

A decade later

June 25, 2015

Ten years after the *Kelo vs. City of New London* SCOTUS decision, the rule of law and representative government remain under attack; what are the strategic allocation implications?

I have often lamented, and reflected on, the ongoing emasculation of property rights and the associated threats to liberty, our way of life, community cohesion, incentives, prosperity, market-based allocations, and, ultimately, a sound, productivity-enabled “wealth of a nations” trajectory. The “hit you between the eyes” link to the story behind the eminent domain-empowering, Fifth Amendment trampling *Kelo* decision, which features a very relatable and sad human dimension, is right here: <http://dailysignal.com/2015/06/23/dreams-demolished-10-years-after-the-government-took-their-homes-all-thats-left-is-an-empty-field/>.

Frankly, the *Kelo* decision is emblematic of what continues to be dished up by our insatiable, increasingly unconstitutional federal government. Long populating that same menu, we find stalwarts such as cronyism-based misallocations financed by the Fed, transfers of wealth away from Main Street to Wall Street/K Street, and the evisceration of federalism: goodbye to adherence to strictly limited and enumerated federal government powers; so long senators chosen by state legislatures; and ta-ta to fidelity to the 9th and 10th Amendments (<http://www.cato.org/publications/commentary/federalism-then-now>).

In a nutshell, today’s fiat government, fiat money system has become a self-perpetuating system which underpins capricious, rapacious, extortionist, and frankly despotic concentration of power in the hands of ever less people. This is the antithesis of a representative or “republican” (as in a republic) form of government with clearly enumerated powers (<http://law2.umkc.edu/faculty/projects/frtrial/conlaw/nec&proper.html>) as envisioned by the Founders in the Declaration of Independence and as codified by the Framers in the US Constitution.

Sadly, the sustained, multi-decade unravelling of vital and sacrosanct property rights has been carried forward by all three branches of the *federal* government with increasing vigor -- and with growing damage to the vibrancy of liberty-protecting separation of powers and federalism principles -- as time goes by. How so? In essence, thusly:

- Congress has continued to “punt” its sole constitutional legislative (law-making) role to the executive branch and its ever expanding bureaucracies/regulatory agencies, disenfranchising voters.
- The executive branch has gladly usurped the legislative power Congress has de facto bestowed on it, which is a pronounced violation of Congress’s constitutional role and of the Framers’ separation of powers doctrine enshrined into the Constitution so as to avoid undue concentration of power in any one federal branch of government (<http://hotair.com/archives/2015/03/18/former-obama-law-prof-epa-is-burning-the-constitution-with-its-co2-regulations/>*). Result: executive branch agencies, or agencies whose heads are determined by the president, such as the EPA, IRS, BLM, HUD, USDA, DOE, DOC, DOL, DOT, FCC, FTC, etc., spit out literally thousands of new regulations annually. These regulations are akin to laws. The reason: penalties, punishment, and even imprisonment for regulatory noncompliance are known to be material and onerous, i.e., assuming citizens can figure out how to comply with wave after wave of them, an engineered impossibility. Proof of the pudding: as of June 24, 2015, **6,023** new federal regulations had been posted over the past 90 days (www.regulations.gov/#!home)! Contrast this executive branch “regulatory zeal” with the 113th Congress, which over a two-year period ended in 2014 passed but 86 bills, which became laws after being signed by the president (www.congress-summary.com/C-113th-Congress/Laws_Passed_113th_Congress_Seq.html).
- The judicial branch, too often with the imprimatur of SCOTUS decisions during the last decade, has “doubled down” on the disembowelment of property rights while simultaneously further weakening the pivotal federal level separation of powers and the enumeration of powers (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people”) doctrines. We saw this in the anti-property rights, anti-liberty 2005 *Kelo* decision by the SCOTUS (www.intellectualtakeout.org/library/primary-sources/kelo-v-city-new-london-dissenting-opinion-justice-occonnor-2005). We have also seen this on display in the SCOTUS’s anti-property rights, anti-federalism 2007 *Mass. vs. EPA* decision (tough luck, states’ rights and coal mine shareholders, and goodbye cheap, reliable 24/7

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power; <http://blog.acton.org/archives/2537-federalism-and-the-epa.html>). Last but certainly not least, we have witnessed it in the Supreme Court's 2012 Obamacare decision, which amounts to a constitutional violation of the fact that new tax bills have to originate in the House (not in the Senate and most certainly not in the SCOTUS, Mr. Roberts!) as well as a constitutional violation of the 5th Amendment's Takings Clause by compelling purchase of health coverage (www.breitbart.com/big-government/2013/05/08/a-new-legal-challenge-to-obamacare/).

In a globally increasingly entrenched fiat currency, fiat government-based political/economic system which usurps both the rule of law/property rights and personal liberty (www.yardeni.com/Pub/peacockfedecbassets.pdf, www.wsj.com/articles/SB10001424127887323981504578177913940268102, <http://skrason.wordpress.com/2011/06/02/the-erosion-of-the-rule-of-law-in-contemporary-western-culture/>, www.opendemocracy.net/openindia/vijay-nagaraj/indian-constitutional-democracy-freedom-in-crisis), we know all too well that the Invisible Hand of Adam Smith, i.e., the free market and its would-be countless millions of economic participants, will no longer be able to either access or provide the pricing information, the opportunities, the incentives, the savings, and/or the investments with which to productively supply society with desired goods and services at attractive prices. This is what all centrally planned, citizen-impoverishing economies/nations have shown us the world over, be it the former USSR, former East Germany, today's North Korea, or today's Venezuela, to name just a few.

Strategic allocation upshot

Consider investing in attractively priced assets whose value should rise in an environment typified by QE-enabled misallocations, drooping productivity, cronyism, and castration of free market incentives. Consider investing in vital, scarce real assets, very much including dense energy and key ag assets, and in real money over the ages, namely in physical silver and gold. Consider investing in assets that can't be printed and thus in assets that become scarcer as expressed in "expanding" fiat currency terms on the one hand, and in assets that become scarcer thanks to central planning-based misallocations and increasing extraction costs on the other hand. If all this fails to "hit home," consider food, energy, consumer staples, and precious metals price explosions and/or shortages in countries that have long trashed the rule of law and sound money. Countries such as those listed a few rows up, come to mind.

Additional thoughts on this topic, related matters, and on scarce real asset investing can be found here: <http://dkanalytics.com/reports/>

Sincerely,
Dan Kurz, blogger
(dan_34135@yahoo.com)

* Harvard University Professor Lawrence Tribe, described as a mentor to Barack Obama, accused his protege of "burning the Constitution" in the EPA's efforts to regulate carbon dioxide. Speaking to a hearing of the Energy and Power subcommittee of the House Energy and Commerce panel on Monday, Tribe blasted the EPA and the Obama administration for running roughshod over the separation-of-powers doctrine, a concept that can best be described as ConLaw 101:

"EPA possesses only the authority granted to it by Congress," Tribe told lawmakers in a hearing Tuesday. "Its gambit here raises serious questions under the separation of powers... because EPA is attempting to exercise lawmaking power that belongs to Congress and judicial power that belongs to the federal courts."

"Burning the Constitution should not become part of our national energy policy," Tribe added.

Tribe, along with other legal and energy experts, appeared before Congress Tuesday to give testimony on the EPA's "Clean Power Plan" — the agency's plan to cut carbon dioxide emissions from new and existing power plants. Tribe told lawmakers the CPP is unconstitutional and outside the agency's authority.

"EPA is attempting an unconstitutional trifecta: usurping the prerogatives of the States, Congress and the Federal Courts all at once," Tribe told lawmakers.

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