

## The Duke of Wekiva



9/18/03

When exactly did Shell Island become a piece of private property? When did the stream, the wind, the marsh wren at the back edge, the cypress just off the head of the island, and the digger wasp squatting on the island and thereabouts lose their temporary and occasionally contested place in the basin? We find no words like private property or title in the language of the Timucuan who called this island home or village for several thousand years. Did they have a proverb: my home is my mound? Or was it: our home is our river?

Private property is a cultural concept Europeans brought to America from the Roman Empire. It has a long history and evolution that it pays the riverkeepers and the developers to study and to keep in mind because almost every negotiation from the legislature down to the smallest planning and zoning meeting concerns this vital element of our community. It belongs to cultures wherever a settled life is led with agriculture, population expansion, and social organization, wherever the distribution of labor and land takes place. It comes as part of a civilization that has surveying technology and some sort of alphabet for assigning a title.

In the Roman Empire new territories were won by conquest and often then assigned to the militia. “You conquer Gaul, Julius, it’s yours.” Land is often the pay for conquest in the name of the emperor, the Roman state. Empire then naturally reaches out upon a globe full of squatters, builds forts or bases, and draws lines on maps and agreements in words or treaties. The conquered as well were sometimes owned or treated as cattle, but usually not the upper classes.

The principle of territory in nature that you own what you can hold or defend (might makes ownership or, in my Bronx schoolyard, the game of keepaway) prevailed right into the nation states that eventually succeeded the fall of Rome. In the gang warfare that followed the loss of Roman control over their vast land holdings, feudalism was born. Basically, if you went down to the school yard by yourself with a football, it wasn’t yours unless you and your brothers could keep it from the other guys. I don’t mean to trivialize this, but the right of private property in our constitution has to be conceived inside the validity of the governmental power which defends and holds that territory securely.

Hence, the kings of Spain, France, and England held their countries and owned the entire land (some of them affirmed by divine right). They parceled out their lands to barons, earls, and dukes. So, John of Gaunt (and his male heirs) had a title, The Duke of Lancaster. This means he had both political power (duke-dominion) and the king’s land (Lancashire) through a system of loyalty and taxation involving an oath of allegiance to the king. Eventually, with the liberation of the nobility, the duke stood with that title of land and power in parliament to speak his mind and to vote. In the early stages of feudalism, the rest of the people forming the nation were peasants and craftsmen who worked the land as tenants with little or no stake in land or government.

When money-lending and commerce entered the scene in the later middle ages, some peasants became freemen and a middle class arose where property, like other goods, could be bought and sold. Wealth could be amassed without title to either lawmaking or land. These are old lessons we all have learned by experience, but they help us keep track of land use in the Wekiva basin today. The Timucvans abandoned Shell Island or simply died out hundreds of years before the European contact. Perhaps they became attracted to the agricultural centers of the north. Did the island then revert to the tribal leaders in nearby Lake Apopka or along the St. Johns? Obviously not. It is in Europe that land is given by the one in power and reverts back to that power upon demise of its current stewards.

So, when Columbus discovered America did Shell Island become the property of Ferdinand and Isabella? No, we probably would say that the conquest of the territory has to be complete before it gets platted and assigned for some sort of production. In this context the kings of Europe had provisions in the colonies for land grants where, more often than not, some enterprise of production and distribution of goods was envisioned and allegiance to the king asserted. The rest of the land was unassigned.

In 1562, when the French Huguenots, escaping their king and his connection to the Roman church, settled on the St. Johns, they might have controlled the river, but they had no grant from

their king and certainly no control beyond their fort. The Spanish, however, treated them like trespassers of the worst kind. It is important to keep in mind the scale of population at contact. Estimates of Florida's native population range widely from 30,000 to 700,000. The earliest French and Spanish settlements achieved "conquest" with four to five hundred people, living in a fort followed eventually with outlying posts. So let's imagine 150,000 Timucuanos dwindling to nothing by 1725 and in all that time the European population of Florida never exceeds 3,000, indeed is often less than 1000.

When the Spanish occupied Florida with outposts and missions, ships coming and going across the seas, the king issued a number of land grants based on unscientific plat descriptions--the kind we made as kids when playing neighborhood games like Pirates and Settlers. Often the pirates won. Not all of Florida was thus assigned to soldiers, settlers, or mission units. Natives were relocating inside and outside these various land designations, and in the second period of control the Spanish actually made the Treaty of Walnut Hills (1793) with the Micosukees, a treaty which in modern legal terms may still have some force.

But there is no indication that Shell Island was encumbered by any of these considerations. However, in the Wekiva basin and the region surrounding Lakes Jessup and Monroe, several Spanish land grants will show up in your abstract if you now have title to that land. Isn't democracy grand: anyone can be the Earl of Shell Island. But we are getting ahead of ourselves.

