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Frederic Bastiat: The Law Study Guide

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FREDERIC BASTIAT: THE LAW

STUDY GUIDE, 2004

Steven Alan Samson

http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=78&chapter=23075&layout=html&Itemid=27

http://www.fee.org/pdf/books/The_Law.pdf

http://bastiat.org/en/the_law.html

Key Ideas

Life -- physical, intellectual, and moral -- is a gift of God to be preserved, developed, and perfected by us
Law is the collective organization of the individual's right to legitimate self-defense
The law destroys the justice it is supposed to maintain when it turns plunder into a protected right
The law has been perverted under the influence of unintelligent selfishness and false philanthropy
Property originates in man's labor, by a constant application of his faculties to things
Plunder originates in a desire to live at the expense of others by appropriating the product of their labor
The victims of plunder merely turn the tables and seek retribution if they seize power
Consequences of the perversion of law: rationalizing injustice, giving sway to political passions [cf. Lieber]
Universal suffrage threatens to create a system of universal plunder
Plunder is the transfer of property without the consent of the owner and without compensation
The law is force and cannot legitimately extend beyond the legitimate domain of force
Socialism is not free association but imposed; it is an unjust displacement of responsibility
Socialism, like ancient despotism, confuses government with society [cf. Lieber, Minogue]
Socialists divide mankind into the commonality of men and political theorists [cf. Rousseau's Legislator]

Foreword

legal positivism

purpose of law

acquired rights (entitlements)

Study Questions

1. **Life Is a Gift from God** What three gifts of God precede legislation? How is property gained by use of our talents? Where does law fit in the scheme of things? (FEE, 2nd ed., pp. 1-2) [FEE, 1st ed., pp. 5-6]
2. **What Is Law?** What is the source of the collective right to protection? What uses of force pervert the law from its true purpose: organized justice? (2-3) [6-7]
3. **A Just and Enduring Government** What is the price of the state's intervention into the private affairs of its citizens? What does Bastiat mean by "**state-created displacements**?" (3-4) [7-8]
4. **The Complete Perversion of the Law** How has the law been used to destroy its own objective? Identify the two causes. (4-5) [8-9]
5. **A Fatal Tendency of Mankind** What is the origin of the desire to live and prosper at the expense of others? The greed motive is examined in several sections: (5-20) [9-24]. (5-6) [9-10]
6. What is the **origin of property? Plunder?** What is the proper function of the law? What accounts for its almost universal perversion? (6-7) [10-11]

7. **Victims of Lawful Plunder** When plunder is organized by law, what is the natural reaction of the plundered classes? What is apt to happen when the tables are turned (topsy-turvy)? (7-8) [11-12]
8. **The Results of Legal Plunder** What are some consequences of this perversion? What happens when law and morality contradict each other? What happens to the distinction between justice and injustice? How is plunder legitimized? Bastiat here anticipates the concept of **rent-seeking**, in which an advantage (rent) is gained by manipulating the political or economic environment instead of adding value. But the long term costs need to be considered. In biology, the co-dependency of a parasite is evident in the fact that, in the long run, it gradually kills the host whose death it cannot survive. (8-9) [12-13]
9. **The Fate of Non-Conformists** What happens to those who express doubts as to the morality of such institutions? How does government suppress free speech? Why does Bastiat believe that the result is to give "an exaggerated importance to political passions and conflicts? (9-10) [13-14]
10. **Who Shall Judge?** How do arguments over universal suffrage illustrate the problem? (10-11) [14-15]
11. **The Reason Why Voting Is Restricted** Why is voting restricted? Why is incapacity a motive for exclusion? (11-12) [15-16]
12. **The Answer Is to Restrict the Law** Regardless of one's preferences concerning the extent of suffrage, what would cause the excitement over suffrage to die down? Why, if law were confined to its proper functions, would everyone's interest in the law be the same? (12-13) [16-17]
13. **The Fatal Idea of Legal Plunder** When the law is used to redistribute property (plunder), why does every class grasp for power over it? (13-14) [17-18]
14. **Perverved Law Causes Conflict** Under what circumstances will political questions become "prejudicial, dominant, and all-absorbing?" Which country was generally most successful in keeping the law in bounds around 1850? (14-15) [18-19]
15. **Slavery and Tariffs Are Plunder** What were the two issues in the United States around 1850 that always endangered the public peace? (15) [19]
16. **Two Kinds of Plunder** What are the two kinds of plunder? Why is socialism not an example of illegal plunder? (15-16) [19-20]
17. **The Law Defends Plunder** Why does the law sometimes defend plunder and participate in it? Why is the victim of plunder sometimes treated as a criminal? What public-choice economists refer to as an **externalization of costs** means that some people are privileged to escape paying them by passing "the buck" or the bill along to others. One method of shifting the financial burden is for a state to grant the privilege of "limited liability" to a corporation, which effectively becomes an arm of the state. The potential nationalization of corporations is always, at the very least, implicit. Those who were suddenly brought to heel in 2009 (such as various financial institutions and auto manufacturers) should not have been surprised. What Roger Scruton calls the "personal state" is degenerating into what Hilaire Belloc called a "servile state" and Tocqueville called democratic despotism. (16-17) [20-21]
18. **How to Identify Legal Plunder** How is **legal plunder** to be identified? What is the remedy? How is legal plunder defended? How may it be built into a whole system? (17-18) [21-22]
19. **Legal Plunder Has Many Names** Identify some of ways of organizing legal plunder. (18) [22]

