of that role and its implications for the functioning of the other branches of government. The two primary lines of argument can be traced to the competing views of the two old and often bitter political adversaries--John Marshall and Thomas Jefferson.

Although the power of judicial review had been assumed to be operative in earlier cases decided by the Supreme Court, the first example of a formal judicial determination that an Act of Congress was in conflict with the Constitution and unenforceable occurred in the case of Marbury v. Madison in 1803. In this case, Marshall speaking for a unanimous court, argued that, "It is emphatically the province and duty of the judicial department to say what the law is."(1) The implications of that pronouncement were worked in the following way. As the Constitution, by its own terms, was the supreme law, any statute in conflict with it must be unconstitutional and, thereby, null and void. The judges have the duty to hold it so. Any other judicial response would require the judges to violate their oath of office to uphold the Constitution. This argument has been read, and was probably meant to be read, to mean that there was a unique and final constitutional interpretative power lodged in the justices of the Supreme Court. Parenthetically, as a

good Federalist, Marshall did not work out and make explicit the implication of his argument that the members of the first Congress, which was dominated by his political party, had violated their oath of office in passing this unconstitutional Act as did President Washington in signing the Judiciary Act of 1789. Each member of Congress and the President, of course, also must take an oath to uphold and defend the Constitution.

The Jeffersonian argument can also be stated quite simply. The Constitution has established three independent, coordinate, and co-equal branches of the national government. Each of the persons serving in these offices is responsible to the Constitution and the people. Each must consider his or her constitutional duties as they perform their official responsibilities. Therefore, each has the final power to interpret the Constitution as it governs the exercise of that branch's duties and responsibilities. The Justices, under this formulation, do have the authority to interpret the Constitution and the duty to be guided by it in cases that are properly before the Court. However, the other branches are not bound to accept or support these interpretations except upon their own sound discretion. Thus, a court is free not to enforce a law or action that it deems to be in conflict with the Constitution, but it has no power or authority to impose that interpretation on the other branches of the national government. The central issue is not whether the courts have the power to interpret the Constitution and exercise the power of

judicial review; it is the uniqueness of that power and its power to control the activities of the other structures of the national government.

These shifting perspectives on the historic debate over the power of constitutional interpretation define one of the most fundamental issues of American constitutionalism, and unfortunately, one of the least understood of American law and politics. This debate is not only of historical interest. It is a recurring issue of American law and politics. It has been refueled by recent speeches by Attorney General Meese and Justice Thurgood Marshall and the reactions to these speeches by the press and the legal community. It was a central element in the "Watergate Affair" and it is being raised as an issue in the current "Iran/Contra" controversy. It will be the critical issue as the Senate debates the confirmation of Robert Bork.

Paradoxically, the Jeffersonian view has prevailed in American law and the Marshallian view has been accepted as a fundamental part of our political ideology. Incomprehensibly, much of the acceptance of Marshall's claim in the political arena is based upon the false belief that his view is directly required by the Constitution and is necessary in a democratic form of government. It is most important that we consider and come to understand thee arguments and their implications for democracy in America.

Let us look at the functioning of the constitutional interpretation in the American legal system in an over-simplified sequential

pattern. Anyone who has followed any important congressional debate must know that one of the central elements of such debates is the question of how proposed legislation squares with the Constitution. Self-evidently the exercise of the congressional law-making power is punctuated by issues of constitutional interpretation. It is obvious that important pieces of proposed legislation have been defeated or significantly modified by the belief of a majority of the members of at least one house of the legislature that elements of the proposal were inconsistent with the Constitution. Such a determination represents a "final" interpretation of the Constitution relative to that particular proposal--at least for the time being. There is no opportunity for any other branch of government to review or alter this negative judgment. The appeal, if there is an appeal, is to the people through the electoral process.

Similarly, presidents have often vetoed bills proposed by the Congress on the ground that some element of the bill was in conflict with the Constitution. Constitutional interpretation often is a significant component of veto messages of presidents. Under the Constitution, these presidential vetoes are final unless overridden by a two-thirds majority in each house of the Congress. In that sense, the Congress, again, has a final power to interpret the Constitution.

