

# *Asian Journal of Law and Economics*

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*Volume 2, Issue 1*

2011

*Article 2*

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**Recommended Citation:**

McGee, Robert W. (2011) "The Law and Economics of Frédéric Bastiat," *Asian Journal of Law and Economics*: Vol. 2: Iss. 1, Article 2.

**DOI:** 10.2202/2154-4611.1019

**Available at:** <http://www.bepress.com/ajle/vol2/iss1/2>

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# The Law and Economics of Frédéric Bastiat

Robert W. McGee

## **Abstract**

Frédéric Bastiat (1801-1850) was a French journalist, pamphleteer, politician and political economist. He was at the forefront of the free trade movement in France and wrote a book, *The Law*, which has become a minor classic in the legal literature and is required reading for some leaders in the American Tea Party movement. This article examines his economic and legal philosophy and discusses its relevance to twenty-first century America. This article is the first to focus primarily on Bastiat's economic and legal philosophy, which has been ignored by law and economics scholars.

**KEYWORDS:** Bastiat, law, economics, Keynesian multiplier

## INTRODUCTION

One might reasonably ask, “Who is Frédéric Bastiat?” Actually, he wore several hats, including gentleman farmer, journalist, pamphleteer, political economist and philosopher.<sup>1</sup> For a few years in his youth he was also an accountant.<sup>2</sup> He has been categorized as a member of the nineteenth century French Liberal School.<sup>3</sup> He has been called “a legal philosopher of the first rank.”<sup>4</sup> Although generally not considered to be a first-rate economic theorist, he was said to have employed satire and irony with the skills of Daniel Defoe or George Bernard Shaw.<sup>5</sup> Skousen compared his writing to that of Franklin and Voltaire in terms of purity and elegance of style.<sup>6</sup> It might also be said that he was a forerunner of the law and economics movement.

He was born in France in 1801 and died in Rome in 1850.<sup>7</sup> Much of his writing took place in the period 1844-1850.<sup>8</sup> He was influential in his time but his influence declined a generation or so after his death. A Bastiat revival took place in the early twentieth century and several books and shorter works were published about him during this period.<sup>9</sup> Then he was nearly forgotten, at least in the English speaking world, until Dean Russell wrote a doctoral dissertation on him,<sup>10</sup>

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<sup>1</sup> For some biographical information about Bastiat, see MARK BLAUG, *GREAT ECONOMISTS BEFORE KEYNES* (1986), at 14-15; GEORGE CHARLES ROCHE, III, *FREDERIC BASTIAT: A MAN ALONE* (1971); DEAN RUSSELL, *FREDERIC BASTIAT: IDEAS AND INFLUENCE* (1969).

<sup>2</sup> Henry Hazlitt, *Introduction*, in *FREDERIC BASTIAT, ECONOMIC SOPHISMS* xi (1964); Robert W. McGee, *Frédéric Bastiat as an Accountant*, 4(1) *INT’L J. BUS., ACCT. & FIN.* 1-17 (2010).

<sup>3</sup> L. COSSA, *AN INTRODUCTION TO THE STUDY OF POLITICAL ECONOMY* 376-382 (1893); C. GIDE AND C. RIST, *A HISTORY OF ECONOMIC DOCTRINES FROM THE PHYSIOCRATS TO THE PRESENT DAY* 329-354 (2<sup>ND</sup>. ED. 1848).

<sup>4</sup> Sheldon Richman, *Foreward*, in *FRÉDÉRIC BASTIAT, THE LAW* (1998), at ix.

<sup>5</sup> MARK BLAUG, *GREAT ECONOMISTS BEFORE KEYNES* (1986), at 15.

<sup>6</sup> MARK SKOUSEN, *THE MAKING OF MODERN ECONOMICS: THE LIVES AND IDEAS OF THE GREAT THINKERS* 59 (2001).

<sup>7</sup> Robert W. McGee, *Frédéric Bastiat as an Accountant*, 4(1) *INT’L J. BUS., ACCT. & FIN.* 1-17 (2010), at 1.

<sup>8</sup> ROBERT L. HEILBRONER, *THE WORLDLY PHILOSOPHERS* 79 (1986); JOSEPH A. SCHUMPETER, *HISTORY OF ECONOMIC ANALYSIS* 500 (1954).

<sup>9</sup> ADOLPHE IMBERT, *FREDERIC BASTIAT ET LE SOCIALISME DE SON TEMPS* (1913) ; GEORGES DE NOUVION, *FREDERIC BASTIAT: SA VIE -- SES OEUVRES, SES DOCTRINES* (1905) ; P. RONCE, *FREDERIC BASTIAT : SA VIE, SON ŒUVRE* (1905).

<sup>10</sup> Dean Russell, (1959). *Frédéric Bastiat and the Free Trade Movement in France and England, 1840-1850. Thèse Présentée a l’Université de Genève pour Obtenir le Grade de Docteur ès Sciences Politiques. Université de Genève, Institute Universitaire de Hautes Études Internationales, 1959.*

translated one of his books into English<sup>11</sup> and published a few books based on his research.<sup>12</sup>

Bastiat's main works are now available in English<sup>13</sup> and some of them are available for free download on the internet in both the original French<sup>14</sup> and English.<sup>15</sup> He has become somewhat of an icon in certain circles. His philosophy permeates the Tea Party movement,<sup>16</sup> according to a New York Times report,<sup>17</sup> along with the philosophy of Ayn Rand.<sup>18</sup> Freedom Works, a libertarian organization that supports the Tea Party movement, includes Bastiat's book, *THE LAW*,<sup>19</sup> in its list of required readings. According to the NEW YORK TIMES article,

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<sup>11</sup> FREDERIC BASTIAT, *THE LAW* (1950; 1998).

<sup>12</sup> DEAN RUSSELL, *FREDERIC BASTIAT: IDEAS AND INFLUENCE* (1969); DEAN RUSSELL, *GOVERNMENT AND LEGAL PLUNDER: BASTIAT BROUGHT UP TO DATE* (1985).

