

Bastiat, Liberty, and *The Law*

by Sheldon Richman

“The state is that great fiction by which everyone tries to live at the expense of everyone else.”

—Frederic Bastiat

Frederic Bastiat (1801–1850) holds a special place in the hearts and minds of the friends of liberty. There is no mystery here to be solved. The key to Bastiat’s appeal is the integrity and elegance of his message. His writing exhibits a purity and a reasoned passion that are rare in the modern world. He always wrote to be understood, to persuade, not to impress or to obfuscate. Bastiat, like his spiritual descendant, Henry Hazlitt, is usually referred to as an economic journalist. If that is meant as derision, Bastiat’s admirers may take comfort in the fact that the obscurants who talk to themselves in ever more arcane academic journals are never called economic journalists.¹

Through the device of the fable, Bastiat deftly shattered the misconceptions about economics for his French contemporaries. When today, in modern America, we continue to be told, by intellectuals as well as by politicians, that the free entry of foreign-made products impoverishes us or that destructive earthquakes and hurricanes create prosperity by creating demand for rebuilding, we are seeing the results of a culture ignorant of Frederic Bastiat.²

But to think of Bastiat as just an econo-

mist is to insufficiently appreciate him. Bastiat was a legal philosopher of the first rank. What made him so is a slim volume that has undoubtedly turned more than a few young American “conservatives” into full-fledged libertarians. That book is *The Law* (1850).³ Writing as France was being seduced by the false promises of socialism, Bastiat was concerned with law in the classical sense; he directs his reason to the discovery of the principles of social organization best suited to human beings.

He begins by recognizing that individuals must act to maintain their lives. They do so by applying their faculties to the natural world and transforming its components into useful products. “Life, faculties, production—in other words, individuality, liberty, property—this is man,” Bastiat writes.⁴ And since they are at the very core of human nature, they “precede all human legislation, and are superior to it.” Too few people understand that point. Legal positivism, the notion that there is no right and wrong prior to the enactment of legislation, sadly afflicts even some advocates of individual liberty (the utilitarian descendants of Bentham, for example). But, Bastiat reminds us, “Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place.”

For Bastiat, *law* is a negative. He agreed with a friend who pointed out that it is imprecise to say that law should *create* justice. In truth, the law should prevent

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injustice. "Justice is achieved only when injustice is absent." That may strike some readers as dubious. But on reflection, one can see that a free and just society is what results when forcible intervention against individuals does not occur; when they are left alone.

Defending Life, Liberty, and Property

The purpose of law is the defense of life, liberty, and property. It is, says Bastiat, "the collective organization of the individual right of lawful defense." Each individual has the right to defend his life, liberty, and property. A group of individuals, therefore, may be said to have "collective right" to pool their resources to defend themselves. "Thus the principle of collective right—its reason for existing, its lawfulness—is based on individual right. And this common force that protects this collective right cannot logically have any other purpose or any other mission than that for which it acts as a substitute." If the very purpose of law is the protection of individual rights, then law may not be used—without contradiction—to accomplish what individuals have no right to do. "Such a perversion of force would be . . . contrary to our premise." The result would be unlawful law.⁵

A society based on a proper conception of law would be orderly and prosperous. But unfortunately, some will choose plunder over production if the former requires less effort than the latter. A grave danger arises when the class of people who make the law (legislation) turns to plunder.⁶ The result, Bastiat writes, is "lawful plunder." At first, only the small group of lawmakers practices legal plunder. But that may set in motion a process in which the plundered classes, rather than seeking to abolish the perversion of law, instead strive to get in on it. "It is as if it were necessary, before a reign of justice appears, for everyone to suffer a cruel retribution—some for their evilness, and some for their lack of understanding."

The result of generalized legal plunder is moral chaos precisely because law and mo-

rality have been set at odds. "When law and morality contradict each other, the citizen has the cruel alternative of either losing his moral sense or losing his respect for the law." Bastiat points out that for many people, what is legal is legitimate. So they are plunged into confusion. And conflict.

As long as it is admitted that the law may be diverted from its true purpose—that it may violate property instead of protecting it—then everyone will want to participate in making the law, either to protect himself against plunder or to use it for plunder. Political questions will always be prejudicial, dominant, and all-absorbing. There will be fighting at the door of the Legislative Palace, and the struggle within will be no less furious.

Sound familiar?⁷

Bastiat finds another motive—besides the desire for booty—behind legal plunder, or socialism: "false philanthropy." Again, he sees a contradiction. If philanthropy is not voluntary, it destroys liberty and justice. The law can give nothing that has not first been taken from its owner. He applies that analysis to all forms of government intervention, from tariffs to so-called public education.