Any bill that becomes law is, and has always been presumed to be, constitutional unless its constitutionality is raised by a party in an appropriate case in a court of law. One of the options that is available to

any judge is to determine that the statute is null and void because it is in conflict with the Constitution. However, if such a decision requires some affirmative act by government to render it enforceable, the court must rely on the executive branch for the enforcement. Executive actions are guided by the sound discretion of the President, and in cases where appropriate, the unlimited power of pardon. Presidents such as Jackson and Lincoln have purposely and clearly refused to enforce specific rulings of the Supreme Court.

If the Congress rejects either the judge's interpretation or the President's response to his duty of enforcement, it may remove the offending party from office through the process of impeachment. An alternative approach is available. The Congress may, by a two-thirds vote in each house, propose a constitutional amendment to correct the "mistake" of the Court. If ratified by three-fourths of the states, the amendment becomes a part of the supreme law of the land. The 11th, 14th, 16th, 18th, 24th, and 26th amendments are examples of the successful use of this technique. Each of these amendments overrules specific constitutional interpretations of the Supreme Court. Thus, in the final analysis the legal relationships under the Constitution identify the Congress as the final governmental interpreter of the Constitution. The appeal from such judgments is always to the people through the electoral process. Therefore, the original notion that the people are the ultimate interpreters of the Constitution is fully preserved in the technical operation of the American legal system.

One additional question in this regard: Are the people in general obligated to follow the "law" made by the court in this process of constitutional interpretation? As we have rejected the abhorrent notion of common law crimes, i.e. judicially created crimes, from the earliest days, the question would appear to be nonsensical except that this issue continues to be broadly raised as a self-evident truth and there have even been allegations that Supreme Court decisions become a part of the supreme law of the land. One needs only to read the quasi-legislative opinion in Roe v. Wade(2) to quickly understand the potential for mischief inherent in that growing acceptance of the court as a legitimate source of law in this society.

The central feature of law that binds individual behavior is that any law enacted by the legislature, enforced by the executive, and that results in an adjudication of guilt by the judiciary can subject the individual to the forfeiture of his life, liberty, or property. Can such an outcome flow from a judicial judgment? It obviously can in the case of persons who are parties to the case that is being decided by the court. Named litigants can be punished for contempt of court if they do not follow an order of the court, assuming that the executive branch sees fit to enforce the judgment and the President does not choose to provide a pardon. However, a judicial ruling does not, and cannot, empower the executive branch to enforce the court's interpretation of the Constitution on persons who are not the specific subjects of a specific court order.

Two examples may clarify this important

point. The Supreme Court has held that prayers in the public schools are contrary to its interpretation of the Constitution. What happens, as a matter of law, if a particular school continues to have prayers? Some private individual with standing to sue may seek a court order stopping that particular activity. However, there can be no punishment ordered by the court for the activity prior to a new order of the court that is addressed to that specific official. Thus, as Jefferson has argued, the court is limited to interpreting the Constitution to those cases that are before it and no other person is <u>legally</u> bound to accept that interpretation. School desegregation in the South provides another very instructive example. There was very little desegregation in the years of 1954 to 1964 when the only national ruling requiring desegregation was a series of decisions of the judicial branch. One should also remember that no one was, or could be, punished for violating the general dictates of the court during this period. There was massive desegregation immediately after the passage of the Civil Rights Act of 1964 that specified generalized duties and provided for executive enforcement. The relative efficacy of a judicial interpretation and a statute enacted in pursuance to the Constitution by the Congress should be self-evident.

There is one other element of the Jefferson-Marshall debate that needs to be introduced before we can fully understand what it means for constitutional government and democratic values to say that Marshall's ideas have prevailed in American political ideology. The second major confrontation

between Jefferson and Marshall developed in the Burr(3) case in 1807. In that case, Marshall issued a subpoena duces tecum ordering Jefferson as President to appear before the Court and produce certain documents and papers under his control. This order, of course, assumed that a court had the power through compulsory process to force the President to carry out a duty defined by the court. This of course was the sole precedent for this principle that became central to the "Watergate affair' when Judge Sirica ordered President Nixon to provide certain tapes to the Court. In the first Sirica case, President Nixon provided the information requested, but he rejected the power of the court to impose its powers of compulsory process on a sitting President. In the second case, the President initially resisted and the Supreme Court upheld the legitimacy of the subpoena. In law, the Nixon(4) and Burr cases were nearly identical. However, the final results of the two cases were very different.