<sup>13</sup> *THE LAW* (1998); *ECONOMIC HARMONIES* (1964); *ECONOMIC SOPHISMS* (1964); *SELECTED ESSAYS ON POLITICAL ECONOMY* (1964); *THE BASTIAT COLLECTION*, 2 VOLS. (2007).

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[http://oll.libertyfund.org/index.php?option=com\\_staticxt&staticfile=show.php%3Ftitle=1776&Itemid=27](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=1776&Itemid=27).

<sup>15</sup> [www.econlib.org/library/classicsauB.html#bastiat](http://www.econlib.org/library/classicsauB.html#bastiat).

<sup>16</sup> For those who are unfamiliar with the underlying philosophy of the Tea Party movement, a brief explanation is in order. Although the Tea Party has a diverse constituency and includes both atheists and religious fundamentalists, pro abortionists and pro life advocates, it has at least one idea in common, and it is a big idea – government, especially at the federal level, has become too big and too unresponsive. The Tea Party name came from an event in American history, the Boston Tea Party, where, in 1773, a group of disgruntled citizens protested British taxation without representation by boarding ships in Boston harbor and throwing hundreds of chests of tea into the water rather than pay the tax that the British king imposed on it. For information about the Tea Party movement and its underlying philosophy, see DICK ARMEY AND MATT KIBBE, *GIVE US LIBERTY: A TEA PARTY MANIFESTO* (2010); B. LELAND BAKER, *TEA PARTY REVIVAL: THE CONSCIENCE OF A CONSERVATIVE REBORN: THE TEA PARTY REVOLT AGAINST UNCONSTRAINED SPENDING AND GROWTH OF THE FEDERAL GOVERNMENT* (2009); BRUCE BEXLEY, *THE TEA PARTY MOVEMENT: WHY IT STARTED, WHAT IT'S ABOUT, AND HOW YOU CAN GET INVOLVED* (2009); JOSEPH FARAH, *TAKING AMERICA BACK: A RADICAL PLAN TO REVIVE FREEDOM, MORALITY AND JUSTICE* (2010); JOSEPH FARAH, *THE TEA PARTY MANIFESTO* (2010); JOHN M. O'HARA, *A NEW AMERICAN TEA PARTY: THE COUNTERREVOLUTION AGAINST BAILOUTS, HANDOUTS, RECKLESS SPENDING, AND MORE TAXES* (2010).

<sup>17</sup> Kate Zernike, *Shaping Tea Party Passion Into Campaign Force*, NEW YORK TIMES, August 25, 2010 at A1, 16. Published online at [www.nytimes.com/2010/08/26/us/politics/26freedom.html](http://www.nytimes.com/2010/08/26/us/politics/26freedom.html) [accessed August 27, 2010].

<sup>18</sup> AYN RAND, *ATLAS SHRUGGED* (1957).

<sup>19</sup> Originally published in 1850 as a pamphlet, *La Loi*, reprinted in *Sophismes Économiques*, Vol. I, *Oeuvres Complètes de Frédéric Bastiat*, 4<sup>th</sup> edition (Paris: Guillaumin et. C<sup>ie</sup>, 1878), at 343-394. French versions of Bastiat's works are available on the internet at several locations, including <http://bastiat.org/fr/guillaumin.html> and [http://oll.libertyfund.org/index.php?option=com\\_staticxt&staticfile=show.php%3Ftitle=1776&Itemid=27](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=1776&Itemid=27). Several English language editions of Bastiat's works, including *THE LAW*, are available. Citations to *THE LAW* in this paper are from the 1998 Foundation for Economic Education edition, translated from the French by Dean Russell. *THE LAW* may be found online at

Bastiat “argues that governments are essentially stealing when they tax their citizens to spend on welfare, infrastructure or public education.”<sup>20</sup> This statement somewhat oversimplifies Bastiat’s position. The purpose of the present article is to review and expand upon Bastiat’s legal philosophy.

Bastiat’s legal philosophy may be summarized as follows: The only legitimate functions of government are the protection of life, liberty and property. All other uses of the law are illegitimate because using it for any other purpose would benefit one party at the expense of another, the result of which is injustice. His legal theories are discussed in depth in Section 2.

Although Bastiat’s works have stood the test of time, he has had his critics. But criticism of his work has been more or less limited to his views on economics. His legal philosophy has been mostly ignored, with the exception of a few libertarian and conservative scholars and the recent revival that is taking place alongside the Tea Party movement. Perhaps examination and criticism of his legal theories will increase now that he has gained some visibility and popularity. The present article is the first to examine his legal philosophy in depth.

Perhaps the most famous criticism of his economic work came from a friendly source, Joseph Schumpeter, who compared Bastiat’s economic writings to those of a “bather who enjoys himself in the shallows and then goes beyond his depth and drowns.”<sup>21</sup> He then goes on to praise some of Bastiat’s economic writings, before returning to his criticism.

Admired by sympathizers, reviled by opponents, his name might have gone down to posterity as the most brilliant economic journalist who ever lived. But in the last two years of his life (his hectic career only covers the years 1844-50) he embarked upon work of a different kind, a first volume of which, the *Harmonies économiques*, was published in 1850...Personally, I even think that Bastiat’s exclusive emphasis on the harmony of class interests is, if anything, rather less silly than is exclusive emphasis on the antagonism of class interests. Nor should it be averred that there are no good ideas at all in the book. Nevertheless, its deficiency in reasoning power or, at all events, in power to handle the analytic apparatus of economics, puts it out of court here. I do not hold that Bastiat was a bad theorist. I hold that he was no theorist.<sup>22</sup>

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[http://oll.libertyfund.org/index.php?option=com\\_staticxt&staticfile=show.php%3Ftitle=78&Itemid=99999999](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=78&Itemid=99999999).

<sup>20</sup> Zernike, *supra* note 17 at A16.

<sup>21</sup> JOSEPH A. SCHUMPETER, *HISTORY OF ECONOMIC ANALYSIS* (1954), at 500.