Should the law be used to provide education? Bastiat replies:

But the law is not, in itself, a torch of learning which shines its light abroad. The law extends over a society where some persons have knowledge and others do not; where some citizens need to learn, and others can teach. In this matter of education, the law only has two alternatives: It can permit this transaction of teaching-and-learning to operate freely and without the use of force, or it can force human wills in this matter by taking from some of them enough to pay the teachers who are appointed by government to instruct others, without charge. But in this second case, the law commits legal plunder by violating liberty and property.

Bastiat's words are as fresh as if they were written today. He explains that one can identify legal plunder by looking for laws that authorize that one person's property be given to someone else. Such laws should be abolished "without delay." But, he warns,



Frederic Bastiat, author of *The Law*.

“the person who profits from such law will complain bitterly, defending his *acquired rights*,” his entitlements. Bastiat’s advice is direct: “Do not listen to this sophistry by vested interests. The acceptance of these arguments will build legal plunder into a whole system. In fact, this has already occurred. The present-day delusion is an attempt to enrich everyone at the expense of everyone else.”

The world view that underlies the distortion of law, Bastiat writes, holds man as a passive entity, lacking a motor of his own and awaiting the hand and plan of the wise legislator. He quotes Rousseau: “The legislator is the mechanic who invents the machine.” Saint-Just: “The legislator commands the future. It is for him to *will* the good of mankind. It is for him to make men what *he wills* them to be.” And the razor-sharp Robespierre: “The function of government is to direct the physical and moral powers of the nation toward the end for

which the commonwealth has come into being.”

Bastiat echoes Adam Smith’s condemnation of the “man of system,” who sees people as mere pieces to be moved about a chessboard. To accomplish his objectives, the legislator must stamp out human differences, for they impede the plan. Forced conformity (is there any other kind?) is the order of the day. Bastiat quotes several writers in this vein, then replies:

Oh, sublime writers! Please remember sometimes that this clay, this sand, and this manure which you so arbitrarily dispose of, are men! They are your equals! They are intelligent and free human beings like yourselves! As you have, they too have received from God the faculty to observe, to plan ahead, to think, and to judge for themselves!

After quoting several of those writers who are so willing to devote themselves to re-inventing people, Bastiat can no longer control his outrage: “Ah, you miserable creatures! You think you are so great! You who judge humanity to be so small! You who wish to reform everything! Why don’t you reform yourselves? That would be sufficient enough.”

Nor does Bastiat allow unrestrained democracy to escape his grasp. With his usual elegance, he goes right to the core of the issue. The democrat hails the people’s wisdom. In what does that wisdom consist? The ability to pick all-powerful legislators—and that is all. “The people who, during the election, were so wise, so moral, so perfect, now have no tendencies whatever; or if they have any, they are tendencies that lead downward to degradation. . . . If people are as incapable, as immoral, and as ignorant as the politicians indicate, then why is the right of these same people to vote defended with such passionate insistence?” And “if the natural tendencies of mankind are so bad that it is not safe to permit people to be free, how is it that the tendencies of these organizers are always good?”

Bastiat closes his volume with a clarion call for freedom and a rejection of all proposals to impose unnatural social arrange-

ments on people. He implores all "legislators and do-gooders [to] reject all systems, and try liberty."

In the years since *The Law* was first published, little has been written in the classical liberal tradition that can approach its purity, its power, its nearly poetic quality. Alas, the world is far from having learned the lessons of *The Law*. Bastiat would be saddened by what America has become. He warned us. He identified the principles indispensable for proper human society and made them accessible to all. In the struggle to end the legalized plunder of statism and to defend individual liberty, how much more could be asked of one man? □

1. Those who think that Bastiat's work lacks depth are referred to James Dorn, "Law and Liberty: A Comparison of Hayek and Bastiat," *The Journal of Libertarian Studies* 5 (Fall 1981):375-97 (in which Bastiat comes out the better), and Murray N. Rothbard, *Classical Economics: An Austrian Perspective on the History of Economic Thought*, vol. 2 (Brookfield, Vt.: Edward Elgar, 1995), pp. 444-48. Rothbard called Bastiat the "central figure" of the French *laissez-faire* school; he hailed Bastiat's rejection of the classical distinction between the productive creation of material goods and the unproductive creation of immaterial services, and his emphasis on the consumer, as "great steps forward toward Austrian theory." (*Ibid.*, p. 501.) See also Dean Russell, *Frédéric Bastiat: Ideas*

and Influence (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1965). We can be grateful that the Foundation for Economic Education has seen that Bastiat's work remains available.

2. Among Bastiat's immortal works, see his pre-Keynes refutation of Keynesianism, "What Is Seen and What Is Not Seen" in *Selected Essays on Political Economy*, trans. Seymour Cain, ed., George B. deHuszar (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1964).

3. Trans. Dean Russell (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1990 reprint). (All quotations are from that edition.) FEE first published the book in 1950, 100 years after the first publication.