In the Burr case, Jefferson ignored and did not comply with the subpoena and prepared himself to resist any judicial finding of contempt. However, Marshall made no effort to enforce his order. At the end of the trial, Jefferson sent a message to Congress asking for the impeachment of Marshall. The recommendation might well have been followed if the Congress had not been so deeply drawn into the events that were related to the growing threat of war with England.(5) The final Nixon story is almost too familiar to tell. Nixon complied with the order after the Supreme Court ruling. The revelations included in the tapes so damaged his

credibility that he resigned from office under the threat of impeachment. The Constitution had not changed. The law had not changed. What had occurred to so dramatically shift the power relationship among the branches of government? In a phrase, political expectations.

In order to indicate that the Nixon case is not an isolated incident and to evade too great concentration of our thought on the character of Richard Nixon, I should add that the Court has alleged in the case of Powell v. McCormick(6) in 1969 that the Congress is bound to follow the Supreme Court's view of the provisions of the Constitution that describe the internal procedures of Congress. However, in this case the Court did have the good judgment not to issue any order to the Congress to act in any particular manner. In addition, there has been a pervasive assumption in the press in recent weeks that the Court would have the power to order the release of the most private personal documents of the President even in the area of foreign affairs in the on-going Iran/Contra controversy. Please remember that the fundamental decision in United States v. Nixon was that it was the Court and not the President who could decide the limits and scope of executive privilege.

The political change that has so dramatically concentrated the power to finally interpret the Constitution in the hand of the court in the public mind has been the result of a slow erosion of faith in democracy in America. The repeated extreme claims of power embedded in pronouncements of the Supreme Court have been reinforced by the

growingly powerful legal profession promoting its own self-interest in the hegemony of complicated legal processes. This trend has been well received by a naive and frequently self-serving and anti-democratic press. This set of forces has led many Americans to accept John Marshall's extreme claim that the Supreme Court is the ultimate interpreter of our Constitution. Even political scientists have come to favorably recite Justice Hughes' dictum that, "we live under a constitution, but the constitution is what the judges say that it is."(7) This is more than judicial arrogance. It is a very serious modification of the central concept of our Constitution and a straightforward rejection of the democratic aspirations of its framers. Even in the context of this modern sophistry, without doubt, the Constitution assumes and dictates that the people are the ultimate interpreters of the document.

Rousseau once wrote that, "The first man who, having enclosed a piece of ground, bethought himself of saying THIS IS MINE, and found people simple enough to believe him, was the real founder of civil society."(8) In a similar vein, I would argue that, "The first judge who in deciding a case, bethought himself of proclaiming that the Court is the ultimate interpreter of the Constitution, and found the people gullible enough to believe it, seriously undermined our great experiment with democracy."

Although the arrogance and the attendant usurpation of governmental power by the judges is quite distasteful, it is the subtle and sinister acceptance of this notion that the people should rely on the least

accountable branch of government to protect themselves from themselves and their elected representatives that tends to crush the life out of the democratic spirit that must be central in a free society. It has contributed to a less responsible Congress, a more timid executive, and a frustrated and cynical citizenry. The proclamation of this doctrine is dangerous; the acceptance of the doctrine is devastating.

There is a democratic spirit that underlies our Constitution. It provides ample mechanisms for the people to govern themselves. However, these provisions cannot preserve liberty and stability unless the people choose to jealously preserve and effectively use them. Although judges may to some degree be at fault for the growing claims of judicial power, the real responsibility must always, in a democratic polity, rest with the people themselves. In conclusion, I must agree with the great jurist Learned Hand when he wrote, "For myself it would be irksome to be ruled by a bevy of Platonic Guardians, even if I knew how to choose them, which I assuredly do not."(9) People or the Judges; the choice is ours!

ENDNOTES

1. Marbury v. Madison, 1 Cranch 137 (1803).

2. 410 U.S. 113 (1973).

3. United States v. Burr, 25 Fed. Cas. 187 (1807).

4. United States v. Nixon, 418 U.S. 683 (1974).

5. See Alfred J. Beveridge, The Life of John Marshall (Boston: Houghton Mifflin, 1919) pp. 533-545, for a detailed treatment of this reaction.