<sup>22</sup> *Id.*

Other scholars have also criticized this work<sup>23</sup> and it is a fair criticism.<sup>24</sup> However, in Bastiat's defense, it should be pointed out that his *Economic Harmonies*<sup>25</sup> was an incomplete work. He was rushing to finish it before his impending death from tuberculosis in 1850. In the Preface to the English-language edition, George B. de Huszar states: "Unfortunately, the *Harmonies* after chapter 10 are unfinished fragments and therefore are filled with repetitions which Bastiat would have corrected had he lived. It is also important to keep in mind that parts of the *Harmonies* were first given as speeches,"<sup>26</sup> which cannot be as rigorous as material that appears in a journal article or book.

Mark Blaug, a scholar who specializes in the history of economic thought, has the following to say about Bastiat:

As an economic theorist, he was third-rate, but as a popularist of economic ideas, employing satire and irony with the skills of Daniel Defoe or George Bernard Shaw, he has no equal in the history of economic thought.<sup>27</sup>

Again, in Bastiat's defense, he was a journalist, pamphleteer and politician. Perhaps he can be forgiven for being a third-rate economic theorist, if indeed that charge is true.<sup>28</sup> Very few journalists, pamphleteers or politicians are first-rate economists. Many of them are fourth-rate.

Keynes' criticism of Bastiat is more indirect. One of Bastiat's ideas included the view that in order to be a good economist one must examine both the long-run and short-run effects a policy has on all groups, not just the most

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<sup>23</sup> Haney provides one of the most detailed criticisms. See LEWIS H. HANEY, *HISTORY OF ECONOMIC THOUGHT* (1949), at 332-337.

<sup>24</sup> Some of Bastiat's other works have also been criticized. For example, referring to Bastiat's *ESSAYS ON POLITICAL ECONOMY*, Haney states: "All are written in a pleasing and luminous style, but have comparatively little scientific value." See LEWIS H. HANEY, *HISTORY OF ECONOMIC THOUGHT* (1949), at 331.

<sup>25</sup> FRÉDÉRIC BASTIAT, *LES HARMONIES ÉCONOMIQUES* (1850) was the first edition of this book and contained only the first 10 chapters. The second edition was published the following year and included additional material.

<sup>26</sup> FREDERIC BASTIAT, *ECONOMIC HARMONIES* (1964), at vii.

<sup>27</sup> MARK BLAUG, *GREAT ECONOMISTS BEFORE KEYNES* (1986), at 15.

<sup>28</sup> Although Bastiat has been criticized for being a lightweight in the discipline of economic theory, he was able to refute the Keynesian multiplier theory more than a generation before Keynes was born. He was able to do so because the multiplier theory that Keynes espoused was not new. The theory was circulating in France in Bastiat's day. For a discussion of this point, see Robert W. McGee, *Keynes, Bastiat and the Multiplier*. *IABPAD Conference Proceedings* 7(1): 865-874, Orlando, January 3-6, 2010.

obvious groups.<sup>29</sup> John Maynard Keynes (1883-1946), a famous British economist and purveyor of the idea that deficit spending can be used to lift an economy out of recession,<sup>30</sup> coined the phrase “In the long-run we are all dead” in response to Bastiat’s position.<sup>31</sup>

One possible response of economists to Bastiat’s argument might be, “What if the liberty or property of individuals is conflicting with each other? For example, I have the property right (or liberty) to breathe fresh air, whereas my roommate has the property right to smoke. There are many situations in which the property right is not well defined, often leading to disputes. The law and economics literature recommends that the law should intervene in this case (if the transaction cost is high).”

This query may be answered at several levels. From the perspective of legal theory one might point out that “real” rights, meaning negative rights, generally do not conflict. My right to life, liberty and property do not conflict with your right to life, liberty and property or, stated negatively, my right not to be deprived of life, liberty or property do not conflict with your right not to be deprived of life, liberty or property. My right to thrust my fist forward ends where your nose begins.

Positive rights are a different matter altogether. One might fairly state that positive rights often conflict with negative rights. A positive right – a right granted by government – often grants a right to one individual or group of individuals at the expense of another individual or group of individuals.

For example, if the tenants of a particular building have a “right” to subsidized rent, the landlord’s negative property right not to be prevented from charging the market rate for rent is violated. If some law prohibits landlords from charging more than \$500 monthly rent for a particular apartment that would fetch \$1200 in a free market, the law is, in effect, confiscating \$700 per month of the landlord’s property and giving it to the tenants.

Bastiat was a negative rights theorist. He discusses the law’s illegitimate use to redistribute property in several of his writings, some of which are discussed below.

One may respond to this question in another, less legalistic way as well. Referring to the example about the alleged conflict between the right to smoke and the right to breathe fresh air, the matter can be solved quite easily by the

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<sup>29</sup> The most complete exposition of this view is in Bastiat’s essay, “What Is Seen and What Is Not Seen,” first published as a pamphlet in July, 1850 and reprinted in FREDERIC BASTIAT, *SELECTED ESSAYS ON POLITICAL ECONOMY* (1964), at 1-50. Henry Hazlitt wrote an entire book that is mostly based on this essay. See HENRY HAZLITT, *ECONOMICS IN ONE LESSON* (1946; 1979).

<sup>30</sup> See JOHN MAYNARD KEYNES, *THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY* (1936).

<sup>31</sup> MARK SKOUSEN, *THE MAKING OF MODERN ECONOMICS: THE LIVES AND IDEAS OF THE GREAT THINKERS* (2001), at 348.

application of property rights. The person who owns the property makes the rules. Bar and restaurant owners are the proper parties to determine whether smoking is permitted or prohibited on their premises. Any other solution violates their property rights. Patrons who do not like to eat or drink in a smoke-filled environment should vote with their feet by not going to bars and restaurants that permit smoking.

If business owners were free to exercise their property rights, it is likely that the market would find solutions to this issue. Some bars and restaurants would permit smoking while others would prohibit it. Other bars and restaurants would have smoking and nonsmoking areas. If two individuals share an apartment and one of them smokes while the other does not, they would have to come to some sort of agreement regarding the smoking policy, provided of course that their landlord allows them to smoke in the first place.

