The History of Florida’s State Flag

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TABLE OF CONTENTS

I. INTRODUCTION ........................................ 1037
II. EUROPEAN DISCOVERY AND CONQUEST ............. 1038
III. AMERICAN ACQUISITION AND STATEHOOD ......... 1045
IV. THE CIVIL WAR ....................................... 1051
V. RECONSTRUCTION AND THE END OF THE
   NINETEENTH CENTURY .............................. 1056
VI. THE TWENTIETH CENTURY ........................... 1059
VII. CONCLUSION ....................................... 1063

I. INTRODUCTION

The Florida Constitution requires the state to have an official flag, and places responsibility for its design on the State Legislature.1 Prior to 1900, a number of different flags served as the state's banner. Since 1900, however, the flag has consisted of a white field,2 a red saltire,3 and the

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1. "The design of the great seal and flag of the state shall be prescribed by law." FLA. CONST. art. II, § 4. Although the constitution mentions only a seal and a flag, the Florida Legislature has designated many other state symbols, including: a state flower (the orange blossom - adopted in 1909); bird (mockingbird - 1927); song ("Old Folks Home" - 1935); tree (sabal palm - 1953); beverage (orange juice - 1967); shell (horse conch - 1969); gem (moonstone - 1970); marine mammal (manatee - 1975); saltwater mammal (dolphin - 1975); freshwater fish (largemouth bass - 1975); saltwater fish (Atlantic sailfish - 1975); stone (agatized coral - 1979); reptile (alligator - 1987); animal (panther - 1982); soil (Mayakka Fine Sand - 1989); and wildflower (coreopsis - 1991). DEL MARTH & MARTHA J. MARTH, FLORIDA ALMANAC 1992-1993 311-13 (9th ed. 1992).
2. The background of a flag is called its field or ground. In describing the field, it is common to divide it into vertical halves known respectively as the hoist and the fly. The hoist is the area closest to the pole or staff from which the flag is being flown, while the fly is the free end of the flag. The field is sometimes further divided into quarters, known as cantons. The upper hoist canton always is the canton that is being referred to unless otherwise noted. WILLIAM CRAMPTON, THE COMPLETE GUIDE TO FLAGS 18 (1989).
3. A saltire is an X-shaped cross. Flags that use crosses employ one of three basic types: a plain cross, in which the arms are of equal length; a Scandinavian cross, in which
state seal.4

Although Floridians encounter the flag every day,5 few know anything about its rich history.6 Accordingly, this essay provides an overview of the many flags that have flown over Florida.7

II. EUROPEAN DISCOVERY AND CONQUEST

Flags as we think of them today are of relatively recent origin. Although differences of opinion exist, most scholars believe that flags made out of fabric first appeared in China and were in regular use in that country by the fifth century B.C. India, Burma, and Siam also employed fabric flags at an early date.8 Flags did not become popular in Europe until the Middle Ages, however, and no truly national flag existed before the sixteenth century.9

As far as is known, none of the Indian tribes of North America had

4. For a description of the state seal, see infra notes 97, 98, and 109.
5. By law, the state flag must "be displayed at a suitable place and in the appropriate manner on the grounds of each elementary and secondary public school." FLA. STAT. § 256-.032 (1991). By custom, the state flag is flown on and around government office buildings, courthouses, historical sites, and sporting venues.
6. This is due, at least in part, to the fact that so many Floridians are transplants. It is estimated that two out of every three Floridians were born somewhere else, and nearly 1,000 new residents arrive in Florida every day. MARTH & MARTH, supra note 1, at 256-57.
8. For a detailed discussion of the development of flags, see CRAMPTON, supra note 2, at 7-20. As Crampton explains, "Flags began as vexilloids, solid objects carried at the top of staffs. They were made of wood, bronze or precious metal, and depicted a god or totem object, or the attribute of a god or guardian spirit." Id. at 7. The word vexiloid comes from the Latin word "vexillum," meaning flag, and it is from this root that the words vexillology (the study of flags), vexillologist (a flag historian), vexilolphist (a flag collector), and vexillarian (a flag bearer) are derived. See WHITNEY SMITH, FLAGS THROUGH THE AGES AND ACROSS THE WORLD 30 (1975) [hereinafter SMITH, ACROSS THE WORLD].
9. Because of the prominent role played by the Crusades, most early European flags had a religious connotation. Subsequently, flags began to be used for other purposes, such as to mark one's station in life or affiliation with a particular group or trade guild. Thus, for example, the candlemakers of Bayeux in France used a black flag with three white candles. Flag, in 4 THE NEW ENCYCLOPAEDIA BRITANNICA: MICROPEDIA 811, 812 (15th ed. 1988).
their own flags prior to the twentieth century. Thus, credit for being the first to bring a flag into the Western Hemisphere usually is given to the Vikings for their “Raven” flag. It is thought that this flag, which most probably had a white field and sported a black raven, appeared somewhere in present-day New England in about 1000 A.D.

10. Whitney Smith, The Flag Book of the United States 10 (1970) [hereinafter Smith, Flag Book]. Rather than using flags, the tribes employed standards to identify themselves:

The forerunners of flags in America were symbols (standards) used by Indian tribes. Although some tribes were identified by their physical appearance, many had developed standards much like those used in Europe and Asia thousands of years before.

These standards were often a symbol of the tribes’ “animal god,” which was believed to be watching over them and lending “his” spirit to the members of “his” tribe. These symbols were made of leather, wood, stone and so on, and often decorated with feathers and/or stained in different colors to create a distinctive standard that was placed on a spear or lance. The “flag” was carried by the chief or his emissary during battle and was placed in a conspicuous position during times of peace.

Some Native American tribes also used another type of standard known as the totem pole. Usually a tall wooden carving, sometimes decorated with feathers and stained various colors, a totem was too large to be carried and was, therefore, a stationary standard.


The Seminole flag was selected in August 1966 during a flag-designing contest held at the tribe’s annual powwow. Intended to resemble the current Florida state flag, it has a blue field with the seal of the Seminole tribe in the center. The seal consists of a palm tree, a dugout canoe (representing the business interests of the tribe), and a chickee house and council fire (suggesting the social affairs of the people), and is surrounded by the words “Seminole Tribe of Florida” and “In God We Trust.” A red saltire bearing blue-and-white chevrons appears behind the seal. Id.


12. As has been explained elsewhere:

It is generally accepted that the first real flag flown in what would become the United States was a white flag with a black raven on it. Legend tells us this flag was carried by Erik the Red and his son, Leif Eriksson, Viking explorers believed to have landed in the Americas during A.D. 1000.

There are no actual illustrations or consistently accurate written descrip-
After the Vikings, flags were not seen again in the New World until Christopher Columbus traveled to the Americas in 1492 with two different flags. The first was a special expeditionary flag that had been given to him by his Spanish patrons, King Ferdinand V and Queen Isabella. This flag was white and had a green cross flanked by the letters F (for Ferdinand) and Y (for Isabella). Like the cross, both of the letters were green and each was topped with a gold crown.

Columbus' other flag was the royal banner of the Spanish kingdoms of Castile and Leon. Created in 1230 and known as the “Castle and Lion” flag, it had two gold castles, each on a red field, in the upper hoist and lower fly, and two red lions, each on a white field, in the upper fly and lower hoist. Since this flag was used by many early Spanish explorers, most historians believe that Juan Ponce de Leon had it with him when he discovered Florida in 1513.

If the Viking flag (white with a black raven) did exist—and the majority of our historians accept that it did—it is doubtful the flag represented the Vikings as a nation. The Bayeux tapestry, an embroidery made between A.D. 1070 and 1080, shows us that flags were commonly used, but not as national symbols. The Viking flag, therefore, would most likely have been a personal flag of Erik and his son, Leif.

T. Frederick Davis, Juan Ponce de Leon's Voyages to Florida, 14 FLA. HIST. Q. 7, 35-36 (1935).
The first flag to be displayed on a regular basis in Florida was the French "Chape de Martin." A blue flag with three gold lilies arranged in an alternating up-and-down pattern, the Chape de Martin arrived in Florida in 1564 when a group of French Huguenots, led by Rene de Goulaine de Laudionniere, established Fort Caroline as the first permanent settlement in Florida. Located near present-day Jacksonville, the outpost fared badly from its inception due to internal conflicts, mutinies, and brutal reprisals, and in 1565 the Spanish conquistador Pedro Menendez de Aviles burned the fort to the ground and enslaved its inhabitants.