6. 395 U.S. 486 (1969).

7. See Henry J. Abraham, The Judicial Process (New York: Oxford University Press, 1975) for example.

8. Jean Jacques Rousseau, Discourse on the Origin of Inequality, 1755.

9. Learned Hand, The Bill of Rights (Cambridge: Harvard University Press 1958) pp. 93-94.

THE FAMILY GRAVEYARD--A VANISHING LANDSCAPE

by Dorothy Scott Johnson

How many times have you passed an ancient burial ground and felt an uncontrollable urge to stop and "just look around"? As you walked among the lichen-covered stones you would brush your hand across the face to glimpse a name or a date. You wondered about the lives of these people--what were their problems and sorrows, their joys and hopes; what was their contribution to the world?

Bending down and squinting into the inscription, barely visible through the crust of moss and time, you became even more aware there was a "long ago". Touching the stones, you felt a link to the past and realized that others had lived, toiled and died after walking the same sod as you and that their labors had paved the way for you to enjoy a life-style they never dreamed of.

These were the people, and their descendants, who had come to a newly created county in north Alabama called Madison. Many came on foot carrying only a gun, axe, knife and what other few necessities they would need on the frontier. The more affluent came on horseback or in ox-drawn carts through many miles of danger-infested mountains, woods and streams.

These hardy pioneers, whose graves are so wantonly destroyed today, built their own rough cabins to keep out the biting winds of winter and the snakes and rains of summer. Their food was what they could raise, not what they bought at the supermarket. They cleared their land with a hand axe, not a

bulldozer. They reaped their harvest with a scythe, not an airconditioned combine. Their "freezer" was a cool mountain stream or a hand-dug cellar. The graves in which they sorrowfully laid their children, parents, and spouses were dug with shovels, not backhoes.

The early pioneers in Madison County buried their dead in the back yard, in the garden, or in a serene spot in view of the house. They then piled rocks high over the graves to discourage predators from digging up the body--a serious threat in the wilderness. Today, these rock-piled graves are often mistaken by laymen for "Indian graveyards," and dismissed by the white population as of no consequence. (How sad is that attitude!)

As more people moved into this valley, communities developed and churches became a focal point. Some families chose to bury their loved ones by the church <u>if it was close enough to get to in inclement weather</u>, otherwise they continued to bury on the land near their home until the advent and wide acceptance of the automobile and all-weather roads.

During the Mississippi Territorial Period, few stone masons came into the valley, and it is presumed that those who did come plied their talents toward building homes and fireplaces for the settlers rather than chiselling inscriptions on tombstones.

Only five territorial-period tombstones survived outside of Maple Hill Cemetery until modern times and they were probably shipped down the Tennessee River from Chattanooga. The earliest known stone to survive until modern times was in the John Drake Cemetery on the Jones Farm on Garth road:

In Memory of
Rosanna Drake
who Departed this life
on the 8th of November
1814, aged 30 years

Rosanna's upright tombstone disappeared within the last fifteen years--probably taken by a juvenile who mistakenly thought it was "cool" to steal a tombstone.

A box-tomb, off Macon Line in northeast Madison County, was erected by a young husband to his wife who had dutifully accompanied him to this hostile frontier and lost her life in the process:

In Memory of
Sarah Bell
Consort of James Bell
born 1777, died Aug. 3, 1815

In the early 1980's Sarah Bell's marker was bulldozed under. It was then dug out of the ground and re-set by Billy Monroe who headed a federally sponsored cemetery restoration committee. A few weeks later the monument again disappeared and a pond appeared in its place.

The upright tombstone of James C. Fennell is the only one dating from the territorial period still in existence outside of Maple Hill Cemetery and known to this writer. His original grave site was in what is now the Camelot subdivision in southeast Huntsville but was legally moved to the John Hobbs Cemetery, in the now Chimney Springs subdivision, in 1975. The stone exists today only because of careful preservation by Mrs. Roy Cochran, a family descendant. The inscription states:

James C. Fennell
Born
January 18, 1780
Died
September 3, 1817

The last two known territorial period tombstones to survive until Huntsville's tremendous expansion in the early 1960's were those of George and Anna Watson Jude. When I first saw these graves in 1966 they were intact along with the markers of three children--all covered with box tombs. When I went back to copy the inscriptions in 1968, only George's marker remained intact. The children's markers were broken and scattered or missing, and Anna's stone was broken in two with the bottom half missing. Only part of her inscription remained:

Anna Watson Jude
Dau. of Matthew and Elizabeth Watson
born September 17, 1754
died...