The issue becomes complicated only in cases where some government owns the property on which the smoking is allowed or prohibited. If the government is considered to own the streets and the sidewalks, it could prohibit individuals from smoking in the streets or on sidewalks. If a restaurant or café has outside tables that are on those sidewalks, the owners must obey whatever law the government puts in place.

One solution to this problem would be to privatize the sidewalks and streets. There is no need for governments to own sidewalks. It has been asserted that there is also no need for governments to own streets.<sup>32</sup> Where the owners of the property are private individuals or corporations, there is no problem with the allocation of rights because no allocation is needed. The owners have the property rights and the nonowners do not.<sup>33</sup>

Bastiat did not address this issue, since smokers' rights versus fresh air was not an issue being discussed in Bastiat's time. However, since Bastiat was a

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<sup>32</sup> One of the most comprehensive analyses of this issue is by WALTER BLOCK, *THE PRIVATIZATION OF ROADS AND HIGHWAYS* (2009). Rothbard would go farther and assert that "government can never be the just owner of property." See MURRAY N. ROTHBARD, *THE LOGIC OF ACTION ONE: METHOD, MONEY, AND THE AUSTRIAN SCHOOL* 290 (1997). Presumably, his blanket prohibition would exclude the possibility of gifts of property to government. A utilitarian might argue that giving property to governments constitutes an unethical act, since governments make less efficient use of property than do individuals in the private sector, and, according to the "efficiency is ethical" strand of utilitarian thought, increasing efficiency is ethical and decreasing efficiency is unethical. Bentham, Posner and others have espoused this efficiency argument but a full analysis of this point is beyond the scope of the present paper. For criticisms of the efficiency is ethical argument, see Murray N. Rothbard, *The Myth of Efficiency*, in *TIME, UNCERTAINTY, AND DISEQUILIBRIUM* 90-95 (MARIO RIZZO, ED. 1979), reprinted in MURRAY N. ROTHBARD, *THE LOGIC OF ACTION ONE: METHOD, MONEY, AND THE AUSTRIAN SCHOOL* 266-273 (1997).

<sup>33</sup> For diverse and conflicting discussions of smokers' rights, see *SMOKING: WHO HAS THE RIGHT?* (JEFFREY A. SCHALER & MAGDA E. SCHALER, EDS. 1998).



negative rights theorist, it is reasonable to conclude that Bastiat's solution would be similar to the one just given.

At this point one might mention the Coase Theorem, a theory formulated by Ronald Coase, as one possible solution to determine the allocation of property rights.<sup>34</sup> One might summarize his theory by stating that economic efficiency is best achieved by the full allocation of, and completely free trade in property rights. What matters is that everything is owned by someone and that who owns what initially does not matter.<sup>35</sup>

In a world where transaction costs do not exist, individuals would bargain to produce the most efficient allocation of resources regardless of what the initial allocation might be. The problem is that transaction costs do exist in the real world and their presence sometimes produces results that are not always welfare maximizing. Theoretically, courts are able to produce outcomes that are similar to the outcomes that would be produced in the absence of transactions cost, if courts seek the most efficient solution.

The problem in dealing with actions that have harmful effects is not merely restraining those who are causing the harmful effects but rather determining whether the gain to be made from preventing the harm is greater than the loss incurred by stopping the harmful action.

Coase discusses the case of a train engine (fired by wood or coal in the old days) that shoots off sparks along its track, causing fire damage to woods, farmers' crops, etc.<sup>36</sup> The example illustrates what economists call a negative externality, a negative consequence that is borne to someone who is not a party to the transaction. The railroad that owns the train does not have to pay the full cost of its action. Property owners who live along the tracks have to absorb the cost of the damages caused by the train engine.

In Pigou's discussion of this example, he suggests two possible solutions to remedy the situation: the government should step in to correct the problem, and the railroad should be made to compensate those who are harmed for their losses.

Coase argues that the first solution proposed by Pigou is based on a misapprehension of the facts and the second solution is not necessarily desirable. It is the second solution that concerns us – compensating those harmed.

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<sup>34</sup> Ronald H. Coase, *The Problem of Social Cost*, 3 J. L. & ECON. 1-44 (October 1960). He addressed the issue of social cost in an earlier work as well. See Ronald H. Coase, *The Federal Communications Commission*, 2 J. L. & ECON. 1-40 (1959).

<sup>35</sup> This summary of the Coase Theorem is based on the definition of the Coase Theorem given in BusinessDictionary.com. See [www.businessdictionary.com/definition/Coase-s-theorem.html](http://www.businessdictionary.com/definition/Coase-s-theorem.html). (accessed January 20, 2011).

<sup>36</sup> Ronald H. Coase, *The Problem of Social Cost*, 3 J. L. & ECON. 1-44 (October 1960). The example Coase discussed in his article was earlier given by Pigou. See ARTHUR C. PIGOU, *THE ECONOMICS OF WELFARE* (4<sup>TH</sup> ED., 1932).

From a Lockean perspective, the just outcome depends on who was there first, the farmer or the railroad. If the farmer was there first, he has the right to exclude the railroad or demand compensation for his losses. If the railroad was there first, the railroad is free to continue spewing forth its sparks and it would be up to the farmer to pay the railroad to become spark-free.

The Coasian solution would look at the relative costs on both sides and arrive at a solution that maximizes production. If the damage to the farmer is greater than the cost to the railroad, the law should side with the farmer. If the cost to the railroad is greater than the farmer's loss, the law should side with the railroad. It is a utilitarian solution that totally ignores property rights, which is one criticism that has been made of the Coase Theorem. Another criticism is that it is impossible to measure interpersonal utilities, a criticism that has been made of utilitarian approaches in general.<sup>37</sup>

Bastiat never discussed the Coase Theorem, of course, since it was not formulated until more than a hundred years after Bastiat's death, but one may fairly guess what Bastiat's position would be. Bastiat did not discuss the impossibility of measuring interpersonal utilities but he did discuss property rights – from a Lockean perspective. Thus, it is reasonable to project that Bastiat would have criticized the Coase Theorem on the grounds that it disregards rights. He would side with the farmers in the Coase example.