17. The flag was called the Chape de Martin because it was inspired by the story of Saint Martin. According to a popular legend, Martin shared his blue cloak, or chape, with a beggar at Amiens. This act of charity was said to have so touched Christ that he made the deed known to all the angels in heaven. See "Our Flag Number," 32 NAT'L GEOGRAPHIC 281, 373 (1917). Among its many contributions, the Chape de Martin is the basis of the word chaplain: "So important did the cloak of St. Martin become, the oratory in which it was carried came to be known as a chapel, from the Latin word for cloak (cappa or capella), and the priest in charge of it was known as a chaplain." SMITH, ACROSS THE WORLD, supra note 8, at 131.

18. Although the field of the Chape de Martin could be either blue or white in the sixteenth century, it is felt by most experts that the flag that flew in Florida was blue. See MORRIS, supra note 10, at 279 ("The flags of France of the 1500s had lilies both on white and blue backgrounds but the flag flown in Florida almost surely was the gold lily on blue."). This belief is based on the fact that the royal standard had a white field. CRAMPTON, supra note 2, at 41. As such, persons not part of the royal family generally used the blue version of the flag. Nevertheless, some commentators are convinced that the Huguenots flew the white version. See HERRICK, supra note 16, at 62 ("The French White Bourbon Flag, with Yellow fleur-de-lis, also flourished in North America during the life of the Huguenot colony in South Carolina and Florida, 1562-1565.") Id.

19. The number three is thought to have been chosen to honor the Holy Trinity. SMITH, ACROSS THE WORLD, supra note 8, at 131.

20. The lily, or fleur-de-lis, is the traditional emblem of France and dates to the twelfth century. CRAMPTON, supra note 2, at 40.

21. For a portrait of Laudionniere, see Charles E. Bennett, A Footnote on Rene Laudionniere, 45 FLA. HIST. Q. 289 (1967).

22. For a description of what life was like at Fort Caroline, see Charles E. Bennett, Fort Caroline, Cradle of American Freedom, 35 FLA. HIST. Q. 3 (1956), and Lucy L. Wenhold, Manrique de Rojas' Report on French Settlement in Florida, 1564, 38 FLA. HIST. Q. 45 (1959).

23. For profiles of Menendez, see Eugene Lyon, Pedro Menendez’s Strategic Plan for the Florida Peninsular, 67 FLA. HIST. Q. 1 (1988); Albert Manucy, The Man Who Was Pedro Menendez, 44 FLA. HIST. Q. 67 (1965); and John F. Schwaller, Nobility, Family, and Service: Menendez and His Men, 66 FLA. HIST. Q. 298 (1988).

Thereafter, France never again played a role in the settling of Florida,\(^{25}\) although the Chape de Martin did reappear briefly over Pensacola in the Quadruple Alliance War.\(^{26}\)

In the same year that they destroyed Fort Caroline, the Spanish founded Saint Augustine, the oldest city in the United States,\(^{27}\) and raised the "Burgundian Saltire." Also called the Cross of Burgundy, it had a white field and a red saltire with serrated teeth.\(^{28}\) The white represented the French state of Burgundy and the French crown; the knobby saltire signified the rough branches of the tree on which Saint Andrew, the patron saint of Burgundy, was crucified; and the red most probably symbolized Andrew’s blood.\(^{29}\)

The Burgundian Saltire was introduced into Spain by Philip I, the Duke of Burgundy, after his marriage in 1496 to Joan, the daughter of Ferdinand and Isabella.\(^{30}\) Upon Ferdinand’s death in 1516, the Castle and Lion flag increasingly gave way to Philip’s flag. Thus, by the time Saint Augustine was organized, the Burgundian Saltire was in general use throughout the Spanish empire.\(^{31}\)

For nearly two hundred years following the founding of Saint Augustine, the Burgundian Saltire served as Florida’s flag. But in 1763, Spain lost control of Florida to England as a result of the Seven Years’ War.\(^{32}\) The transfer in governments resulted in numerous dislocations,\(^{33}\)

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25. Instead, France decided to focus its energies on present-day Canada. This effort proved very successful, and by 1697 the area around Quebec was known as New France. See further W. J. ECCLES, FRANCE IN AMERICA (rev. ed. 1990).

26. During the war, which began in 1719, control of Pensacola changed hands at least four times. Finally, in 1722, the city was ceded to Spain by treaty. The Triangular Contest for Florida, 21 FLA. HIST. Q. 281, 283 (1943).


28. As was true of other Spanish flags during this time, the appearance of the Burgundian Saltire was not uniform. Thus, for example, on religious holidays the field was blue and images of the Virgin Mary appeared in the quarters formed by the cross, while on other occasions the Spanish coat of arms was added to the ends of the arms. MORRIS, supra note 10, at 276.

29. Id.

30. Although Philip popularized the Burgundian Saltire, the first leader to use it was King Pelayo of Asturias in 718 A.D. See SMITH, FLAG BOOK, supra note 10, at 15.

31. MORRIS, supra note 10, at 276.

32. This capped a long drive by the British to oust the Spanish and take control of Florida. See Charles W. Arnade, The English Invasion of Spanish Florida, 1700-1706, 41 FLA. HIST. Q. 29 (1962), and J. Leitch Wright, Jr., Sixteenth Century English-Spanish Rivalry in La Florida, 38 FLA. HIST. Q. 265 (1960).
including the replacing of the red and white Burgundian Saltire by the red, white, and blue “Union Jack.”

The Union Jack, one of the most recognizable flags in the world, was created in 1606 after King James VI of Scotland ascended the English throne and became King James I of England and Scotland. To commemorate the historic merger, the red cross of Saint George, the patron saint of England, was combined with the white saltire of Saint Andrew, the patron saint of Scotland. Upon the overthrow of King Charles I by Oliver Cromwell in 1649, the Union Jack was changed to include an Irish harp. This symbol was removed, however, when the monarchy was restored in 1660.

England’s reign in Florida was both brief and difficult, and in 1783 it returned Florida to Spain pursuant to the Treaty of Paris. Thus, after an absence of just twenty years, the Burgundian Saltire once again graced

33. See Robert L. Gold, Politics and Property During the Transfer of Florida from Spanish to English Rule, 1763-1764, 42 FLA. HIST. Q. 16 (1963), and Wilbur H. Siebert, How the Spaniards Evacuated Pensacola in 1763, 11 FLA. HIST. Q. 48 (1932).

34. Although the British flag is universally known as the Union Jack, its official name is the Union Flag:

As well as being the national flag the Union Jack is also the jack used by ships of the Royal Navy, and some people think it should only be called the ‘Union Jack’ when used in this context. However, the practice of calling it the Union Jack in almost all circumstances is so widespread as to make it the flag’s unofficial name. Officially, the government and the military still call it the ‘Union Flag.’ Crampton, supra note 2, at 23.

35. The universal recognition of the Union Jack is attributable to “its striking graphic design, its influence on other flags, and the importance of the British Empire (later Commonwealth) in world history.” Whitney Smith, Flags and Arms Across the World 224 (1980).

36. Prior to the introduction of the Union Jack, England had used a white flag that bore a red cross while Scotland’s flag consisted of a blue field and a white saltire. These designs dated back to the Crusades, when all Christians were assigned crosses of various styles and colors. Crampton, supra note 2, at 23-24.

37. Id. at 23. The Union Jack now in use dates to 1801, when Ireland, England, and Scotland formed a parliamentary union. To mark Ireland’s participation in the alliance, the red saltire of Saint Patrick was added to the Union Jack. Although Ireland became independent in 1921, the Union Jack was not changed. Id.