In 1763 when the two colonial powers of England and Spain traded territories—Florida for Havana—as a part of the treaty they "respected" each others grants of property, but only so long as they were legitimate, that is, if the conditions of the grant in terms of the time of occupation, the productivity of the land, and the service to the crown were fulfilled. In a five volume reference work, now, you can find all these land transactions and in the Wekiva Basin there were Spanish Land grants still operative in our legal descriptions with names like Felipe Roberto Yonge, Pedro Miranda, and Moses E. Levy (oops, what was he doing in Spain?).

If I understand this correctly, such treaty provisions required that someone actually be working the land, that is, holding it, as opposed to being an absentee landlord back in Catalan somewhere. You can imagine that the news of such a change would cause quite a few quick transfers of property rights to avoid confiscation by the new government. That would explain how Levy, a wealthy speculator from New York City, got involved in major holdings of the Wekiva basin.

The principle here that we know, but don't always remember, is that title to land is a function of the latest peace treaty or outcome of war. When Florida changes hands between nations, some of the land is as assigned, but the rest is now for the new government to give in grant, presumably for some function of the common good. In the beginning, mere settlement was a provision of security where every citizen had a right to bear arms and defend the nation in a small homestead.

In the brief period of twenty years of British rule of Florida and Shell Island, wealthy entrepreneurs with royal approvals built a hundred large plantations, running them with slave labor and filling the coffers of absentee land lords and non-lords. Florida became an expansion of the agricultures and industries of Charleston and Savannah: rice, indigo, sugar, oranges, all things you can't do very well on Shell Island. However, in 1783 when Spain took over again, there followed a mass evacuation of slaves and plantation owners to other parts of the British Empire and many of the land grants were vacated as well. Florida's population that stood at 11,000 in 1780 fell to 891 in 1785.

When the American Revolution succeeded and the constitution was ratified, it guaranteed life, liberty, and the pursuit of happiness to everyone. The idea was that everyone be equal before the law and not pay taxes without a vote in the matter (try to keep a straight face). The feudal connection between title and political power was busted because theoretically any man (or later, woman) could be president, senator, or representative. We know that it took a long time to make good on that ideal.

Likewise, private property was a part of the constitutional attack on British feudalism, though not so thoroughly. Even though the government was made up mostly of landholders, it was assumed that every individual might achieve title to land as well as to the vote. Indeed, the policies of the government for most of the nineteenth century pursued a course supported especially by Jefferson of providing opportunities for individual settlers, farmers and ranchers, to acquire territorial holdings.

The fifth amendment, ratified in 1791, provides the protection of the citizen against the confiscation by the government of life, liberty, or property, without due process, adding that: "nor shall private property be taken for public use without just compensation." Those who take private property as a watchword of democracy are entirely correct because the replacement of the phrase "the pursuit of happiness" in the Declaration of Independence with "private property" in this amendment identifies property ownership as a central part of the Revolution.<sup>1</sup>

However, Article IV, Section 3 of the constitution provides that Congress has power respecting the territory and property belonging to the United States. There is something still feudal about America. The government, specifically the Congress, has powers by law to dispose of territorial property. This did not apply, however, to Florida for some time to come because shortly after the colonies became the States, Britain turned Florida, east and west, back to Spain.

After that, Wekiva was only a territory, but America had Shell Island in its sights. They made a system for platting land that divided Florida from a point in Tallahassee into square sections that we use to this very day to establish the location of any piece of land. Hence, Shell Island is described as located in the Northwest ¼ of Northeast ¼, Section 29, Township 20 South, Range

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<sup>1</sup> Locke's original phrase, "the pursuit of property," was adopted here but altered in Jefferson's Declaration of Independence.

29 East. As you can see on your topographical map, Section 29 is a square mile block inside the quadrant that is 20 units south and 29 east of Tallahassee, and Shell Island sits in the upper right corner of it.

However, it is all more complicated than that. Bernard Shanks' excellent book, *This Land is Your Land*, describes clearly how the delicate negotiations of the thirteen colonies to form the constitution was threatened very seriously by the prospect of adding new territory to the "old" states. What if the already larger states like Virginia got all the new territory and increased their power?

So, very early in our new nation's history it was wisely established that new territories that became states would belong not to any one original state, but to the union. Congress, then, as Article IV, section 3 devises, would decide how to grant the land to the state for purposes of settlement, productivity, and education.

Thus, in principle, Shell Island and most of Wekiva became federal land in 1845 upon statehood, mostly by reason of the fact that it was not part of any Spanish or British grant that the courts had ratified nor part of any Native lands established by U. S. treaty. For the Timucuan, life had dwindled to nothing before liberty or land had evaporated. It is the Creeks and the Miccosukee refugees of the removal policies of the Jacksonian era that we now call Seminoles who had treaty rights to some Florida territory, but none in the Wekiva basin.