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<sup>37</sup> Space does not permit a full discussion of all sides of this issue or the Coase Theorem. However, the Coase Theorem literature is both rich and abundant. For some criticisms of the Coase Theorem, see Walter Block, *Coase and Demsetz on Private Property Rights*, 1(2) J. LIBERTARIAN STUD. 111-115 (1977); Murray N. Rothbard, *Law, Property Rights, and Air Pollution*, 2 CATO J. 55-99 (1982); Walter Block, *Ethics, Efficiency, Coasian Property Rights and Psychic Income: A Reply to Demsetz*, 8(2) REV. AUSTRIAN ECON. 61-125 (1995); MURRAY N. ROTHBARD, THE LOGIC OF ACTION ONE: METHOD, MONEY, AND THE AUSTRIAN SCHOOL 87, 260-262, 275-276 (1997); MURRAY N. ROTHBARD, THE LOGIC OF ACTION TWO: APPLICATIONS AND CRITICISM FROM THE AUSTRIAN SCHOOL 123-126 (1997); Walter Block, *Private Property Rights, Economic Freedom and Professor Coase: A Critique of Friedman, McCloskey, Medema and Zorn*, 26 HARV. J. L. & PUB. POL'Y 923-951 (2003); Hans-Hermann Hoppe, *The Ethics and Economics of Private Property*, in THE ELGAR COMPANION TO THE ECONOMICS OF PRIVATE PROPERTY (ENRICO COLOMBATTO 2004), reprinted at <http://mises.org/etexts/hoppe5.pdf>; William Barnett, II, Walter Block & Gene Callahan, *The Paradox of Coase as a Defender of Free Markets*, 1 NYU J. L. & LIBERTY 1075-1096 (2005); Walter Block, *Coase and Kelo: Ominous Parallels and Reply to Lott on Rothbard on Coase*, 27 WHITTIER L. REV. 996-1022 (2006). For defenses of the Coase Theorem, see Harold Demsetz, *Some Aspects of Property Rights*, 9 J. L. & ECON. 61-70 (October 1966); Harold Demsetz, *Toward a Theory of Property Rights*, 57 AM. ECON. REV. 347-359 (1967); Harold Demsetz, *Ethics and Efficiency in Property Rights Systems*, in TIME, UNCERTAINTY AND DISEQUILIBRIUM: EXPLORATIONS OF AUSTRIAN THEMES 97-116 (MARIO RIZZO, ED. 1979); Harold Demsetz, *Block's Erroneous Interpretations*, 10(2) REV. AUSTRIAN ECON. 101-109 (1997); John R. Lott, *A Note of Law, Property Rights, and Air Pollution*, 3 CATO J. 875-878 (1983/84).

Bastiat's position on assigning property rights in nuisance cases would also likely rely on the Lockean property rights position. Whoever is there first has the right. In the Coasian example of the doctor who lives next to a noisy confectionary factory, Bastiat would likely ask, "Who was there first, the doctor or the factory?" The solution would become less clear if the doctor and the noisy factory moved to their relative locations at exactly the same time, since Locke's property rights theory is based on the view that whoever appropriates the unused property first has the superior claim to it.<sup>38</sup>

Some economists may also raise an issue that has to do with Pareto improvement.<sup>39</sup> They might ask, "If there is a way to make all society members better off by the intervention of the government (usually by wealth redistribution), should it still be regarded as illegitimate?" Bastiat never addressed this issue and probably never even considered the possibility that wealth redistribution might increase total societal wealth.<sup>40</sup>

Vilfredo Pareto (1848-1923) was only two years old when Bastiat died in 1850. Thus, Bastiat did not have an opportunity to comment on Pareto improvement or optimality, which was espoused by Pareto in 1906. However, it is possible to guess what Bastiat's response might be.

He would likely point out that those who have their wealth taken from them are necessarily made worse off. For Bastiat, forcible redistribution of wealth always results in injustice, as we shall see below.

## **BASTIAT'S LEGAL PHILOSOPHY**

The state is that great fiction by which everyone tries to live at the expense of everyone else.<sup>41</sup>

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<sup>38</sup> Nuisance law was not a common topic of discussion in Bastiat's time and, as far as the present author knows, Bastiat never discussed this issue.

<sup>39</sup> Pareto improvement, Pareto efficiency and Pareto optimality are terms used to describe an idea Italian economist Vilfredo Pareto (1848-1923) discussed in his book, *MANUAL OF POLITICAL ECONOMY* (1906). If some policy or act can make at least one person better off without making anyone worse off, it is an improvement. If some policy or act cannot improve anyone's lot without making someone else worse off, the point of Pareto optimality has been reached.

<sup>40</sup> Let's consider an example of Pareto improvement. Let's say that if a property right is ill defined, two parties may be involved in costly litigation. In the absence of a dispute, they can produce a total utility of 100. If the litigation, arbitration or other solution costs them each 10, their individual utility drops to 40 and the total utility drops to 80. If the law can settle the matter and assign property rights, they will be able to avoid this utility decrease and they can both be better off. The law can be used to reduce or avoid social costs. Once this cost is avoided, wealth redistribution is simply a matter of making both parties agree on the division of the surplus.

<sup>41</sup> *THE LAW*, at ix.

Bastiat's writings are known for their clarity.<sup>42</sup> This attribute is especially important in the area of law, a discipline that can get bogged down in jargon and minutiae. Like other members of the French Liberal School, Bastiat placed a great deal of emphasis on liberty and the rule of law. He viewed government as the greatest single threat to liberty,<sup>43</sup> a view that is shared by many Tea Party members.