39. The bloodless return was especially sweet for Spain in light of the fact that its attempt to reclaim Florida through force had been a dismal failure. See Albert W. Haarmann, The Spanish Conquest of British West Florida, 1779-1781, 39 FLA. HIST. Q. 107 (1960).
Florida's skies. Its reinstatement, however, was short-lived, for on May 28, 1785, Spain's King Charles III replaced the Burgundian Saltire with a flag of his own design.\footnote{With only slight modification, Charles' flag continues to serve as Spain's national flag. Crampton, supra note 2, at 63.}

The primary feature of the new flag was three horizontal stripes. The top and bottom stripes were red, while the larger middle stripe was yellow. These colors had been chosen because they were the heraldic colors of the Spanish regions of Castile (yellow) and Aragon (red).\footnote{Id.}

Within the middle stripe, slightly to the left of the center, were placed a castle (to represent Castile) and a lion (for Leon).\footnote{As another commentator has pointed out, the castle and lion continue to influence modern American design, and can be seen "in the seals or arms of such cities as Coral Gables, Los Angeles, New Orleans, and Sante Fe." Smith, Flag Book, supra note 10, at 15-16.}

Although Charles' flag flew over Florida for thirty-six years, Spain's rule during this span was beset by numerous problems. In addition to having to contend with an assortment of pirates, Indians, and slaves, Spain faced numerous independence movements\footnote{For an examination of the increasing unrest in Florida during this period, see Helen H. Tanner, Zespedes and the Southern Conspiracies, 38 Fla. Hist. Q. 15 (1959).} that over time gave birth to several different unofficial flags.\footnote{The first of these flags was devised by the English adventurer William A. Bowles. A longtime nemesis of the Spanish, Bowles in 1799 persuaded a congress of Seminoles and Creeks to make him "Director General" of a new state that Bowles hoped to organize around Tallahassee and call Muskogee. Upon his election, Bowles created a flag for his new state that had a blue cross edged in white surrounded by three red squares and one blue square. Unlike the red squares, which were empty, the blue square contained a yellow sun. In 1803, before Bowles had a chance to move ahead with his plans, he was captured by American agents and delivered to the Spanish authorities. He subsequently died in a prison in Havana. For a further discussion of the life and times of Bowles, see Jack D. L. Holmes & J. Leitch Wright, Jr., Luis Bertucat and William Augustus Bowles: West Florida Adversaries in 1791, 49 Fla. Hist. Q. 49 (1970); Lyle N. McAlister, William Augustus Bowles and the State of Muskogee, 40 Fla. Hist. Q. 317 (1962); and David H. White, The Spaniards and William Augustus Bowles in Florida, 1799-1803, 54 Fla. Hist. Q. 145 (1975).}

Thus, in February 1821, Spain agreed...
to give Florida to the United States in exchange for the United States assuming up to $5 million in damages allegedly owed by Spain to American settlers living in Florida. Several months later, on July 17, 1821, transfer ceremonies were held in Pensacola and Saint Augustine. As Charles’ flag was lowered for the last time, General Andrew Jackson, Florida’s first American governor, raised the “Stars and Stripes” of the United States.

III. AMERICAN ACQUISITION AND STATEHOOD

From 1821 to 1845, Florida was a United States territory. Because Florida did not have its own flag during this period, the United States flag was used. At the time of Florida’s acquisition, the flag had twenty-three stars. By 1845, when Florida was admitted to the Union, three more states had joined the Union. In keeping with the practice of adding one star to the flag for each new state, a twenty-seventh star was added for Florida on July 4, 1845.46

West Florida Annexation, 35 FLA. HIST. Q. 219 (1956), and Hugh C. Bailey, Alabama’s Political Leaders and the Acquisition of Florida, 35 FLA. HIST. Q. 17 (1956). Florida’s current boundaries are set out in article II, section 1 of the Florida Constitution.

The final independence flags of this period are a legacy of the British blockade of East Florida. Although ultimately unsuccessful, the siege, which lasted from 1806 to 1812, helped to reveal the strategic importance of Amelia Island, see Christopher Ward, The Commerce of East Florida During the Embargo, 1806-1812: The Role of Amelia Island, 68 FLA. HIST. Q. 160 (1989), and made control of the island a top military objective. As a result, between 1812 and 1817 three different attempts were made to seize Amelia Island. The first, in March 1812, involved a group of seventy Georgians and nine Floridians who, after capturing the island, proclaimed the free “Territory of East Florida.” They then raised the “Patriots Flag,” a white field that depicted, in blue, a soldier above the Latin phrase “Salus Populi Lex Suprema” (“Safety, the Supreme Law of the People”). Five years later, in June 1817, Gregor MacGregor, a veteran of several Latin American revolutions, landed on Amelia Island and hoisted a white flag bearing a green cross. Finally, it is believed that General Luis Aury, the father of Mexico’s independence movement, may have lifted a red, white, and green flag over Amelia Island in October 1817. If Aury had a flag, its design has not survived the vicissitudes of time. For further descriptions of the struggle for Amelia Island, see T. Frederick Davis, MacGregor’s Invasion of Florida, 1817, 7 FLA. HIST. Q. 3 (1928), and Richard G. Lowe, American Seizure of Amelia Island, 45 FLA. HIST. Q. 18 (1966).

45. For accounts of Jackson’s role in Florida, see Herbert J. Doherty, Jr., The Governorship of Andrew Jackson, 33 FLA. HIST. Q. 3 (1954), and Herbert J. Doherty, Jr., Andrew Jackson vs. The Spanish Governor, 34 FLA. HIST. Q. 142 (1955).

46. The Stars and Stripes, consisting of thirteen red and white stripes and an equal number of white stars on a blue canton, was adopted as the official flag of the United States by the Continental Congress on June 14, 1777. See II JOURNAL OF THE AMERICAN CONGRESS 165 (1823). Following the Revolutionary War, the flag remained unchanged for
As part of the statehood application process, territories were required to draft and submit to Congress a proposed constitution. Florida took this step in 1838.47 In keeping with the custom of the day, the constitution made no provision for a state flag.48 As a result, Florida did not have an official flag when it became a state on March 3, 1845.49

At 12:00 noon on June 25, 1845, William D. Moseley was inaugurated ten years. The admission of Kentucky and Vermont in 1792, however, raised the question of whether the flag should be altered as new states joined the Union. Many members of Congress opposed changing the flag, pointing out that it would be expensive for shipowners to acquire new flags, and the issue became a fiercely debated one. Finally, a law was passed providing that after May 1, 1795, the flag would have fifteen stripes and fifteen stars. See Act of Jan. 13, 1794, ch. 1, 1 Stat. 341. The admission of still more states, however, threatened to make the design of the flag unwieldy. As a result, in 1818, Congress, acting on a proposal introduced by Representative Peter Wendover of New York, decreed that henceforth the flag would have thirteen stripes and one star for each state, with new states receiving their stars on the first July 4th after their admission. Since 1947, the design of the flag has been codified, see 4 U.S.C. §§ 1-2 (1988), although details on the number of stars, dimensions, color, and miscellany are controlled by executive order. The flag assumed its present configuration in 1959, when Hawaii became the fiftieth state. See Exec. Order No. 10834, 3 C.F.R. 367 (Aug. 21, 1959). For histories of the flag, see DAVID EGGENBERGER, FLAGS OF THE U.S.A. (1964); WILLIAM R. FURLONG & BYRON McCANDLESS, SO PROUDLY WE HAIL: THE HISTORY OF THE UNITED STATES FLAG (1981); SCOT M. GUENTER, THE AMERICAN FLAG, 1777-1924: CULTURAL SHIFTS FROM CREATION TO CODIFICATION (1990); PELEG D. HARRISON, THE STARS AND STRIPES AND OTHER AMERICAN FLAGS (5th ed. 1914); BOLESLAW MASTAI & MARIE-LOUISE D’OTRANGE MASTAI, THE STARS AND STRIPES (1973); and MILO M. QUAIFE, MELVIN J. WEIG & ROY E. APPLEMAN, THE HISTORY OF THE UNITED STATES FLAG (1961).


48. Although each colony had a state seal prior to the start of the Revolutionary War, none had a flag, and it was not until the Civil War that states began using flags. Today, however, every state has an official flag. See RITA D. HABAN, HOW PROUDLY THEY WAVE: FLAGS OF THE FIFTY STATES (1989), and BENJAMIN F. SHEARER & BARBARA S. SHEARER, STATE NAMES, SEALS, FLAGS, AND SYMBOLS: A HISTORICAL GUIDE (1987).

