

Freedom Matters

A Weekly Newsletter

Dane County, Wisconsin

Vol. 3, No. 4

Friday, January 24, 2003

We are a free people in a republic, under a constitution which limits the powers of government to those necessary to secure the unalienable rights of each person to their life, liberty and property. Yet, when a legislature is in session, no one's life, liberty or property is safe. It's the curse of a democracy. That's why we have a republic instead. *Freedom Matters* dedicates itself to the fight to restore our republic. Most of the press and courts fail to do so. They've forgotten that freedom matters.

Decapitalizing America Part 4. How the USA Created Capital

A Review by Bob Bowman

To De Soto (*The Mystery of Capital*) the U.S.A. offers an historic model for how a private property system evolved into capital for economic enterprise. We started like a Third World country, and evolved property law from the bottom up.

In the history of the American colonies, immigrants squatted on land, without surveys or title.

Squatters made their own law. With vast open land available, they marked their claims themselves. The distance to the land office, and its disarray of records, led them to develop their own local rules for ownership. They devised "tomahawk rights" (slash marked trees), "cabin rights" and "corn rights" (claiming land by building a cabin or raising a crop on it).

Massachusetts tried to evict squatters in the area of Maine. The settlers fought back, killing a sheriff, and juries refused to convict for it. Massachusetts lost and Maine was born.

Squatters began petitioning legislatures for laws confirming their titles. Ethan Allen and his "squatter followers" fought in the Revolution, and won statehood for Vermont, thus legalizing their titles.

George Washington sued to evict squatters from his farm, and as President, ordered squatters evicted from public lands. Pennsylvania lawmakers protested people who "sitt frequently down on any spott of vacant Land they can find." Such people occupied and improved 100,000 acres without "a shadow of a right." The sheer number overwhelmed the authorities.

Unable to stop squatters, states made revenue from them. They charged them for surveying their land or gave them the "preemption" of buying the land they had squatted on rather than having their land seized and put to a sheriff's sale.

The U. S. acquired about 900 million acres of land via conquest and purchase. In 1784, Congress began making laws to control access to it. Deciding that settlements in the Northwest Territories would eventually become states, they provided a system for surveying and selling these lands, laying out townships 6 miles square, comprising 36 sections one square mile each (640 acres), such sections to be sold at \$1 per acre. In 1787, these laws became the Northwest Ordinance (authored by Nathan Dane, and containing provisions later adopted in the constitution as the Bill of Rights). This Ordinance also provided for fee simple ownership and guaranteed the freedom of contract.

The Northwest Ordinance was an orderly law for distributing public lands, yet had a major flaw. Few settlers could afford the price it set. So, they continued to squat. For 20 years, Congress tried to dispossess squatters; in 1807, they passed laws providing fines and imprisonment for squatters. Yet, Congress itself confounded this problem. Short of cash, it gave land grants ("land scrip") for over 60 million acres of land as compensation to soldiers who fought in its wars (Revolutionary War, War of

1812, and the Mexican War). Most veterans sold this scrip, and holders of it squatted on land as due them. Congress also gave railroads over 300 million acres.

De Soto quotes one "articulate squatter" thus: "I do certify that all mankind agreeable to every constitution formed in America, have an undoubted right to pass into every vacant country and ... Congress is not empowered to forbid them."

Rival claims, litigation, eviction attempts, etc. threatened investments, and the plethora of local property laws created confusion. Two sets of property laws arose: those in the law books and extralegal rights that prevailed on the ground.

Kentucky was the turning point, where conflicting land claims added up to three times its area. Two major legal principles arose from settlement of these claims: the right of occupants to their **improvements** on the land, and the right of **adverse possession** of the land in the face of all other titles.

The Supreme Court declared Kentucky's occupancy laws unconstitutional, and upheld English property law. The settlers rejected that, as did local politicians, and even state judges.

In defiance, other states adopted occupancy laws like Kentucky's, and Congress got the message. They passed a preemption law in 1830, and extended it in 1841 to "every person ... who shall hereafter make a settlement on the public lands."

Settlers continued to create property law. As examples, De Soto cites the "claims associations" of the American Midwest in the 1800s, and the "miner districts" that grew up in the West following the California gold rush. Some 800 miner districts, each with its individual regulations, existed in California. Settlers had the conviction that they had "a greater right to define and interpret the rules than legal experts." All these groups had the principles of preemption and improvement rights on their side, and local courts supported them.

Congress passed the 1862 Homestead Act, which sanctioned what settlers had been doing, and the mining law of 1866 and 1872, still in effect, which recognized the claims of the miner districts, and sought only to regularize and standardize them, and which specifically commended the American genius for creating these extralegal arrangements.

The Supreme Court also finally got the message. It validated the mining laws as giving "the sanction of the government to possessory rights acquired under the local customs, laws, and decisions of the courts ... [and] recognized the obligation of the government to respect private rights which had grown up under its tacit consent and approval. It proposed no new system, but sanctioned, regulated, and conferred a system already established, to which the people were attached."

Thus ended a bitter struggle between top-down law and a bottom-up law that grew out of the U. S. experience of "massive migration and the needs of an open and sustainable society." By accepting the extralegal arrangements evolved by the settlers, De Soto says, **formal law thereby legitimized itself.**

(The conclusion to this series in the next issue)

Readers' Bulletin Board. e-mail us your comments. Include your name, for publication by *Freedom Matters*

*** Published by Freedom Matters, Inc., Cross Plains, WI. 53528, Michael Byrne, Editor ***
To subscribe or unsubscribe, e-mail to rebshar@chorus.net, or call Bob at (608) 831-6653.
Our e-mail subscriber list is confidential. We will not sell it or reveal it.

Back Issues of Freedom Matters are available, as e-mail.