He opposed laws that prohibit or punish voluntary acts that do not violate the rights of others.<sup>44</sup> He was a strong advocate of free trade and opposed laws that placed restrictions on trade, such as tariffs, antidumping laws and outright prohibitions.<sup>45</sup>

He was an opponent of the nanny state. He opposed socialism, which he viewed as an attempt by those in power to force their views on others at the point of a gun.<sup>46</sup> He feared government's encroachment on liberty and anticipated Hayek's *THE ROAD TO SERFDOM* by 100 years.<sup>47</sup> He used ridicule and the technique of *reductio ad absurdum* to expose the irrationality of numerous arguments that were espoused by the politicians, lawyers, economists and bureaucrats of his day. He supported the right to be left alone.

If one were to summarize Bastiat's legal philosophy in a single sentence it would probably be accurate to say that he believed the only legitimate functions of government are the protection of life, liberty and property and that all other acts by government are illegitimate. He is against all forms of wealth redistribution and special interest legislation. He was a proponent of the night watchman state – government should protect life, liberty and property and otherwise leave people alone to live their lives as they see fit.

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<sup>42</sup> See Walter E. Williams, *Introduction*, *THE LAW*, at iii.

<sup>43</sup> *Id.*, at iv.

<sup>44</sup> This basic viewpoint is also held by modern libertarians. For expositions on this theme, SEE JOEL FEINBERG, *HARMLESS WRONG-DOING* (1990); PETER MCWILLIAMS, *AIN'T NOBODY'S BUSINESS IF YOU DO* (1996); MURRAY N. ROTHBARD, *FOR A NEW LIBERTY* (2006); MURRAY N. ROTHBARD, *THE ETHICS OF LIBERTY* (2003).

<sup>45</sup> His views on free trade were expressed in a number of places, including *ECONOMIC HARMONIES* (1964); *ECONOMIC SOPHISMS* (1964); *SELECTED ESSAYS ON POLITICAL ECONOMY* (1964); *THE BASTIAT COLLECTION*, 2 VOLS. (2007).

<sup>46</sup> His views on socialism were expressed in a number of places, including *THE LAW* (1968; 1998); *ECONOMIC HARMONIES* (1964); *ECONOMIC SOPHISMS* (1964); *SELECTED ESSAYS ON POLITICAL ECONOMY* (1964); *THE BASTIAT COLLECTION*, 2 VOLS. (2007).

<sup>47</sup> F.A. HAYEK, *THE ROAD TO SERFDOM* (1944). One might also add F.A. Hayek's *THE FATAL CONCEIT: THE ERRORS OF SOCIALISM* (1988) to this list. In this latter work Hayek points out that not only are socialist theories logically incorrect but the premises upon which socialist arguments are made are also incorrect.

He exposed the fallacy of the Keynesian multiplier theory a generation before John Maynard Keynes (1883-1946) was born.<sup>48</sup> Referring to his classic essay, “What Is Seen and What Is Not Seen,”<sup>49</sup> DiLorenzo states:

...Bastiat, by relentlessly focusing on the hidden opportunity costs of governmental resource allocation, destroyed the proto-Keynesian notion that government spending can create jobs and wealth.<sup>50</sup>

President Obama’s economic team advocated this discredited multiplier theory as part of their plan to run deficits to spend our way out of recession. Historically this policy has never worked,<sup>51</sup> for reasons Bastiat pointed out in the 1840s.<sup>52</sup>

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<sup>48</sup>Robert W. McGee, Keynes, Bastiat and the Multiplier. *IABPAD Conference Proceedings* 7(1): 865-874, Orlando, January 3-6, 2010. The Keynesian multiplier theory appears in JOHN MAYNARD KEYNES, *THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY* (1936), chapter 10. However, the multiplier theory was not new. It was being discussed in France in the 1840s and before.

<sup>49</sup> Published in *SELECTED ESSAYS ON POLITICAL ECONOMY* 1-50 (1964).

<sup>50</sup> Thomas J. DiLorenzo, *Frédéric Bastiat: Between the French and Marginalist Revolutions*, in 15 *GREAT AUSTRIAN ECONOMISTS* 59-69 (Randall G. Holcombe, ed., 1999), at 62-63. Austrian School economists consider Bastiat to be an Austrian economist, in spite of the fact that he was French, because his approach to economics was similar to that of the early members of the Austrian School, most notably his insights regarding opportunity cost, a theory that was not formulated in a complete version until Carl Menger did it in the early 1870s. Interestingly, most Austrian School economists are not Austrian. The center for Austrian economics is the United States. In the 1930s, many Austrian School economists fled Vienna to get away from the Nazi regime. Ludwig von Mises fled first to Geneva, then to New York. F.A. Hayek went first to London, then Chicago. Schumpeter and others also found their way to the United States and started teaching Austrian methodology, which explains why there are so many Austrian School economists in the United States. For more on the Ludwig von Mises story, see EAMONN BUTLER, *LUDWIG VON MISES: FOUNTAINHEAD OF THE MODERN MICROECONOMICS REVOLUTION* (1988); JÖRG GUIDO HÜLSMANN, *MISES: THE LAST KNIGHT OF LIBERALISM* (2007); ISRAEL M. KIRZNER, *LUDWIG VON MISES* (2001); MARGIT VON MISES, *MY YEARS WITH LUDWIG VON MISES* (1976).

<sup>51</sup> For detailed analyses of why Keynesian economic policies do not work, see HENRY HAZLITT, *THE FAILURE OF THE “NEW ECONOMICS”* (1959); *THE CRITICS OF KEYNESIAN ECONOMICS* (HENRY HAZLITT, ED., 1960); W.H. HUTT, *KEYNESIANISM: RETROSPECT AND PROSPECT*; W.H. HUTT, *THE KEYNESIAN EPISODE: A REASSESSMENT* (1979); *DISSENT ON KEYNES: A CRITICAL APPRAISAL OF KEYNESIAN ECONOMICS* (MARK SKOUSEN, ED., 1992).

<sup>52</sup> Bastiat’s refutation of the multiplier theory is in his essay, *What Is Seen and What Is Not Seen*, which was written in the 1840s and which is published in English in *FREDERIC BASTIAT, SELECTED ESSAYS ON POLITICAL ECONOMY* 1-50 (1964).