49. To maintain the delicate balance between free and slave states established by the Missouri Compromise of 1820, Congress authorized the territories of Florida and Iowa to enter the Union as soon as they met the requirements for admission. Although Florida qualified immediately, Iowa’s admission was delayed pending settlement of a boundary dispute and the submission of an acceptable state constitution. See Franklin A. Doty, Florida and Iowa: A Contemporary View, 36 FLA. HIST. Q. 24 (1957), and Franklin A. Doty, Florida, Iowa, and the National “Balance of Power,” 1845, 35 FLA. HIST. Q. 30 (1956). For a description of what Florida was like when it became a state, see Dorothy Dodd, Florida in 1845, 24 FLA. HIST. Q. 3 (1945).
as Florida’s first state governor. 50 Earlier in the day, James E. Broome, chairman of the citizens’ committee on inaugural arrangements, had presented a colorful new flag to the governor-elect and the joint legislative committee on the inauguration. 51 While no copies remain in existence, eyewitness reports describe the flag as having five horizontal stripes, each in a different color. 52 The flag also depicted the United States flag in the canton, 53 as well as a white scroll on the second stripe that bore the motto “Let Us Alone.” 54

Although no official explanation of the significance of the design or the colors was provided, 55 upon receiving the flag the joint legislative committee introduced a resolution in both chambers of the General Assembly providing “That the Colors now presented be the Colors of the State of Florida, till changed by law, and that the same be placed over the Speaker’s chair of the House of Representatives.” 56 The House at once adopted the

50. Born in North Carolina in 1795, Moseley had been educated at the University of North Carolina. Following graduation, he became a successful lawyer in Wilmington and later served in the North Carolina State Senate. Unsuccessful in his bid to become the Democratic nominee in the North Carolina gubernatorial race in 1834, Moseley moved to Florida in 1835. He immediately became involved in territorial politics and was elected governor of Florida in 1845, defeating his Whig opponent Richard K. Call by a vote of 3,292 to 2,679. Because the 1838 Constitution prohibited him from running for reelection, Moseley retired to his plantation on Lake Miccosukee at the conclusion of his term in October 1849, and died in Palatka on January 4, 1863. I BIOGRAPHICAL DIRECTORY OF THE GOVERNORS OF THE UNITED STATES, 1789-1978, at 251 (Robert Sobel & John Raimo eds. 1988).

51. Dorothy Dodd, The Flags of the State of Florida, 23 FLA. HIST. Q. 160, 161 (1945). The flag had been prepared by a group of Tallahassee citizens with the approval of Governor Moseley. Id. at 160.

52. Id. Although modern-day drawings of the flag always show the stripes as being, from top to bottom, blue, orange, red, white, and green, whether this was the actual arrangement is open to debate because “[c]ontemporaneous accounts vary as to the sequence of the colors of the flag.” T. Frederick Davis, Pioneer Florida, 22 FLA. HIST. Q. 134, 137 n.* (1944).

53. Dodd, supra note 51, at 160. It was not at all uncommon during this period to depict a separate flag in the canton. The “Continental Colors,” the flag used by George Washington prior to the adoption of the Stars and Stripes, for example, included the Union Jack in its canton. See CRAMPTON, supra note 2, at 30. Likewise, Hawaii’s state flag, which was adopted in 1845, displays the Union Jack in its canton. Id. at 33.

54. Dodd, supra note 51, at 160.

55. Davis, supra note 52, at 137. The editor of the Tallahassee Star suggested that the colors of the flag “were intended to represent youth, energy, purity etc.” Id. at 137 n.*.

56. See FLA. S. JOUR. 8 (1845); FLA. H. R. JOUR. 10 (1845). Although modern flag etiquette would prohibit the draping of the flag over a chair, nineteenth century conventions were considerably more relaxed:

In the United States, what one law professor has termed “vexillatry” or the
exaltation of the flag “into a kind of mystical reification of the nation,” is a relatively recent development clearly associated with the growth of American nationalism in the post-Civil War era. Apparently, great patriots of the past committed acts that qualify as flag desecration under modern standards: for example, one photograph which survives from the Civil War shows President Lincoln and General McClellan eating at a table covered with a flag. Furthermore, the law has only recently recognized national respect for the flag. Congress declared the “Star Spangled Banner” to be the national anthem only in 1931, and it declared “The Stars and Stripes Forever” to be the national march in 1987. Congress did not establish Flag Day until 1949, and expanded the observance into Flag Week only in 1966. Although a magazine first published the Pledge of Allegiance in 1892, the government did not endorse the Pledge until 1942, when Congress codified flag etiquette for the first time. Most significantly, while the first state laws prohibiting flag desecration date only from 1897, no federal flag desecration law was passed until 1968.


Several years after Johnson and Eichman, the subject of flag desecration was revived in an international setting when the Canadian flag was displayed upside-down by a United States Marine color guard before the start of the second game of the 1992 World Series between the Atlanta Braves and the Toronto Blue Jays. See World Series Notebook: Flag, If Not Jays, Was Upended, N.Y. TIMES, Oct. 19, 1992, at C8. Although the incident threatened to ruin the fall classic, the crisis was defused after President Bush apologized for the mistake and a different Marine color guard carried the flag correctly before the start of the third game. See Claire Smith, World Series: Marines Rally 'Round the Maple Leaf.
resolution, as well as a proclamation giving thanks "to the patriotic citizens of Tallahassee for the present stand of colors for the State of Florida." Maters did not go as smoothly in the Senate however, and as noon approached the resolution still had not been passed. With a large crowd beginning to gather at the recently-completed capitol for the swearing-in ceremony, the Senate finally had no choice but to adjourn, thereby leaving the issue unsettled.

While Moseley’s inaugural address “was rather modest and unassuming,” when he finished the large crowd “responded to [it with] deafening shouts.” A twenty-eight gun salute then was fired, the Stars and Stripes and the proposed flag were raised, and the band struck up “Yankee Doodle Dandy.”

In the days following the inauguration, the debate over the flag resumed. As before, the sole issue was the flag’s motto. While the
Democrats contended that it was a fitting credo, the Whigs countered that it was nothing more than a party slogan, and for the next six months the debate dragged on as the issue was raised, debated, tabled, and then raised again. Finally, however, on December 27, 1845, the Democrats prevailed.

61. While it is not known what the public thought of the motto, at least one source has concluded that the phrase “probably represented the sentiments of most Floridians.” CHARLTON W. TEBEAU, A HISTORY OF FLORIDA 173 (rev. ed. 1980). Another has gone even further, contending that the phrase was placed on the flag as a warning to the federal government not to meddle in the state’s affairs:

At the inauguration of Governor Moseley, the ceremonies of which were performed in the completed capitol, a state flag was displayed consisting of horizontal stripes of blue, orange, red, white and green bearing the motto, “Let Us Alone.” The motto was significant, in view of the long period of discussion over the aggressions of the Federal Government and the North, and the warnings of Florida nullifiers who were following Calhoun rather than Jackson. The strong States Rights element had also introduced into the [territorial] council’s call for a constitutional convention the phrase “the admission of Florida into the National Confederacy.” The state flag placed an added emphasis on the “Let-Us-Alone” attitude of Florida. The new state asked to be allowed to work out her own salvation.

I HISTORY OF FLORIDA: PAST AND PRESENT 121 (Harry G. Cutler ed. 1923).

62. It has been written elsewhere that:

No one seems to have objected to the rather bizarre color combination, but the motto raised a furor. The Whigs charged that “Let us alone” was a party motto, “now about being foisted upon this State” by the Democrats. The Floridian, a Democratic organ, seeking to refute this, claimed that it was “the substance of the answer of the French manufacturers of Lyons, to the French minister of Finance (Colbert), when he asked what they wished the Government to do for them.” To which the Whig Sentinel rejoined, if its origin was sought it would be found to be “the frantic exclamation of an ‘unclean spirit’ to our Saviour.” (Mark 1:24)

Dodd, supra note 51, at 160-61.

63. The odyssey endured by the Senate has been described as follows:

But the Whigs in the Senate, though in the minority, succeeded in having consideration of the resolution deferred from day to day. On June 27, R. B. Haughton, “after briefly stating his objections to the motto, appealed to the liberality of the majority for further time, in order to propose a substitute.” George S. Hawkins replied “that there was no disposition to press the matter too urgently; but if it was procrastinated, the gentleman should obligate himself to show a better. Mr. Haughton thought this could easily be done and he would undertake it.”

The resolution was again debated on July 2, when a number of devices were suggested. When Haughton proposed “a magnolia with a rattlesnake entwined around its trunk, with an English motto which we (the editor of the Sentinel) have forgotten,” Hawkins approved the device but suggested “Let us alone” as an appropriate motto. Among other suggestions were, “A single Live
and a resolution adopting the flag and its motto “as the Flag of the State of Florida” was approved by a vote of 8 to 5.\textsuperscript{64}

Rather than bringing the furor over the flag to an end, the Senate’s action sparked a new controversy as to whether the resolution had been in the proper form.\textsuperscript{65} By now, however, the Senate had grown weary of the entire issue and therefore decided to move on to other business. As for the flag itself, following its unveiling at the inauguration it was never flown again, and eventually either was discarded or lost.\textsuperscript{66}

\section*{IV. The Civil War}

The election of Abraham Lincoln on November 2, 1860 resulted in calls for secession throughout the South, and before the year was out South Carolina had left the Union. In Florida, reaction was almost as swift, and on November 30, 1860 Governor Madison S. Perry signed a bill authorizing the holding of a convention to consider whether Florida should disassociate itself from the United States.\textsuperscript{67} On the same day, Senator George W. Call, the sponsor of the secession act, introduced a bill proposing that Florida adopt a state uniform and flag.\textsuperscript{68} Although the bill was approved by the Senate on December 1, 1860, time did not permit the House of Representatives to consider it before adjourning for the year. As a result, the matter was not taken up by the House until the following February.\textsuperscript{69}

\begin{itemize}
\item oak, with the motto, \textit{‘Robore, sicut fronde perennis,’—in strength as in verdure perpetual,” and “a Live Oak upon a craggy beach, against which the surfs of a raging sea are beating, and in the distance a view of the tempestuous ocean, with the motto, ‘The same in sunshine as in storm’.” No agreement being reached, the resolution was referred to a select committee, which failed to make a report on it.
\end{itemize}

\textit{Id.} at 161-62.

