

## Liberal Read

No 2 | November 2021

# Bastiat and the Minimal Law

### BOOK REVIEW

Frederic Bastiat  
*The law*

Foundation for Economic Education, 1998

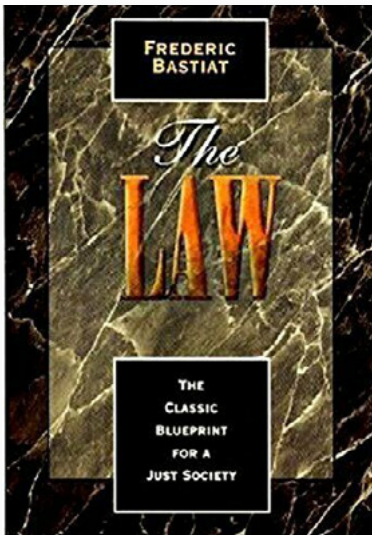
By Mara Pepine

A series of crises has put many liberal ideas under question. Inspired by a popular commercial concept, Liberal Reads are packaged in an easily accessible format that provides key insights in 30 minutes or less. The aim of Liberal Reads is to revisit and rethink classical works that have defined liberalism in the past, but also to introduce more recent books that drive the debate around Europe's oldest political ideology. Liberal Reads may also engage critically with other important political, philosophical and economic books through a liberal lens. Ideological discussions have their objective limits, but they can still improve our understanding of current social and economic conditions and give a much needed sense of direction when looking for policy solutions in real life problems.

## Liberal Read

# Bastiat and the Minimal Law

---



Lately, all around us there is talk of tariffs, subsidies, and embargoes. The markets grow less and less free each day and those who would see our economic life freed from the influence of government grow more and more worried. About 300 years ago in France, in the midst of an emerging socialist and communist doctrine, one French political philosopher took it upon himself to make his contemporaries look around and realise that the circular thinking in which they were trapped was preventing them from achieving true freedom. This philosopher was Frédéric Bastiat. In his short essay, *The Law*, published in 1850, he presents simply and elegantly some of the most important concepts of classical liberal thinking. His work is considered a very valuable resource and has served

as important inspiration to many similarly inclined authors. Exploring Bastiat's ideas today might prove to be the needed impulse to make the radical changes he so wished for.

## The minimal state as a protector of natural rights

Bastiat's political philosophy begins by postulating a natural state characterised by three natural rights—meaning that they are God-given, not granted by society. These are the right to life, to liberty, and to property. It is important to mention that any person also has the right to defend their life, liberty, and property—by force if necessary. Initially, in the natural state, everyone must constantly defend their rights; this is a tedious process that impedes progress of any nature. Thus, people decide to come together to create a common force that can protect the rights of all the people involved. *The law* is this “organisation of force”, with the express and sole purpose of defending these natural rights. *The law* in this understanding represents the extent of the responsibilities of a governing body in Bastiat's ideal state. Such a state, whose only duty is safeguarding a handful of pre-existing rights, is called a minimal state or a minarchy. The consequences of a minimal, non-interventionist state are that every individual becomes exclusively responsible for their own successes or failures. However, it would suffice to look at any government from Bastiat's days to our contemporary ones and see that no society has ever heeded his advice. The law has been “perverted”: more often than not, it far exceeds the limits

on its power and is burdened by too many responsibilities. At the root of this incredibly pervasive mistake are, alternatively, two causes, two very human flaws.

### Greed as a threat to the rule of law

The first threat to the integrity of the law is greed. That comes as no surprise to Bastiat. In fact, he finds it to be the logical economic objective of maximising profits: everyone wants to gain as much as possible with the least possible effort, cost, and sacrifice. This unfortunately leads some to disrespect the natural rights of others. Basing one's livelihood on the labour of others instead of one's own toil constitutes plunder. The defensive purpose of the law is to make plunder less appealing than labour. Unfortunately, the law is vulnerable to those in charge of legislation. As such, historically, only one person or a small group of people have been responsible for legislation. Since the law is organised force, then those who are in charge of the law are those in whose hands power rests. The profit-maximising tendency completes this unfortunate picture. Legislators have the motive, the opportunity, and the means to resort to plundering and perverting the law from a means of protecting all citizens to a means of securing their unjust income. When the victims of lawful plunder rise up against abusive legislators, they do so with one of two purposes in mind: either to put an end to lawful plunder or to partake in it. It is obvious that the first objective is preferable. However, universal suffrage leads to the second.

