

An Overview of Allodialism and Allodial Policy

By John Cobin, Ph.D

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[P] Chapter 15 of *A Primer on Modern Themes in Free Market Economics and Policy* E-Book \$5.95 download.

[BR] Chapter 4 of *Building Regulation, Market Alternatives, and Allodial Policy* E-Book \$3.95 download.

A. Disturbing accounts of recent real property policy, [P] pp. 495-496 and [BR] p. 177: Riggs, Hedlund, Jemtegaard, Devine, and Watts cases

B. What is allodial policy? What is an allodial title? [P] pp. 450-451

1. ἀλλ δε Διοσ “but from God” [BR] p. 122: held not subject to men
2. Deals with *real* property, not personal property
3. Primary policy issues: (a) regulation (b) property taxes
4. Allodial system: (a) *absolute* real property rights with (b) a *free market* and free exchange in real property and (c) *voluntary* regulation and contracting with respect to real property.
5. Allodial title is *never granted* by civil government, but instead must be **recognized** by them and other persons in order to be held peacefully.
6. Therefore, allodial title is *not* the same thing as a land patent granted by the federal government.

C. Feudalism theory and history (peak period 800AD to 11200AD)

1. A feudal system has one allodiary, usually the king or queen.
2. Must not be confused with manorialism [BR] p. 117.
3. Estates were doled out to favored sons who in turn assigned tenements to serfs in fee simple, etc.
4. Estate holders had titles of nobility (prohibited in the American Constitution, art. I, sec. 9-10): (a) barons, counts, earls, lords, et al, (b) requiring an oath of allegiance [BR] p. 117, (c) Rome had a similar system called *dominium*, and (d) we shall see that U.S. states or even local governments hold these titles of nobility today with respect to real property.

D. Market “failure” theory [P] ch. 12 used to justify feudal policies

1. *Negative externalities* cited as the key failure
2. Enlivens feudal *philosophy*
3. Requires *proactive public policy* to “solve” the problem

E. Market-based solutions

1. Voluntary contracting (*restrictive covenants*): George Washington example [BR] p. 116.
2. Allodial policy would rely on the *common law* of property, contract, and tort to resolve issues
3. *Voluntary taxes* could be used to finance defense.

E. Quasi-allodial and quasi-feudal variants (a continuum): technically all feudal [BR] p. 118

F. Examples of allodial or quasi-allodial policy: (1) Teutonic peoples of Europe in the middle ages [BR] p. 124, (2) in Novogrod 1200AD -1450AD (100 miles SSE of St. Petersburg <http://policyofliberty.net/quotes2.php>), (3) perhaps in pre-Norman England (per David Hume’s remarks) and (4) in ancient Iceland (per David Friedman in *The Machinery of Freedom*), as well as (5) ante-bellum America.

G. Real property policy in America

1. Colonial feudal policy
2. How the American Revolution changed this policy: comments of Jefferson & Adams [BR] pp. 149-151. Feudal terms left for expediency but real property considered held allodially (huge problem sown).
3. There was little regulation of real property [BR] p. 72 = quasi-allodial policy.
4. Hoffman’s contention 1830s (feudal terms mean feudal policy): repudiated by Maryland Supreme Court in *Matthews’ v. Ward* (1839).
5. Contrast *Wallace v Harmstad* decision (1863) vs. the modern *American Jurisprudence* [BR] p. 144-145.

6. Lincoln, Reconstruction era, and beyond: (a) Second Confiscation act of 1862 with *Bennett v. Hunter* (1870) and *Schenck v. Peay* (1869) cases [BR] pp. 189-190, (b) Pennsylvania Supreme Court ignores *Wallace* in *DeJong v. Chester* (1986) [BR] p. 164, and (c) Maryland Supreme court overruns *Matthews* in *Stevens v. City of Salisbury* (1965) [BR] p. 178.
7. Constitutions containing allodial clause: Arkansas, Minnesota, New York, Ohio, Wisconsin.
8. Eleven other states have a judicial or other affirmation of allodial rights in the state [BR] pp. 202-203
9. Weakly built on *DeRepintigny* case (1866) where the United States assumed lordship over a French grant, and cases like Colorado's *Dunn v. Dunn* (1877), the state is now considered to be "lord paramount" or "lord of the soil" of all real property in the state.
10. Legal historians concur (Jonathan Hughes, Noyes, White, Lefarve): American real property policy is feudal just like it was during the Middle Ages [BR] p. 197.

H. Is allodial policy possible?

1. Yes, but with extraordinary transitional costs.
2. Lower production costs and other advantages of allodial policy: [P] p. 492.
3. What would an allodial world look like?
4. Allodialism as a threat to the state.
5. How pollution control might occur under allodial policy.
6. How defense and public goods would be provided under allodial policy.

I. Is there a procedure to get an allodial title?

1. No.
2. Remember, all real property is allodial already.
3. The goal is to get civil government and other persons to recognize you as the allodiary rather than them, either by buying their allodial rights or getting a judicial declaration of title and allodial right.