Even though part of the stone with the death date on it was missing, through the Last Will & Testament of her husband we glean that she died before him. The children who died before him, however, were not listed in the Will, and since their graves are now gone, their identify has been lost forever. George's inscription read:

George Jude
born
the 15th day of August, 1746
died
13 December 1818
aged
72 y 3 Mo 28 dayes

Sometimes history is written on a tombstone such as that in the Bragg Cemetery in Hurricane Valley southeast of New Market:

Shedrick Golden
was born July 4, 1808
in the year of our Lord
On the 13th of January, 1865
he was taken off and murdered
for maintaining the Union and Constation
of the United States.

The inscription clearly points out the conflict between neighbors of southern sympathies and those of northern sympathies during the Civil War. It also shows that not all southern residents were pro-Confederacy as is commonly believed. Mr. Golden and William E. Norris, then a youth, were butchering hogs near a spring on the side of the mountain off Ray Road when a group of strongly pro-Confederate neighbors rode up on horses. Norris outran the horsemen, but Golden was caught and killed.

Revolutionary Soldiers Buried in Madison County

Many Revolutionary soldiers are buried in Madison County, a reminder of this country's war for independence by a rag-tag army of poorly clad and poorly fed citizens. Among them are Adam Dale (born July 14, 1768, died Oct. 14, 1851) in the Jeffries Cemetery one mile east of Hazel Green; John Amonnet (died March 30, 1833) in the Donaldson Cemetery of Jimmy Fisk Road, Samuel Davis (died Aug. 31, 1842 aged 88) and Moses Poor (stone now gone) in the Graveyard Hill Cemetery at New Market, and Robert Clark (born Feb. 23, 1757, died Nov. 20, 1837) buried in a fence row off Monroe Road, to name a few. Included in this list should be

John Connally who is buried in the Connally Cemetery on St. Clair Lane off Bell Factory Road. One of his descendants, John Connally, became governor of Texas as a Democrat and a candidate for president of the United States as a Republican. Unfortunately, the Madison County pioneer John Connally's tombstone is one that is no longer in existence since cattle have been allowed to mill under the lofty trees of the tiny family graveyard crushing the marble stones to dust.

I have seen tombstones in Madison County used as a hearthstone, steps to a house, a driveway, a ford across a creek, a splash-board under a downspout, and a cornerstone to a barn. Special note was taken of the remnants of tombstones imbedded in the north wall of Maple Hill Cemetery. One cannot help but wonder how many of these destroyed stones were erected to the memory of an old patriot who came to Madison County to carve a better life for himself and his family.

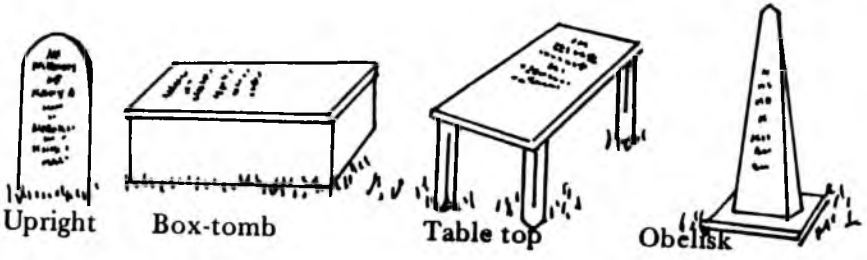
Works of Art--Gone!

Not only are we losing part of our heritage through destruction of our graveyards, we are losing works of art that cannot be replaced. In the McDavid Cemetery, three miles south of the Tennessee line, is the grave of Brancy Davie who died in 1848, aged 27 years, the wife of Dr. Gabriel S. Davie. Brancy's monument was the only box-tomb found in Madison County made entirely of marble. The lid was exquisitely ornamented with carvings of roses in deep bas-relief surrounding a shield. In the center of the shield were carved these words, "I am not dead, but only sleeping." A few months before I visited this once lovely spot, neighborhood boys had knocked the stones to the ground while rabbit hunting. Cattle were

then let into the graveyard and they completed the destruction.