### The perils of democracy

Bastiat explains universal suffrage as the wrong response on the part of victims of plunder towards those responsible. Instead of abolishing lawful plunder, they want to take part in it. Even more, they want retribution for their suffering. What they are doing is creating far more suffering by completely blurring the line between justice and injustice. Bastiat argues that universal suffrage as it was understood by the followers of Jean-Jacques Rousseau (an earlier French political philosopher) imposes these unfair restrictions on the rest of the population for one reason: in a system of universal suffrage, the vote of each person affects everybody else. Bastiat recognises the concerns that led to this idea, but since it is practically impossible to only grant the right to vote to those who have everyone's best interest at heart, he proposes a solution that does away with this right altogether. That would be a shocking proposal today, but what he had in mind was the furthest thing from a dictatorship. He simply reiterates his point that the law should be restricted to its original scope—that is, safeguarding the rights to life, liberty, and property.

### The road to socialism

When plunder becomes lawful, everyone will demand to take part in the legislative process, either to protect themselves or to profit from it. This in turn causes enormous political strife, since every individual or group is desperate to push their own interests. A law that legalises plunder would be a law that takes the property of some and redistributes it to others. Many practices fall under this concept—from a minimum wage to subsidies, from progressive taxation to public education. All of these practices forming a system of political organisation are also known as socialism. It becomes obvious that Bastiat was a staunch opponent of socialism.

For Bastiat, socialism by definition opposes freedom, as all the measures that rest at its foundation—these being redistributive practices—can only be implemented through the use of force.

### Socialism and mistaken philanthropy

We've already seen that the perversion of the law can have two possible causes. The first is greed. The second is mistaken philanthropy. He understands the appeal of granting citizens more than the three natural rights; he actually refers to the "seductive lure of socialism". It is indeed a grand idea, not only to ensure freedom but to guarantee welfare, education, and more for everyone. However, Bastiat argues that this is an unattainable goal, and as such preserving freedom should take priority. But why is it an unattainable goal? Let's go back to the definition of law. We defined it as the organised collective force of individuals whose main and sole purpose is to defend the rights to life, liberty, and property. Force is the basis for the existence of law. It follows that

creating a law with a different scope, such as education, would imply the use of force to guarantee that it is respected. However, just as an individual cannot use force to coerce another individual in any way, shape, or form, so should it be forbidden for the collective force to coerce individuals. That is, the law cannot coerce individuals and still be just. Socialism by definition opposes freedom, as all the measures that rest at its foundation—these being redistributive practices—can only be implemented through the use of force. Bastiat recalls his correspondence with fellow political philosopher Alphonse de Lamartine, who had told him that his political program included freedom as well as fraternity. (The reader should think back to the French national motto: *Liberté, égalité, fraternité*—liberty, equality, fraternity.) Bastiat retorted that including fraternity in one's political program would be a sure-fire way to destroy any ideal of liberty. For him, fraternity is essentially voluntary, and striving to make it something guaranteed through legislative processes would also imply the use of force, thus destroying not only the freedom of citizens but also fraternity in its actual sense.

Bastiat insists that the term he has chosen, plunder (*spoliation* in French), is used in a scientific way, as it has a specific and concrete definition. Plunder represents the transference of a portion of wealth, no matter its shape or form, without consent, from the rightful owner to somebody who does not have any right over said property. However, it should be remarked that the Frenchman never intended to offend the sensibilities of his readers by claiming they may be guilty of barbaric acts that violate fundamental rights. He reserves judgment for the ideas behind the systems that allow such acts to take place and distinctively underlines that, since these systems are so wide-spread that everyone is affected by them, both positively and negatively, no blame should be put on the participating individuals. Indeed, he considers that the three types of redistributive political views prominent at the time—namely protectionism, socialism, and communism—are founded on a sincere wish to better society and rid it of injustice.

The law has a strictly defensive purpose. But how come it only protects the three aforementioned rights? What makes these particular rights so special that only they deserve the involvement of the law?