20. **Socialism Is Legal Plunder** How may socialism be opposed? (18-19) [22-23]
21. **The Choice Before Us** What are the choices? (19-20) [23-24]
22. **The Proper Function of the Law** What is the proper function of law? When does the use of force destroy justice? (19-21) [23-24]
23. **The Seductive Lure of Socialism** Having disposed of "human greed," Bastiat moves on to a more subtle hazard: "false philanthropy" [love of man]. (21) [25]
24. **Enforced Fraternity Destroys Liberty** Why is the word fraternity inseparable from the word voluntary? (21-22) [25-26]
25. **Plunder Violates Ownership** What is the meaning of **plunder**? What is the nature of plunder as an idea, a system, and an injustice independent of personal intentions? (22-23) [26-27]
26. **Three Systems of Plunder** Identify three varieties or systems of plunder. How did this popular aspiration to promote the general welfare through general plunder originate? (23-24) [27-28]
27. **Law Is Force** As the Rev. T. Robert Ingram noted, law is the power to kill. In this light, why does Bastiat say that "the proper functions of the law cannot lawfully extend beyond the proper functions of force?" (24) [28]
28. **Law Is a Negative Concept** Why is true law negative? Why is the positive use of law to regulate society dangerous? (24-25) [28-29]
29. **The Political Approach** How do politicians attempt to remedy the ills of society, which may in fact be due to earlier plundering? (25-26) [29-30]
30. **The Law and Charity, The Law and Education, The Law and Morals** Why does Bastiat criticize the use of the treasury for charitable, educational, and religious purposes? How does Bastiat respond to socialist objections to **individualism**? (26-28) [30-32]
31. **A Confusion of Terms** How do the socialists confuse the distinction between government and society? (28-29) [32-33]

OPTIONAL

32. Identify the assumptions of socialist writers. What makes it evident they wish to play God? Who in their view should rule? What view do they take of mankind? (30-33) [33-37]
33. How is this attitude reflected by Bossuet? What did Fenelon, drawing on his classical studies, see as the proper role of the prince? Montesquieu? Rousseau? Raynal? Mably? Condillac? What accounts for this error of the socialist writers? (30-51) [33-51]

REQUIRED

34. What is the nature of the political struggle [Bastiat wrote immediately after the failed revolutions of 1848]? What is the nature of liberty? What is the fatal desire of the socialist writers? What is the evidence that they want **philanthropic tyranny** or dictatorship? These observations may be compared with Tocqueville's on democratic despotism. (51-56) [51-55]
35. What sort of **despotism** do they seek to impose? How does Bastiat characterize the efforts of Louis Blanc? What is the **triple hypothesis** of these philanthropists? How do they attack liberty? How does Bastiat mock them in turn? Where does their right to advocate their ideas stop? (56-65) [55-64]

OPTIONAL

36. Why does France lead the rest of Europe in **red tape** and **revolutions**? How does the one contribute to the other? (65-68) [64-66]
37. Why must a science of economics be developed before a science of politics? What are the proper legislative functions? What is the necessary result of taking the high road to communism? Why are there too many "great" men in the world? What is the remedy? (67-76) [66-75]

Review

state-created displacements	origins of property and plunder	proper functions of law
natural reaction of plundered classes	nature and varieties of legal plunder, ways of organizing it	despotism
remedy for legal plunder	philosophic tyranny	
triple hypothesis		