Shell Island finally became state land when the U. S. Congress passed the Swamp Land Act of 1852, but it was still not yet private property, that is, deeded to a corporation or an individual for its, hers, or his devise and heritage. Every person or board that owns a piece of property has this little reminder that the property requires the hatchwork of the surveying system, the set of laws defining ownership, and the courts adjudicating all disputes. No one imagines property to be fully theirs if it is encumbered by liens. Nor should anyone forget that the property is null and void if the government defaults, state or nation.

The abstract for Shell Island provides the final answer to our simple question. The Wilson Cypress Co. bought the land surrounding the island in September of 1902 from Henry Strunz. He got the parcel, among others, from Charles Percival, Arthur McNamara, and H.T. McGee when they failed to pay their taxes in 1897. Percival, as it happens, was the Earl of Egmont and a resident of London.

He and his partners purchased Shell Island and other parcels in December of 1891 from the South Florida Manufacturing Co. through the Pierce and Torry Investment Co. They evidently got all the Clay Springs property and the railroad acreage when the Florida Southern Railway went into receivership after foreclosure in 1890. The railroad in turn got Shell Island and most of what is now Sweetwater Oaks from the State of Florida in 1856, although the patent for Shell Island was not recorded until 1887. If you don't record a deed or the payment of the lien, is it yours?

What does all this history tell us about private property in Wekiva? Recently the newspaper had an article about a woman who wanted to exercise some sort of ownership over stored embryos and the court upheld the mutual “property rights” that included the estranged father. Mutuality is a key word here. The land and the water of the Wekiva basin seems to be in suspension between the state and the private sector (corporate or individual). Developers are like the woman, ready to produce some good for society: food, housing, education, commerce, or transportation, some profit for the owner, and some tax revenues for the government. The riverkeepers are in the position of the father, wanting to restrict such growth for the sake of the prosperity of the system as is. Watching the seesaw between the government and the individual or private owner is like watching the water and the land trade places in the basin.



9/23/03

Here we are in the court of memory and this wasp keeps following me about. All during the day as I take care of a variety of tasks, the fuzzy buzzer keeps popping up in my mind like the old song, “Time after Time.” There is something deeper in this sandy arc, dark patch, and back-peddalling orange-footed beauty. I study the close-ups I find on the internet—the dark shiny blob of the head with its double rump, the shape of a molar.

My mind tries to read its mind, the chemistry in that little noggin that's perhaps a hundred million years in the making. I've no clue. When the paper reports today the finding of a fossil of a 1500 pound mouse, I begin to imagine the digger at dinosaur scale, among the mastodons at Shell Island, excavating a tunnel for the safest retreat. Are we so fully abstract in our approach to Shell Island and our own world of transport, provision, and reproduction that we don't know any more how to live beyond the abstractions or without them?

I've been reading Oliver Sachs describe how the story of Mendel's discovery of the periodic table had changed his life as a teen. I can't help but feel a special grace because his table of the elements is an abstraction that more or less comprehends the universe—a formulation certainly for all the chemistry and behavior and ecology that engulfs the digger wasp and her family on the river. Add to that the recently constructed human genome and, more relevant to the wasp, the abstraction we now have of the common fruit fly, and we can certainly begin to comprehend the wasp's experience. The nose to nose assembly of daily routines and events will no longer suffice for the record.

I have read the record of American literature and especially the poetry to watch how it changes with the discovery of such abstractions of science and mostly it is Whitman, that great shaman of the loafing, experiential, cruising spirit of reproduction and debauchery, who seems to comprehend and incorporate, to balance like my kayak, the cosmic with the immediate and local. This wasp awakens the earth, the island with its patterns. Its black antennae reach forward into wireless communications systems and she packs her little cubbard with smoked grasshopper and spheroid eggs. Little engine of the sun, she floats over the ground, finding the three-leaved grass that marks her nursery and deposits her family to be. Can she learn to dig in lawns and azalea beds?

## **Building the River Community, Step 2**

At the end of our second run of the river, we have reached 1969 and the establishment of a magnificent park between and including the river's two major spring sites. Central Florida is on the verge of colossal growth as a result of the opening of Disney World in 1972. However, our second principle is already established, that the river shapes the land and us.

Eventually it calls forth responsible citizens who in their own properties monitor and manage the populations of plants and animals with a view to maintaining optimum habitat conditions, a viable biological community. In the face of rapid growth, they support the government's efforts to balance the reduction of habitat with careful purchase of the primary biomes for preservation. Rural character, therefore, remains in outlying districts and provides the alternative of wildlife recreation and education for our children.

Once the land is so governed, it has to be planted with a great variety of grass roots organizations of every kind who work together for a better river community. This is the democratic vista Whitman imagined a century before Wekiwa Springs State Park and what the Friends of the Wekiva River have undertaken to establish since the 1980's.