\textsuperscript{64} \textit{Id.} at 162.

\textsuperscript{65} While the Senate had passed a resolution, the House’s approval had been expressed in a joint resolution. This led opponents of the flag to argue that the Senate’s action had no effect: “‘Therefore,’ the \textit{Florida Sentinel} pointed out, ‘although both houses have passed upon this motto, and approved it, yet for want of attention to the matter of form, it has not been legally adopted, and it is \textit{not} the motto of the State.’” \textit{Id}.

\textsuperscript{66} \textit{Id.} (“Whether legally adopted or not, presumably the flag thereafter gathered dust over the speaker’s chair, for we hear no more of it.”).

\textsuperscript{67} For a look at Florida during the year leading up to the Civil War, see George C. Bittle, \textit{Florida Prepares for War 1860-1861}, 51 FLA. HIST. Q. 143 (1972).

\textsuperscript{68} Dodd, \textit{supra} note 51, at 163.

\textsuperscript{69} \textit{Id.}
In the interim between Lincoln's election and the start of the Convention, numerous unofficial secession flags began to appear throughout Florida. Of these, the one to gain the greatest prominence was a flag prepared by the "Ladies of Broward Neck," a community in Duval County, and presented to the governor by Miss Helen Broward on December 28, 1860.

The flag had a white field and the motto "The Rights of the South At All Hazards" painted in black across the top. On the hoist below the legend was a pale blue circle that had two large dark blue stars and twelve small light blue stars. The fly, meanwhile, had an alternating pattern of red, white, and blue stripes. In acknowledging "the receipt of the beautiful States Rights flag," Governor Perry promised that the flag would "be unfurled on all fitting occasions which may present themselves in the progress of the important and interesting events which are now daily transpiring."

The Secession Convention began on January 3, 1861, and one week later the delegates voted sixty-two to seven to secede from the Union. On the next day, January 11, 1861, the Ordinance of Secession was signed on the east portico of the capitol. After the last delegate had affixed his signature, a fifteen gun salute was fired to usher in the new nation. Governor-elect John Milton, who was presiding due to the illness of Governor Perry, then presented Miss Broward's flag to the Convention. The news that the Secession Ordinance had been signed triggered merrymaking throughout the state, and in Saint Augustine a locally-produced flag bearing

70. Id.

71. MORRIS, supra note 10, at 279.

72. The two large stars were intended to portray South Carolina and Florida as the first two states to secede from the Union, while the twelve small stars were meant to represent the states that were expected to join them: Alabama, Arkansas, Georgia, Kentucky, Louisiana, Missouri, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Just days before Florida seceded, however, Mississippi left the Union, and a third large star was hastily added to the flag. Mississippi is therefore represented by both a large and a small star. Dodd, supra note 51, at 165 n.21.

73. MORRIS, supra note 10, at 279.

74. Dodd, supra note 51, at 163-64.

75. Despite the lopsided margin by which the secession ordinance passed, at least one scholar has suggested that most Floridians did not want to leave the Union. See John F. Reiger, Secession of Florida from the Union—A Minority Decision?, 46 FLA. HIST. Q. 358 (1968).

76. Although Miss Broward's flag was not officially adopted, it was displayed on the rostrum of the Florida House of Representatives throughout the Civil War. MORRIS, supra note 10, at 279-80.
a palm tree and an eagle was raised over the city.  

Recognizing that the United States was now a foreign nation and that war was likely, Governor Perry dispatched Captain V. M. Randolph and Richard L. Campbell to seize the Pensacola Navy Yard. Encountering little resistance, Randolph and Campbell quickly secured the vital base and on the next day, January 13, 1861, replaced the Stars and Stripes with an improvised flag. Even by impromptu standards, however, the new flag was a rather pathetic sight, and upon seeing it Colonel William H. Chase, the commander of the Florida troops stationed in Pensacola, ordered all Floridians to fly the United States flag modified so as to have just one white star in the canton until a permanent flag could be adopted.

77. The description of the Saint Augustine flag comes from a story carried in the January 19, 1861 issue of the St. Augustine Examiner:

"[T]he report [that the Secession Ordinance had been signed] was communicated almost instantly to the entire population, and there was exhibited a scene of intense excitement never before witnessed by us. In approbation of the result, all the bells of the City reechoed in loud, long and continuous peals the feelings of a rejoicing public." Later in the day public ceremonies were held in the Plaza. . . . After an address by Judge Benjamin A. Putnam, "the national flag of Florida, wrought by the fair hands of some of our patriotic ladies . . . rose beautifully amidst deafening cheers and saluting discharges of artillery and small arms, and as it reached the top of the staff unfolded gracefully and expanded to a favoring breeze, bearing on its ground the cherished Palmetto with an Eagle resting on a globe and holding in its mouth the State's motto, 'Let us alone.'"

78. According to one account, the flag was "a dingy white flag" that "looked like an old signal flag with a star put on it." Id.  

79. Born in Massachusetts, Chase had moved to Pensacola at a young age. A graduate of West Point, he was a man of considerable influence and eventually rose to the rank of major general in the Florida militia. Cutler, supra note 61, at 140. Being a highly-trained military officer, Chase's order was both detailed and explicit, and left little to the imagination:

Colonel William H. Chase, commanding the Florida troops, immediately took steps to replace this obvious makeshift with a more suitable flag. By General Order No. 3, issued January 13, he required a flag, whose design he prescribed, to be displayed at the Navy Yard, forts, barracks, and hospital in possession of state troops. "Until otherwise ordained by the people of Florida assembled in convention," the order read, "the emblems of the flag will be thirteen stripes, alternate red and white, commencing with the red, a blue field, with a large white star in the center." On January 14, the commander of the U. S. S. Wyandotte, lying in Pensacola harbor, noted in his log, "Florida forces hoisted the American flag with lone star." Chase's order required that the flag, when hoisted for the first time, be saluted with thirteen guns.

Dodd, supra note 51, at 167.
From a historical standpoint, Chase’s flag was a poor choice for a people attempting to distance themselves from the United States. Designed in 1836 for use by the Texas navy, the flag had been intended to demonstrate solidarity with the United States during the days of the Texas Republic. Nevertheless, Chase’s order was accorded widespread respect and was complied with throughout Florida.

On February 1, 1861, the House of Representatives, having reassembled following the Secession Convention, took up Senator Call’s flag bill. Not surprisingly, the bill passed without dissent and was signed into law on February 8, 1861. As approved, the bill directed the governor “by and with the consent of his staff” to adopt “an appropriate device for a State flag, which shall be distinctive in character.”

One month later, on March 4, 1861, the Provisional Congress of the Confederate States of America selected the “Stars and Bars” to be the national flag of the Confederacy. Modelled after the Stars and Stripes,

80. Like Florida, Texas originally had belonged to Spain, but became a Mexican possession in 1821 when that country broke away from Spain. Following increasing hostilities, Texas declared her independence from Mexico on March 2, 1836, and thereafter was a self-governing republic. On December 29, 1845, Texas became the twenty-eighth state to join the United States, just ten months after Florida had been admitted to the Union. During the nine years that Texas was a republic, a number of different flags were used, including a flag known as the “Texas Naval Ensign.”

During the era of the Republic, Texas also had distinctive flags for use at sea. During the pre-independence period of the revolution, Texas privateers flew the “1824” flag. In 1836, this was replaced by the ensign of the Texas Navy. The Texas naval ensign proclaimed the attachment of Texas to the United States, both symbolically and diplomatically, and was in fact the flag of the United States with a lone star in the union. This ensign graced the naval vessels of the Republic until Texas became one of the United States in 1845.