4. The gap between the maintenance of life and issues of morality and rights was bridged about a century after Bastiat by Ayn Rand. See "The Objectivist Ethics" in *The Virtue of Selfishness* (New York: New American Library, 1964), pp. 13-35, in which she writes, "It is the concept of 'Life' that makes the concept of 'Value' possible. It is only to a living entity that things can be good or evil" (p. 16).

5. Hayek's distinction between law and legislation is valuable in this context. See F. A. Hayek, *Law, Legislation, and Liberty*, vol. 1, *Rules and Order* (Chicago: University of Chicago Press, 1973). See also Bruno Leoni, *Freedom and the Law*, expanded 3d ed. (Indianapolis, Ind.: Liberty Press, 1991), showing the connection between judge-found law and the free market, on the one hand, and legislation and central planning, on the other.

6. "When a portion of wealth is transferred from the person who owns it—without his consent and without compensation, and whether by force or by fraud—to anyone who does not own it, then I say that property is violated; that an act of plunder is committed" (p. 26). Note the conjunction and between *consent* and *compensation*, indicating that forced but compensated transfers also qualify as plunder.

7. Bastiat pointed to the United States as exemplary in confining the law to its objective purpose, except for two glaring lapses: slavery and tariffs.

"Years ago, when I went to work for Randy Richardson at the Smith Richardson Foundation, he introduced me to FEE's activities and publications. I have benefited enormously from them ever since. Indeed, I regularly bring your publications home for my own children. In our household, they are the equivalent of Dr. Spock — and much better for health and development as well.

Congratulations to all concerned on this important milestone. I hope FEE remains a vibrant part of our intellectual culture for many years to come."

— Leslie Lenkowsky
President, Hudson Institute

Classics Reconsidered

We asked several *Freeman* writers and book reviewers to select a significant book, or a personal favorite, published or reprinted within the last fifty years. Their choices are revealing and, in some cases, unexpected. All are worth sharing.

John Attarian:

Democracy and Leadership

by Irving Babbitt

Liberty Fund, 1979 (1924)

First published in 1924, Irving Babbitt's *Democracy and Leadership* remains one of this century's greatest works of political philosophy. Combining philosophy of history, a philosophy of civilization, deep reflection on human nature, and keen insights into the psychology of belief, it diagnoses modernity with matchless prescience.

For Babbitt, man's noblest characteristic is "a will to refrain." Like Burke, he recognized that social existence requires checks on desire and impulse, and that true liberty therefore rests on self-control. Unfortunately, since the Renaissance the West has seen ever-increasing indulgence in desires and emancipation from authority, culminating in Rousseau's advocacy of man's natural goodness and yielding to one's desires.

Rousseau's expansive egoism gained dominion because, Babbitt divined, man's main need is "to keep in good conceit with himself." Unwilling to discipline himself to standards, preferring to "expand freely along the lines of his dominant desire," man accepted Rousseau's view "not because it is true, but because it is flattering." Babbitt foresaw in consequence increasing self-indulgence and lawlessness; the advent of political adventurers; substitution of "compassionate" feelings for self-control as the index of virtue; and the rise of prophets of social service ravening for power and curtailing freedom.

Babbitt's analysis rings truer daily. Skirting the pervasive errors of philosophical materialism, economic determinism, and preoccupation

with politics, Babbitt fingers the true source of our woes: man's infinite appetites and moral indolence. Hence his peerless explanatory power. Many observers now lament our decadence. None matches Babbitt's profundity. Who would understand modernity must read this book. □

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Leonard P. Liggio:

The Servile State

by Hilaire Belloc

Liberty Fund, 1977 (1913)

Hilaire Belloc (1870–1953) was indeed an Edwardian Radical as described in John McCarthy's biography (also published by Liberty Press). *The Servile State* represented Belloc's disgust with politics after serving in the House of Commons. He found politicians in control of organizing any new industries; cabinet officers determining which businessmen would control new industries. If capitalism were absolutely recognized, according to Belloc, government-created monopolies could not continue. But, from inside parliament, he saw "executive statesmen" determining which group of businessmen would operate that sphere of industry.

The system described by Belloc in 1913 emerged most fully as the corporatism of the 1930s; it extended from Berlin to Washington. F. A. Hayek in *The Road to Serfdom* saw Belloc as a prophet; and Robert Nisbet, in his introduction to this edition, notes "just as Belloc predicted, we find the real liberties of individuals diminished and constricted by the Leviathan we have built in the name of equality."

Belloc's attempt to place *The Servile State* in a historical causation does not succeed, any more than his foray into economic theory. But, he saw clearly what was happening around him, that business leaders were the ones who wished to replace private institutions with state systems of social security and unemployment insurance—to replace liberty and free markets with