Progress?

In order to build, we must destroy; one is impossible without the other. Progress may mean the destruction of a wildlife habitat, an ancient tree, a dilapidated building, a landscape, or as some avaricious people believe, a tiny family graveyard. It is society's role to dictate what must be retained for the benefit of future generations. Carl Sandburg once said, "When a society or civilization perishes, one condition can always be found; they forgot where they came from." Each time one tombstone is destroyed, part of our heritage, our history, is destroyed. We must not allow these reminders of "where we came from" to be lost to future generations.



HUNTSVILLE -- ALABAMA AND TEXAS

by George M. Mahoney

(In response to an invitation from the Rotary Club and the City of Huntsville, Texas, seven Huntsville, Alabama, Rotarians accompanied Mayor Joe Davis to Huntsville, Texas, on July 12, 1986. The occasion was the celebration of the Texas Sesquicentennial and the 151st birthday of Huntsville, Texas, a city founded by Pleasant Gray from Huntsville, Alabama, who named the Texas town for the Alabama town.)

There is a striking similarity in the origin of the two cities of Huntsville, Alabama, and Huntsville, Texas. Both were established near a big spring, both town plats contain a county courthouse square in the center, and both were founded by pioneer settlers who braved the wilderness in search of a better life for themselves and their families.

In 1805, John Hunt, for whom Huntsville, Alabama, was named, settled near a big spring in the bend of the Tennessee River in what was then a part of the Mississippi Territory. Other families soon followed, and by 1808, when Madison County was created, more than 300 people had come to live near Hunt's spring in the community which was to be known as Huntsville.

When the Federal government first sold Madison County land at auction in 1809, Leroy Pope outbid John Hunt for the 160 acres around the Big Spring and thus became the real estate developer of the town. Although John Hunt bought land in the county, he did not finish paying for it and returned to his former home in Tennessee in 1814.

When the town of Huntsville was chosen as the seat of county government on July 5, 1810, its official name became Twickenham, in accordance with an act of the Mississippi Territorial Legislature. Because the citizens objected to the new name, the legislature changed it back to Huntsville in honor of its original pioneer settler.

By 1819 Huntsville had grown to be the largest town in the newly formed Alabama Territory and was chosen as the temporary capital during the period when Alabama was transformed into a state.

Pleasant Gray was also a pioneer settler who discovered a spring, obtained a land grant from the Mexican government, established a trading post, and founded the town of Huntsville, Texas. He named it in honor of his earlier hometown, Huntsville, Alabama.

According to Madison County (Alabama) deed records, Gray's father, Thomas Gray, owned farmland near Huntsville during the 1820's, but in 1826 sold his farm and moved to Tipton, Tennessee. There in 1828, Pleasant married Hannah E. Holshouser, and by the time he moved his family to Texas, three children had been born to this union.

Pleasant and his brother, Ephraim, were among a large number from Madison County who settled in Texas during the 1830's. Because many families had relatives and friends who were involved in the Texas revolution, several companies of volunteers were raised from north Alabama to fight for the cause. Most of Captain P. S. Wyatt's company of "Huntsville Volunteers" and Dr. Jack Shackerford's "Red Rovers" lost their lives in the Goliad Massacre on March 27, 1836. Other families from Madison County arrived in

Texas just in time to aid General Sam Houston fight the Battle of San Jacinto. Some of the older men who migrated to Texas had known both Sam Houston and David Crockett as they had fought side by side against the Creek Indians in 1813 and 1814 under the leadership of General Andrew Jackson.

The 1810 town plat of Huntsville, Alabama, and the 1844 plat of Huntsville, Texas, are very similar. Both are drawn in blocks which include a public square. Both have a big spring as a source of water supply. Both have a street named for the spring. Both have streets named for war heroes and national leaders. While Huntsville, Alabama, has streets named for Generals Gates, Greene, Lincoln, and Clinton of Revolutionary War fame, Huntsville, Texas, has streets named for Fannin, Milam, Travis, and Lamar of Texas Revolution fame.