81. Morris, supra note 10, at 279.
82. Dodd, supra note 51, at 167.
83. Id.
84. Adoption of the Stars and Bars had proven rather contentious, and in many ways was the first tangible crisis faced by the seceding states:

For the first twenty-four days of the existence of their government, the Confederate States of America had no officially approved flag. When Jefferson Davis was inaugurated President of the provisional government on February 18, 1861 the capitol building in Montgomery flew the flag of the State of Alabama, and the inaugural parade was lead [sic] by a company of infantry carrying the flag of Georgia.

The Provisional Congress had established a Committee on Flag and Seal,
the Stars and Bars consisted of three horizontal stripes, or bars, in an alternating combination of red-white-red, and a blue canton bearing seven white stars arranged in a circle. Within weeks, use of the Stars and Bars had spread throughout the South, and in Florida Governor Perry decided to model the new state flag after the Stars and Bars. Consequently, on September 13, 1861, an executive order was issued establishing as the new state flag a vertically split field with a blue hoist bearing a white shield and a fly with the same stripes as the ones found on the Stars and Bars.

The Committee received hundreds of designs for flags which were submitted to it by citizens from all parts of the country. Even citizens of States still among the United States sent in proposals. An unwritten deadline for the adoption of a flag was March 4, 1861 because on that date Abraham Lincoln was to be inaugurated president of the now foreign United States; and on that date the Southern States were determined to fly a flag which expressed their own sovereignty.

As the deadline neared, the Committee continued to examine and debate designs without being able to reach a consensus. The Committee finally had to admit its inability to agree on a flag and chose four patterns to present to the full Congress for a final decision.

Thus, on the morning of March 4, large cambric models of the proposed flags were hung up on the walls of the Congressional chamber.

CANNON, supra note 80, at 7.

Although it now seems odd that the Provisional Congress would have selected a flag that so closely resembled the Stars and Stripes, the "sentimental attachment to 'the old flag' felt by the public at large . . . made it impossible [for either the Flag Committee or the Congress] to ignore the elements of its design." Id.

"The use of this new flag not only spread rapidly across the Confederate States but also among Confederate sympathizers in States still in the old Union." Id. at 10.

"The flag adopted by the Confederate Congress on March 4, 1861 was altered to serve Florida's needs by extending the canton to form a vertical bar the entire width of the flag."

More precisely, the executive order described the flag as follows:

The one half of the Flag next to the Staff is blue: the other half has alternately one red, one white, one red stripe. Each stripe (three in all) is of equal width and perpendicular to the staff. (The stripes are the same as the Confederate stripes, only they form one half the Flag). On the blue ground, and occupying somewhat more than one half of it is an elliptical band (the axis of the ellipse in the proportion of fifteen to thirteen, the longitudinal axis parallel with the Flag Staff) bearing superiorly 'In God is Our Trust'—inferiorly—'Florida'—making as it were a frame for the Shield. In the center of the ellipse is a single strong Live Oak Tree. Beyond it is seen the Gulf of Mexico, with vessels in the distance. In front of and near the foot of the Oak is a piece of Field Artillery. Beyond the gun, and resting against the boll of the Oak, is seen a stand of six colors—the Confederate and State Flags, to the front. To the left of the Fieldpiece are Four Muskets stacked. To the right and near, balls piled,
Perry's flag apparently failed to generate much enthusiasm, for it appears that it was never "raised over the capitol or in the field." Instead, like most Southerners, Floridians preferred using the Confederate battle flag. Known as the "Southern Cross," this highly distinctive flag had a red field and contained a blue saltire with thirteen white stars arranged inside the arms. Designed by William Porcher Miles of South Carolina, it had been submitted for consideration as the national flag. When the Stars and Bars were selected instead, General Joseph E. Johnston adopted the Southern Cross as the battle flag of the Army of the Potomac. In time, the Southern Cross became the unofficial flag of the South and appeared in a multitude of civilian and military styles.

V. RECONSTRUCTION AND THE END OF THE NINETEENTH CENTURY

On April 9, 1865, General Robert E. Lee surrendered his troops to General Ulysses S. Grant at the Appomattox courthouse. The defeat of the Confederacy ushered in a period of hard feelings between the victorious North and the vanquished South, and, in time, resulted in the formulation of a stern national reconstruction plan.

In order to end the military occupation that had been established and be readmitted to the Union, Southern states were required to pass new constitutions that renounced slavery, guaranteed equal protection to all and a drum.

Dodd, supra note 51, at 167-68.
89. Id. at 168.
90. CANNON, supra note 80, at 51-54.
91. For a detailed history of the Southern Cross as well as other Confederate battle flags, see ECHOES OF GLORY: ARMS & EQUIPMENT OF THE CONFEDERACY 230-81 (Henry Woodhead ed. 1991).
92. Because of communication difficulties, troops stationed in Florida did not begin to surrender until May 10, 1865, and it was not until May 20, 1865 that General Edward M. McCook took formal possession of Tallahassee and raised the United States flag over the capitol. Morris, supra note 10, at 415. For the most part, Florida was untouched by the Civil War, and the only battle of consequence to be fought in the state was the Battle of Olustee, which occurred on February 20, 1864. As a result, Tallahassee was the only confederate capital east of the Mississippi not to be invaded by Union troops. For a further discussion of the role of Florida in the Civil War, see Allen W. Jones, Military Events in Florida During the Civil War, 1861-1865, 39 FLA. HIST. Q. 42 (1960), and John F. Reiger, Florida After Secession: Abandonment by the Confederacy and Its Consequences, 50 FLA. HIST. Q. 128 (1971).
citizens, repudiated the Confederate war debt, and punished anyone who had taken up arms against the Union. Although Florida adopted a new constitution on November 7, 1865, it fell far short of what the Radical Republicans in Congress expected and was rejected in 1867. As a result, Florida was returned to military control and remained in that status until a constitution acceptable to the North was passed on May 8, 1868.

Because the Civil War had made flags very popular, the 1868 constitution’s “Miscellaneous” article directed the Legislature to “adopt a State Emblem having the design of the Great Seal of the State impressed upon a white ground of six feet six inches fly and six feet deep.” Since Florida did not have an official state seal at the time the 1868 constitution was ratified, the design of the flag was not finalized until August 6, 1868, when the Legislature met and passed a joint resolution adopting a seal.

93. See TEBEAU, supra note 61, at 239-47.

94. The military occupation of Florida is discussed further in Merlin G. Cox, Military Reconstruction in Florida, 46 Fla. Hist. Q. 219 (1968), while the drafting of the 1868 Constitution is set out in Richard L. Hume, Membership of the Florida Constitutional Convention of 1868: A Case Study of Republican Factionalism in the Reconstruction South, 51 Fla. Hist. Q. 1 (1972), and Jerrell H. Shofner, The Constitution of 1868, 41 Fla. Hist. Q. 356 (1963). In large part, the 1868 constitution was written by Northerners who had migrated to Florida to take advantage of the post-war chaos. Because such persons were called “carpetbaggers,” in recognition of the suitcases that they used, the 1868 Constitution is often referred to as the “Carpetbag Constitution.” For an assessment of the carpetbaggers, see Maurice M. Vance, Northerners in Late Nineteenth Century Florida: Carpetbaggers or Settlers?, 38 Fla. Hist. Q. 1 (1959).

95. Although little attention had been paid to flags prior to the war, the conflict served to elevate the place of flags in the minds of most Americans. Thus, for example, when the Ku Klux Klan was founded in 1867, one of the first things it did was adopt a flag. Seeking to set itself apart from the numerous other groups that were forming in the post-war South, the Klan’s flag consisted of a yellow triangle with a red scalloped border and bore a black dragon and the Klan’s motto. SMITH, FLAG BOOK, supra note 10, at 274.

96. Fla. Const. art. XVI, § 31 (1868).

97. Although seals had been used throughout Florida’s history, no official seal had ever been adopted. Prior to 1821, the Spanish or English seal was used in Florida depending on which country was in power. From 1821 until 1846, a seal bearing an American eagle with outstretched wings resting on a bed of clouds and ringed with the words “The Territory of Florida” was employed. After 1846, a seal depicting an outline map of Florida and the sitting figure of a woman holding her hand out in the direction of the Gulf of Mexico was utilized. For a further description of the Spanish and British seals, see Robert R. Rea, The Deputed Great Seal of British West Florida, 40 Ala. Hist. Q. 162 (1978), and Peter Walne, The Great Seals Deputed of British East Florida, 61 Fla. Hist. Q. 49 (1982). For a further description of the American seals, see MORRIS, supra note 10, at 284-87.