## **The Law**

Bastiat begins his book with what has become a famous quote:

The law perverted! And the police powers of the state perverted along with it! The law, I say, not only turned from its proper purposes but made to follow an entire contrary purpose! The law become the weapon of every kind of greed! Instead of checking crime, the law itself guilty of the evils it is supposed to punish!<sup>53</sup>

Bastiat goes on to say that it is his moral duty to call attention to this fact, which he does throughout the remainder of the book, utilizing several arguments and numerous examples about how the law in France had become perverted by the 1840s. Many of the examples and arguments he gives still have relevance today, more than 150 years later.

Bastiat was a Catholic<sup>54</sup> and his philosophy of law has a religious base. This approach is attractive to many members of the Tea Party movement, since many of them hold strong religious (mostly but not exclusively Christian) beliefs.<sup>55</sup> But Bastiat also has a following among atheists and agnostics<sup>56</sup> because the power of his arguments transcends religion. Ayn Rand, an atheist, novelist and political philosopher, has an economic, political and legal philosophy that is basically the same as Bastiat's<sup>57</sup> -- they both believe that the only legitimate

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<sup>53</sup> THE LAW, at 1.

<sup>54</sup> GEORGE CHARLES ROCHE, III, FREDERIC BASTIAT: A MAN ALONE 20 (1971).

<sup>55</sup> The large Tea Party rally held in Washington, DC on August 28, 2010 had a semi-religious theme, predominantly Christian, but the Tea Party movement is not about religion; it is about reducing the size of the federal government, which is perceived as a threat to freedom and individual liberty. See <http://teaparty.freedomworks.org/>; Kate Zernike and Carl Hulse, At Lincoln Memorial, a Call for Religious Rebirth, *New York Times Online*, August 28, 2010, [www.nytimes.com/2010/08/29/us/politics/29beck.html](http://www.nytimes.com/2010/08/29/us/politics/29beck.html) [accessed August 29, 2010]; DICK ARMEY AND MATT KIBBE, GIVE US LIBERTY: A TEA PARTY MANIFESTO (2010); B. LELAND BAKER, TEA PARTY REVIVAL: THE CONSCIENCE OF A CONSERVATIVE REBORN: THE TEA PARTY REVOLT AGAINST UNCONSTRAINED SPENDING AND GROWTH OF THE FEDERAL GOVERNMENT (2009); BRUCE BEXLEY, THE TEA PARTY MOVEMENT: WHY IT STARTED, WHAT IT'S ABOUT, AND HOW YOU CAN GET INVOLVED (2009); JOSEPH FARAH, TAKING AMERICA BACK: A RADICAL PLAN TO REVIVE FREEDOM, MORALITY AND JUSTICE (2010); JOSEPH FARAH, THE TEA PARTY MANIFESTO (2010); JOHN M. O'HARA, A NEW AMERICAN TEA PARTY: THE COUNTERREVOLUTION AGAINST BAILOUTS, HANDOUTS, RECKLESS SPENDING, AND MORE TAXES (2010).

<sup>56</sup> Murray Rothbard, Walter Block, Ludwig von Mises and Ayn Rand come to mind.

<sup>57</sup> Among Rand's fiction works, ATLAS SHRUGGED (1957) probably best represents her economic, legal and political philosophy. CAPITALISM: THE UNKNOWN IDEAL (1966) presents her views in a nonfiction format. Although Bastiat and Rand basically agreed on the purpose of government and the relationship of government to the individual, they used different approaches to arrive at their

functions of government are the protection of life, liberty and property -- although her philosophy is not religious based.<sup>58</sup> One may delete mention of religion and still have powerful arguments to support the positions Bastiat espouses.

For Bastiat, life is a gift from God.<sup>59</sup> Life includes both physical as well as intellectual and moral life. But this life cannot be maintained by itself. Individuals have the responsibility of preserving, developing and perfecting life, which they can do through the faculties and natural resources that God has given us. Individuals have the ability to convert these faculties into products that they can use to maintain life. Doing so is necessary to maintain life.

### Where Does Law Come From?

Bastiat equates these three items – life, faculties and production – with individuality, liberty and property.<sup>60</sup> These three gifts from God come before all legislation and are superior to it, a natural law view that rejects legal positivism,<sup>61</sup> which holds that all rights are the result of legislation. This view is strongly opposed to the Benthamite view that “... there are no such things as natural rights – no such things as rights anterior to the establishment of government ... Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, - - nonsense upon stilts.”<sup>62</sup> Bastiat’s view is more in keeping with that of John Locke.<sup>63</sup>

Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property

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positions. Whereas Bastiat used both utilitarian and rights-based approaches, Rand was strongly anti-utilitarian and arrived at her positions using rights theory only.

<sup>58</sup> Parallels have been drawn between Bastiat’s philosophy and the philosophy of Ayn Rand. Guenin, for example, identified three themes in Rand’s work that were also present in the work of Bastiat – life as the foundation of rights, property vs. slavery and the overwhelming value of inventions to humanity as opposed to the small benefit to the inventor. See Jacques de Guenin, *Bastiat’s Influence on Libertarianism*, paper presented at the 19<sup>th</sup> Conference of the International Society for Individual Liberty, London, Ontario, Canada, July 24, 2000. Reprinted at <http://bastiat.net/en/about/influence.html> (Accessed August 29, 2010).

<sup>59</sup> THE LAW, at 1.

<sup>60</sup> THE LAW, at 1.

<sup>61</sup> For a defense of legal positivism, see MATTHEW H. KRAMER, IN DEFENSE OF LEGAL POSITIVISM: LAW WITHOUT TRIMMINGS (2003). For a view that opposes legal positivism, see LON L. FULLER, THE MORALITY OF LAW (1969).

<sup>62</sup> Jeremy Bentham, *Anarchical Fallacies*, in Vol. 2 of THE WORKS OF JEREMY BENTHAM (JOHN BOWRING, ED., 1843), reprinted in NONSENSE UPON STILTS: BENTHAM, BURKE AND MARX ON THE RIGHTS OF MAN (JEREMY WALDRON, ED. 1987), at 52-53.