Both cities have remained county seats of their respective counties over the years, as well as educational and cultural centers. While Huntsville, Alabama, developed its Greene Academy by 1821, Huntsville, Texas had its academy developed by 1844. Both built churches and lecture halls to support the religious and intellectual life of the community.

Although John Hunt and Pleasant Gray moved away from the towns which they founded, these communities have continued to flourish. Both cities are proud of their heritage and strive to preserve it. At the same time, they both look forward to a better future just as the pioneers did in the early nineteeenth century.

Huntsville, Texas, today is a city of 30,000 in East Texas, 75 miles north of

Houston. It is famous as the retirement home of Texas hero Sam Houston and the home of Sam Houston College. Located in pine-covered, red sandy hills, it is the headquarters of the Raven Ranger District Office of Sam Houston National Forest of over 158,000 acres. Lumber mills and woodworking plants are important to its economy. The Texas Department of Corrections is also an important part of its economy, with many facilities located there, including the one where the famous Texas Prison Rodeo is put on by the prisoners and is attended by as many as 100,000 visitors annually.

Today Huntsville, Alabama, is the fastest growing metropolitan area in Alabama, with a current population of more than 165,000. Agriculture remains an economic mainstay for Madison County, with an annual gross income of more than $60 million from cotton, soybeans and livestock. In the span of the last 35 years, Huntsville has made the transition from cotton and cotton mills to missiles, to space, and to diversified industry, without losing momentum in any of these fields. The ever-growing scope of scientific, technical and management tasks for the Army, NASA, private industry, and educational institutions has caused amazing growth. Huntsville has also grown into a regional center for health care, education, arts, entertainment, transportation, trade (including international) and distribution.

So, this is a "Tale of Two Cities" -- two sister cities with a common history. It is also the story of two men and two springs. Pleasant Gray's Texas spring no longer exists, while John Hunt's spring continues to flow and remains one of the sources of water for Alabama's fourth largest city, and one of

the nation's leaders in high technology.

Maybe, just maybe, the difference in the two springs is what has made the difference in the two cities.

THE CHRISTY PAINTING
SCENE OF THE SIGNING OF THE CONSTITUTION OF THE UNITED STATES

1.	Washington, George	Va.	14.	McHenry, James	Md.	27.	Langdon, John	N.H.
2.	Franklin, Benjamin	Pa.	15.	Read, George	Del.	28.	Gilman, Nicholas	N.H.
3.	Madison, James	Va.	16.	Bassett, Richard	Del.	29.	Livingston, William	N. J.
4.	Hamilton, Alexander	N. Y.	17.	Spaight, Richard Dobbs	N. C.	30.	Paterson, William	N. J.
5.	Morris, Gouverneur	Pa.	18.	Blount, William	N. C.	31.	Mifflin, Thomas	Pa.
6.	Morris, Robert	Pa.	19.	Williamson, Hugh	N. C.	32.	Clymer, George	Pa.
7.	Wilson, James	Pa.	20.	Jenifer, Daniel of St. Thomas	Md.	33.	FitzSimons, Thomas	Pa.
8.	Pinckney, Chas. Cotesworth	S. C.	21.	King, Rufus	Mass.	34.	Ingersoll, Jared	Pa.
9.	Pinckney, Charles	S. C.	22.	Gorham, Nathaniel	Mass.	35.	Bedford, Gunning, Jr.	Del.
10.	Rutledge, John	S. C.	23.	Dayton, Jonathan	N. J.	36.	Broom, Jacob	Del.
11.	Butler, Pierce	S. C.	24.	Carroll, Daniel	Md.	37.	Dickinson, John	Del.
12.	Sherman, Roger	Conn.	25.	Few, William	Ga.	39.	Brearley, David	N. J.
13.	Johnson, William Samuel	Conn.	26.	Baldwin, Abraham	Ga.	40.	Jackson, William (Secretary)	

The purpose of this Society is to afford an agency for expression among those having a common interest in collecting, preserving and recording the history of Huntsville and Madison County. Communications concerning the organization should be addressed to the President at P. O. Box 666; Huntsville, Alabama 35804. Manuscripts for possible publication should be directed to the Publications Committee, at the same address. Articles should pertain to Huntsville or Madison County. Articles on the history of other sections of the state will be considered when they relate in some way to Madison County. All copy, including footnotes, should be double spaced. The author should submit an original and one copy.

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