98. Dodd, supra note 51, at 169. According to the description contained in the resolution, the seal was to be “the size of the American silver dollar,” and was to have “in
Reconstruction ended in 1877 with the election of Rutherford B. Hayes as president, and like other Southern states, Florida set out to eradicate all vestiges of Northern control and influence. This attempt reached its zenith in 1885, when an entirely new constitution was adopted to replace the 1868 constitution. Like the 1868 constitution, however, the 1885 constitution provided that the state flag was to be a field of white with the state seal in the middle.

The next change in the flag’s design occurred just as the century was coming to an end. Whenever the flag would hang limp, such as on windless days, it appeared to be completely white. Since white flags always have stood for surrender, late in the century Governor Francis P. Flem-

the centre thereof a view of the sun’s rays over a highland in the distance, a cocoa tree, a steamboat on water, and an Indian female scattering flowers in the foreground, encircled by the words: ‘Great Seal of the State of Florida: In God we Trust.’” Id.

99. For a sense of what Florida was like during Reconstruction, see Jerrell H. Shofner, Political Reconstruction in Florida, 45 FLA. HIST. Q. 145 (1966). In large measure, Reconstruction came to an end because the Florida State Board of Elections decided to award Florida’s electoral votes to Rutherford B. Hayes, the Republican nominee, in the disputed presidential election of 1876. Modern-day historians are in agreement that the election actually was won by Samuel J. Tilden. See further Jerrell H. Shofner, Florida Courts and the Disputed Election of 1876, 48 FLA. HIST. Q. 26 (1969), and Jerrell H. Shofner, Florida in the Balance: The Electoral Count of 1876, 47 FLA. HIST. Q. 122 (1968).


101. FLA. CONST. art. XVI, § 12 (1885).

102. This visual effect should have been anticipated, since a similar problem had been encountered during the Civil War. As noted above, see supra notes 84-85 and accompanying text, the original Confederate flag was the Stars and Bars. On May 1, 1863, however, the Confederacy replaced the Stars and Bars with a new flag known as the “Stainless Banner.” This flag had a white field and contained the Southern Cross in its canton. Because the Stainless Banner often was mistaken for a flag of surrender when no breeze was blowing, a red vertical stripe was added to its fly on March 4, 1865. See further CANNON, supra note 80, at 14-24.

103. SMITH, ACROSS THE WORLD, supra note 8, at 97. Although no harm is supposed to come to a person proceeding under a white flag, one’s protection is by no means guaranteed. History has recorded numerous incidents in which a flag of truce either was ignored or used to stage an ambush, and Floridians need look no further than their own state for such an episode.

In 1832, President Andrew Jackson ordered the forcible relocation of the Seminoles from Florida to Oklahoma. Jackson harbored a strong antipathy for the tribe as a result of his participation in the First Seminole War (1817-18), and therefore was quite willing to oblige the white settlers in Florida who were clamoring for the Seminoles’ land. Jackson’s decision to remove the Seminoles touched off the Second Seminole War (1835-42), a bloody confrontation that eventually cost $20 million and claimed at least 1,500 lives. During the
Jarvis: The History of Florida’s State Flag

1994

1059

ing\textsuperscript{104} recommended that a red saltire be placed behind the seal.\textsuperscript{105} In 1899, the Legislature responded to Fleming’s suggestion by passing a joint resolution proposing that the constitutional description of the flag be changed to include a red saltire.\textsuperscript{106} On November 6, 1900, the amendment was approved by the voters.\textsuperscript{107}

VI. THE TWENTIETH CENTURY

Although no major changes have been made in the flag during the twentieth century, three small modifications have taken place. First, on November 8, 1966, a constitutional amendment was passed reducing the

early years of the fighting, the Seminoles were led by a Creek warrior named Osceola. His brilliant tactics and ability to elude capture completely frustrated the United States Army, and finally led Major General Thomas S. Jesup to invite Osceola to a peace conference near Saint Augustine in October 1837. Although Osceola arrived carrying a white flag, Jesup had him imprisoned, first at the Castillo de San Marcos in Saint Augustine, and later at Fort Moultrie in Charleston, South Carolina, where he died on January 30, 1838. Despite a public outcry and a Congressional investigation, Jesup was not punished, although his reputation suffered permanent damage and he spent much of the rest of his life defending his actions. For a further description of the affair, see \textit{The White Flag}, 33 FLA. HIST. Q. 218 (1955). See also PATRICIA R. WICKMAN, \textsc{Osceola’s Legacy} (1991).

104. Fleming served as governor of Florida from January 8, 1889 to January 3, 1893. Born in Panama Park, Florida, on September 28, 1841, Fleming served in the famous 2d Florida Regiment during the Civil War. While home on sick leave, he commanded a company of volunteers at the Battle of Natural Bridge. After the war he studied law, gained statewide prominence, and entered politics. As governor, Fleming is best remembered for having set up the State Board of Health and charging it with suppressing Yellow Fever. He died on December 20, 1908 in Jacksonville. Sobel \& Raimo, supra note 50, at 261.

105. SMITH, FLAG BOOK, supra note 10, at 126. Although it is not known why Fleming proposed adding a red saltire, the generally-accepted theory is that he got the idea from the recently-adopted Alabama state flag. During the Civil War Alabamians had used a modified version of the Bonnie Blue flag as their state flag. \textit{See supra} note 44. In 1895, this flag was replaced by an entirely new design:

The present State flag [of Alabama] was adopted by the Legislature on 16 February 1895 in accord with a motion introduced by Representative John W. A. Sanford, Jr. It is described as having a “crimson cross of St. Andrew,” although St. Andrew’s saltire has in fact always been white. . . . The proportions are not specified, but since the intention of the creator was to suggest the Battle Flag of the Confederacy, the flag should be made square in shape. \textit{Id.} at 102. Given the fact that less than four years separate the adoption of the Alabama flag and Fleming’s proposal, the theory seems well-founded.


107. SMITH, FLAG BOOK, \textit{supra} note 10, at 126.
dimensions of the flag to conform to standard commercial sizes. Second, on May 21, 1985, the state seal was changed to correct a number of historical inaccuracies. Finally, as part of the 1968 revision of the constitution, the description of the flag was deleted. Consequently, the constitution now simply provides that the design of the flag "shall be prescribed by law." 

Today, in addition to the state flag, many other flags regularly appear in Florida. Among the most common are the red-and-white diver's flag, the red-and-black hurricane flag, and the blue-and-gold flag.

108. This change was necessitated because "the proportions of three to four which were selected for the flag in 1900 did not correspond to those generally in use for other state flags. Thus on 8 November 1966 a further amendment was ratified, specifying a greater flexibility in the proportions of the flag, the width of the seal, and the saltire." Id. Although the change made little difference to the public, it was greeted with great enthusiasm by flagmakers: "The former size of the Florida flag had presented a problem to flagmakers, who were being called upon to furnish Florida flags in ever increasing number because of legislative requirements for its display at school and other public buildings." MORRIS, supra note 10, at 280.

109. Id. at 284. Among the errors found in the old seal were the following: "a bag of coffee, never a prime crop in Florida; a cocoa palm instead of the state's Sabal (Palmetto) palm; an Indian maiden dressed as a Plains Indian, mountains in a state where the highest elevation is 345 feet, and questionable seaworthiness of the sidewheel steamer." Id. Although no one knows how these anomalies crept into the seal, "[t]here is an unconfirmed story that a Northern designer modified for Florida a seal previously prepared for use by a government in the West." Id. at 286. For a further discussion of the errors contained in the 1868 seal, see Florida's Great Seal: Its Historical Inaccuracies, 3 FLA. HIST. Q. 16 (1924).

110. Some legislators wanted to go further, and argued that the constitution should not mention the flag at all. See, e.g., Talbot "Sandy" D'Alemberte, Commentary, 25A FLA. STAT. ANN. 504 (1970).

111. See supra note 1. At the same time, chapter 15 of the Florida Statutes was amended to include the following description of the flag: "The seal of the state, in diameter one-half the hoist, shall occupy the center of a white ground. Red bars, in width one-fifth the hoist, shall extend from each corner toward the center, to the outer rim of the seal." FLA. STAT. § 15.012 (1991).

112. The diver's flag, consisting of a white diagonal stripe on a red field, "warns of diving in the area where it is displayed[.]" SMITH, FLAG BOOK, supra note 10, at 275. In Florida, all divers are required to "prominently display a divers-down flag in the area in which the diving occurs, other than when diving in an area customarily used for swimming only." FLA. STAT. § 861.065(4) (1991).