## FRÉDÉRIC BASTIAT

*“And what is this liberty, whose very name makes the heart beat faster and shakes the world? Is it not the union of all liberties – liberty of conscience, of education, of association, of the press, of travel, of labor, of trade? In short, is not liberty the freedom of every person to make full use of his faculties, so long as he does not harm other persons while doing so? Is not liberty the destruction of all despotism – including, of course, legal despotism? Finally, is not liberty the restricting of the law only to its rational sphere of organizing the right of the individual to lawful self-defense; of punishing injustice?”*

**Frédéric Bastiat (1801-1850)** was a French philosopher, economist, justice of the peace and, at the end of his life, a representative of the people who advocated for a liberal society. He regularly contributed to the *Journal des Economistes*, in which he often fiercely opposed the socialist Pierre-Joseph Proudhon. Bastiat also published some remarkable books and essays in his time. His book *Economic Sophisms* (1845) discusses the importance of free trade. In *Justice and Fraternity* (1848) he states that the titular concepts are often misunderstood. In *Things Seen and Things Not Seen* (1850) he deals with the problem of the hidden effects of economic activity. Just before his death he wrote the essay *The Law* (1850), in which he talks about the duty of government, taking a stance against protectionism and socialism. He was a friend of the liberal statesman Richard Cobden, who fought against the English Corn Laws.

## Positive and negative rights

The answer to these questions is simple. It is because the rights to life, liberty, and property are negative rights. Negative rights are essentially the right to be left in peace, the right to *not* have someone interfere in matters of your life, liberty, or property. You have a right to not have injustice thrust upon you. As such, the role of the law is not to bring about a reign of justice but rather to impede injustice. Rights such as those to a 40-hour work-week or to a comprehensive public education curriculum are positive rights. These rights mean there is something that is offered, given, guaranteed to citizens. But when the law gains a positive character, all citizens see their own wills being overridden by those who compose the legislation. It is Bastiat's belief that when such a situation occurs, citizens lose their ability to plan ahead and discuss even their own personhoods, let alone their property. In short, they also lose their life and liberty. The wish to transform the law into an instrument of equality is a noble one but will ultimately prove unsuccessful, since every redistributive act amounts to the same thing: plunder and injustice.

## Bastiat and his socialist counterparts

It is Bastiat's belief that the discord between the upholders of liberty, such as himself and the socialists, may be somewhat tempered if one clarifies an important misunderstanding. An important difference between the two ideologies rests on the conflation of two terms: *government* and *society*. When a socialist says *government*, they also understand it to mean *society* and vice versa. Meanwhile, a supporter of Bastiat's theories draws a clear, even crucial, distinction between these two terms. For such thinkers, *government* refers to the organisation wielding the law, which is the only permissible use of force. When faced with the reproach that he and his supporters reject education, charity, and morality, Bastiat answers simply that it is the involvement of *government* that he rejects; *society* may do as it pleases.

However, whilst socialism conflates terms that should be understood separately, it also errs on the other side by making unnecessary and harmful distinctions. It is Bastiat's firm belief that the majority of socialist writings follow the same pattern. This pattern involves dividing the population into two categories: the *masses*, the general population, and the special, gifted writers themselves. The French philosopher considers this to be proof of incredible conceitedness, as it implies that such authors are the only ones in possession of both the truth and moral superiority. Some such authors might accept that every individual has agency, but they consider it the linchpin of society that, if left unchecked, would lead to moral corruption and the collapse of civilisation. In these socialists' view, all people are profoundly evil and selfish or, at best, bestial—all people, that is, except for themselves. Bastiat laments that, for these thinkers, the *legislator* acquires legendary dimensions. The legislator goes from being a mere person to embodying a messianic figure of irrefragable morality.