The desire of commercial dive shops to fly the diver's flag in front of their stores has spawned an interesting situation in Fort Lauderdale and other Broward County cities. Under the zoning ordinances of both the County and the various municipalities, the use of commercial banners, including flags, is illegal. See, e.g., FORT LAUDERDALE, FLA., II CODE § 47-50.3(c) (1990). Governmental flags, however, are exempt from the prohibition. Id. § 47-50.3(c)(5). Some years ago, dive shop owners discovered that the flag of the Brazilian
of the Conch Republic. Other often encountered flags are foreign flags, municipal and corporate flags, and the deeply moving black-and-white P.O.W.-M.I.A. flag. By far, however, the most popular flag

state of Para looks exactly like the diver’s flag, except that it adds a blue star to the middle of the white horizontal stripe. MAURO TALOCCI, GUIDE TO THE FLAGS OF THE WORLD 225 (rev. ed. 1982). As a result, the Para flag now can be seen throughout Broward County.

113. The hurricane flag is actually two identical flags flown one above the other. Each flag is red and has a black square in the middle. When only one such flag is flown, a whole gale rather than a hurricane is indicated. See Whitney Smith, Flag, in 11 Encyclopedia Americana 348, illus. opp. 363 (1986). For a look at how hurricanes have shaped the development of Florida, see MORTON D. WINSBERG, FLORIDA WEATHER 111-33 (1990). The legal issues that can be spawned by hurricanes are canvassed in Symposium, Andrew: Force Majeure—The Legal Aftermath, 17 NOVA L. REV. 1003 (1993).

114. The Conch Republic was “founded” on April 23, 1980, by residents of Key West to protest a United States Border Patrol road block that turned U.S. Route I into a nineteen mile long parking lot. In recent years, the Conch Republic flag, which in actuality is the Key West city flag, has become something of a collector’s item. See further Whitney Smith, The Conch Republic Flag, 32 FLAG BULL. 49 (1993).

115. Nowhere is this more true than in Coral Gables, where the local chamber of commerce recently convinced the City to permanently display the flags of more than 200 countries in a colorful salute to the city’s large international business community. See Coral Gables Salutes the World, NEW MIAMI, Oct. 1993, at 8. Although the Cuban, Haitian, and Israeli flags are very prominent in South Florida, on a statewide basis the Canadian Maple Leaf is the most frequently seen foreign flag. It also enjoys the distinction of being the only foreign flag ever to fly over the Capitol:

After the spirited of six Americans from Tehran by the Canadian Ambassador to Iran in February, 1980, Governor Bob Graham ordered the flying of the flag of Canada from four poles at the Capitol until the hostages then held at the American Embassy in Tehran were freed. The six rescued were those who had escaped when militiants took over the Embassy. The Canadian flags were lowered for the last time at noon on January 26, 1981, as bands played and in the presence of dignitaries headed by Governor Graham and of the public.

MORRIS, supra note 10, at 281.

116. Since the end of World War II, an increasing number of American counties and cities have adopted their own flags. Most often, such flags depict the government’s seal and are displayed in “the chambers of the mayor or the governing council.” SMITH, FLAG BOOK, supra note 10, at 248-53. Similarly, many corporations today find it advantageous for advertising purposes to have their own flag. Like municipal flags, corporate flags normally bear the company’s seal. Id. at 271-78. This is not always the case, however, for when Carl Barger, the president of the Florida Marlins baseball team, died shortly before the start of the team’s inaugural season, owner H. Wayne Huizenga had a flag bearing Barger’s name and his favorite number (5, for legendary Yankee outfielder Joe DiMaggio) raised over Joe Robbie Stadium before the Marlins’ first home game. See S. L. Price, Marlins Don’t Make a Move Before Making Sure Barger is Remembered, MIAMI HERALD, Apr. 6, 1993, at 12D.

117. The P.O.W.-M.I.A. flag, which depicts a prisoner of war in the foreground and a sentry box and barbed wire in the background, was created after the Viet Nam War to honor
in Florida is the Southern Cross.\textsuperscript{118} But because many Americans recently have come to the conclusion that this flag promotes racism, the future use of the Southern Cross is in considerable doubt.\textsuperscript{119}

missing soldiers. Since September 19, 1990, the Florida Legislature has required “each state-owned building at which the flag of the United States is displayed [to] also display a P.O.W.-M.I.A. flag[.]” FLA. STAT. § 256.12 (1991).

\begin{itemize}
  \item[118.] The popularity of the Southern Cross is not limited to just Florida:
  \begin{itemize}
    \item Another flag which has been transformed over time is the naval jack of the Confederate States of America. Originally flown only on the prow of ships, since the late nineteenth century it has been displayed extensively on land as an unofficial Southern banner — a kind of national flag of Dixieland, symbolizing adherence to the “Lost Cause” and the principles of racial segregation and “States’ Rights.” In the North it has also been widely used since World War II by some high school and college students on speedboats, hot rods, motorcycle helmets, in dormitories and similar situations. It is often mistakenly called the Battle Flag or the Stars and Bars. This is the only regional flag now used in the United States, although in the seventeenth and eighteenth centuries New England had its own flag.
  \end{itemize}

\cite{Smith, Flag Book, supra note 10, at 273-74.}

\begin{itemize}
  \item[119.] In a recent interview, the owner of a popular flag store in Sunrise, Florida noted that of all the flags he stocks, none is more controversial than the Southern Cross. See Beth Feinstein-Bartl, \textit{A World of Flags: Merchant Finds Patriotism Brings Business Success}, SUN-SENTINEL, May 16, 1993, North East, at 6. In Georgia, the debate over the Southern Cross has grown so fierce that many citizens have demanded the governor’s resignation. On May 28, 1992, Governor Zell Miller, saying that the flag represented the “dark side of the Confederacy—that desire to deprive some Americans of the equal rights that are the birthright of all Americans[,]” called on the Georgia Legislature to remove the Southern Cross from the state flag, which had been added in 1956 to protest the United States Supreme Court’s decision in \textit{Brown v. Board of Education}, 347 U.S. 483 (1954). Believing that Miller has turned his back on the state’s heritage, many Georgians have taken to sporting bumper stickers and buttons that read “Keep the Flag, Lose the Governor.” For a further discussion of the controversy, see Don Melvin, \textit{Scars & Bars}, SUN-SENTINEL, Mar. 7, 1993, at 1G.

  \begin{itemize}
    \item Despite Miller’s troubles, on April 29, 1993, the new governor of Alabama, Jim Folsom, reversed a longstanding tradition when he prohibited the Southern Cross from being flown from the dome of the capitol. Folsom defended his action by saying: “This has been a divisive issue in our state, and I believe it is time we put it behind us and move our state forward.” \textit{See Confederate Flag Banned from Capitol}, MIAMI HERALD, Apr. 30, 1993, at 3A. Encouraged by this action, black leaders in Mississippi have sued to have the Southern Cross removed from their state flag, while black legislators in South Carolina have stepped up their longstanding effort to end the practice of flying the Southern Cross alongside the state flag. \textit{See Ray Recchi, 'Tradition' Unravels to Reveal Racism}, SUN-SENTINEL, May 3, 1993, at 1D.

    \begin{itemize}
      \item The dispute over the Southern Cross reached the national stage in July 1993, when Senator Carol Mosley-Braun, the only black member of the United States Senate, gave a heartfelt speech and thereby singlehandedly persuaded her colleagues not to renew a patent held by the United Daughters of the Confederacy ("UDC"). The patent, which dated back...
VII. CONCLUSION

It has been written that "Flags are fond symbols, popular with people of all ages."120 As this essay has shown, anyone who likes flags will find Florida an exciting and rewarding place to indulge their passion.

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Braun’s speech has inspired partisans on both sides of the controversy, particularly in Florida. While Braun’s words encouraged Richard Klos, a white freelance writer, to appear before the Hillsborough County Commission to urge that it remove the Southern Cross from the county seal, see *Hillsborough to Take Rebel Flag Off Seal*, SUN-SENTINEL, Aug. 6, 1993, at 8A, they also caused the Populist Party of Florida to hold a rally in downtown Davie to show support for the flag. See Bob French, *Protesters Support Confederate Flag*, SUN-SENTINEL, Sept. 12, 1993, at 3B. Thus, it appears that the struggle over the Southern Cross in Florida, as well as in other parts of the South, will be a long one.

120. CANNON, supra note 80, at 1.