By pointing out how atrocious he finds the writings of all these revered authors, Bastiat was already quite unpopular among contemporary scholars of political thought. But he goes even further, attacking Rousseau next. Considered one of the most influential characters in political philosophy, the Swiss thinker played a major role in the French Revolution of 1789. Bastiat's first point of contention is that although the *general will* of the people plays a central role in Rousseau's philosophy, he still subscribes to what Bastiat calls the "classical" idea of a borderline-superhuman legislator who alone has the capabilities and

power to put society on the right track by treating citizens as a means to an end instead as an end in and of themselves (borrowing from the Kantian principle of the categorical imperative). An even more damning idea in Bastiat's eyes is that not only does Rousseau place the leader categorically above the general population and the legislator above the ruler, but he then places himself above the legislators, he alone having to teach them the "right" way to manipulate the masses. To Bastiat's dismay, Rousseau explicitly refers to the inhabitants of a land as a natural resource and proposes that, ideally, not everyone should participate in the arts, agriculture, commerce, or religion. When faced with Rousseau's conclusion that, in the case of the failure of a ruler, such a society would return to its natural state (the natural state as postulated by Rousseau, not to be confused with Bastiat's views on pre-societal humanity), Bastiat naturally raises the question: what use does the legislator even have then? It is apparent to him that Rousseau's legislators are useless, even dangerous, since they are expected to reform and transform the very nature of humans. Ultimately, he also finds them pitiable, since they are burdened with such a terrible responsibility, one which they have no hope of shouldering.

According to Bastiat, the only way to achieve just and rightful governance is to embrace the rule of law as a collection of negative rights enforced by mutual agreement.

Bastiat finds that these authors' flaw of considering themselves better than the average person is the main obstacle in the way of achieving total liberty, understood as the sum of all freedoms. He points to the French Revolution of 1789 as an example. After the French ridded themselves of the shackles of absolute monarchy, they sought freedom. However, the ideological leaders suffered from inaccuracies, which Bastiat attacks, resulting from their classical education; rather than allowing the people the liberty they so craved, they merely invented new ways to subdue and control the population. Even worse, revolutionaries at the time explicitly called for a dictatorship, showing that they didn't want to rid themselves of the harmful practice of legalised

plunder; instead, they wanted to be the ones profiting from it under the guise of reforming society. Napoleon also succumbed to this way of thinking.

Bastiat returns to his critique of socialism by depicting it as a vicious circle. He shares Louis Blanc's view on liberty, explaining that since socialists do not consider freedom as merely a collection of negative rights but also the opportunity and power to fully engage one's faculties, then in order to ensure freedom for all, everything should be provided by the state through education and the means of production. Bastiat simply asks, "Whom do this education and means of production come from? Who provides them?". He continues by explaining that those who call themselves social-democrats (as the term was understood in the 19<sup>th</sup> century) rest their doctrine on three premises—that the law is omnipotent, that legislators can make no mistakes, and that the masses are completely devoid of thinking, feeling, or agency. He also points out their outmost hypocrisy when they claim that every citizen is in full control of their faculties and thus capable and expected to express their opinion on how society should be governed during the process of electing officials—but, once the elections are over, they revert to the inert matter to be moulded by legislators into a respectable society. Even more hypocritical, in Bastiat's opinion, is any claim a socialist could make that they want freedom. No, he says, socialism is fundamentally opposed to

freedom, and they cannot coexist. The only way to ensure freedom, equality, progress, and dignity in society is to do away with the demands of socialists and to embrace the rule of law as it was previously defined: a collection of negative rights enforced by mutual agreement. This is the only way to achieve just and rightful governance. Bastiat ends his essay with an ardent call to forget about socialist propaganda and embrace liberty once and for all. His contemporaries didn't heed his advice, but maybe we can do better and bring his ideal to fruition today.





European Liberal  
Forum  
**PAPERS**

#### ABOUT ELF

The European Liberal Forum (ELF) is the official political foundation of the European Liberal Party, the ALDE Party. Together with 47 member organisations, we work all over Europe to bring new ideas into the political debate, to provide a platform for discussion, and to empower citizens to make their voices heard. Our work is guided by liberal ideals and a belief in the principle of freedom. We stand for a future-oriented Europe that offers opportunities for every citizen. ELF is engaged on all political levels, from the local to the European. We bring together a diverse network of national foundations, think tanks and other experts. In this role, our forum serves as a space for an open and informed exchange of views between a wide range of different EU stakeholders.



/europeanliberalforum



@eurliberalforum

#ELFpaperq

**liberalforum.eu**

COVER IMAGE AdobeStock

COPYRIGHT 2021 / European Liberal Forum ASBL

This publication was co-financed by the European Parliament. The European Parliament is not responsible for the content of this publication, or for any use that may be made of it. of this publication, or for any use that may be made of it.