<sup>63</sup> JOHN LOCKE, TWO TREATISES OF GOVERNMENT (1690; 1993).

existed beforehand that caused men to make laws in the first place.<sup>64</sup>

Bastiat defines law as “the collective organization of the individual right to lawful defense.”<sup>65</sup> Individuals have the right to defend their lives, their liberty and their property and so do groups of individuals who band together. Although individuals retain the right to defend themselves and their property, they can delegate this right to government. However, if they decide to delegate this right, they do not give up their individual right to defense. They retain it.

Bastiat and Locke<sup>66</sup> are the same on this point. Their position differs from that of Thomas Hobbes,<sup>67</sup> who believed that when individuals band together to form governments for protection they cede their rights to the state, and if the state abuses its power the people just have to live with it. Locke, along with Thomas Jefferson, who took a Lockean position when he wrote the U.S. Declaration of Independence,<sup>68</sup> held that legitimate government exists only with the consent of the governed, and that if the government abuses reach a certain intolerable point, the people have the right to cast off their current government and replace it with one that is more to their liking. This retention versus ceding of rights is one of the main differences between the social contract theories of Locke and Hobbes.<sup>69</sup>

A corollary of the view that individuals have the right to defend their person, liberty and property, even by force, is the belief that groups of individuals can organize to protect these rights. They can do so by forming a private club or a government. However, the club or government that is formed by this group of individuals cannot possess any rights that the individuals who formed the group do not possess as individuals.<sup>70</sup>

...since an individual cannot lawfully use force against the person, liberty, or property of another individual, then the common force –

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<sup>64</sup> THE LAW, at 2.

<sup>65</sup> THE LAW, at 2.

<sup>66</sup> JOHN LOCKE, TWO TREATISES OF GOVERNMENT (1690; 1993).

<sup>67</sup> THOMAS HOBBS, LEVIATHAN (1651).

<sup>68</sup> U.S. DECLARATION OF INDEPENDENCE (1776). Although Jefferson drafted the Declaration of Independence, the final draft was not identical to his first draft. It was edited by several of America’s Founding Fathers, which upset the young Jefferson. For discussions of the creation of this document, see PAULINE MAIER, AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE (1998); GARRY WILLS, INVENTING AMERICA: JEFFERSON’S DECLARATION OF INDEPENDENCE (2002).

<sup>69</sup> Numerous philosophers over the centuries have expounded on theories of the social contract. For an overview and analysis of the main proponents and theories, see PATRICK RILEY, WILL AND POLITICAL LEGITIMACY: A CRITICAL EXPOSITION OF SOCIAL CONTRACT THEORY IN HOBBS, LOCKE, ROUSSEAU, KANT AND HEGEL (1999).

<sup>70</sup> THE LAW, at 2.



for the same reason – cannot lawfully be used to destroy the person, liberty, or property of individuals or groups.<sup>71</sup>

This point may seem minor, but in fact it is huge, because it means that governments cannot legitimately do anything that individuals cannot do as individuals.

Let's take some examples. No individual can justly force someone to set aside a percentage of one's income for a pension plan, yet the federal government of the United States and the governments of many other countries have been doing exactly that for a generation or more, depending on the country.<sup>72</sup> Likewise, no group of individuals can justly force some other group of individuals to pay for health insurance, yet duly elected governments use their power to do exactly that.<sup>73</sup>

Bastiat views such acts by government as a perversion of force. The abuse of such force destroys the equal rights of others. Individuals do not have the right to initiate force against others; it follows logically that groups of individuals also do not have this right.<sup>74</sup> No mystical rights are created when individuals form groups. The group formed cannot have any rights that are not possessed by the individuals who form the group.

The law is the organization of the natural right of lawful defense. It is the substitution of a common force for individual forces. And this common force is to do only what the individual forces have a natural and lawful right to do: to protect persons, liberties, and properties; to maintain the right of each, and to cause *justice* to reign over us all.<sup>75</sup>

Governments established along the lines Bastiat proposes would be just and long enduring. People would not have any complaint against government, provided their persons, liberty and property were protected from unjust attack. People's success or failure would not be dependent on government but on their own energy and abilities. Labor and capital would not be displaced as a result of legislative decisions. Resources would be allocated as a result of individual choice and voluntary exchange rather than by legislative fiat.<sup>76</sup>

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<sup>71</sup> THE LAW, at 2.

<sup>72</sup> The Social Security Act of 1935 is an example. P.L. 74-271 (49 Stat. 620) (1935).

<sup>73</sup> For U.S. examples, see the Patient Protection and Affordable Care Act, P.L. 111-148, 124 Stat. 119 (2010), enacted March 23, 2010 and the Health Care and Education Reconciliation Act of 2010, P.L. 111-152, 124 Stat. 1029 (2010) which became law on March 30, 2010.

<sup>74</sup> THE LAW, at 3.

<sup>75</sup> THE LAW, at 3.

<sup>76</sup> THE LAW, at 3-4.

Unfortunately, in Bastiat's time as well as in our own, the law has not confined itself to these few legitimate functions. It has exceeded its proper function. It has been used to destroy liberty and property and replace justice with injustice. It is used to limit or destroy the very rights its purpose was to protect. "It has converted plunder into a right, in order to protect plunder. And it has converted lawful defense into a crime, in order to punish lawful defense."<sup>77</sup>

Bastiat attributes this perversion of the law to two causes – stupid greed and false philanthropy.<sup>78</sup> It is a weakness of human nature that individuals, when given the opportunity, sometimes wish to live at the expense of others. Rather than working and prospering as a result of their labor, they sometimes choose to satisfy their wants by seizing and consuming the fruits of other people's labor. Bastiat refers to this choice as plunder.<sup>79</sup>

### **Legal Plunder**

Since people tend to seek pleasure and avoid pain,<sup>80</sup> they will often take the easy way out. They will resort to plunder whenever plunder requires less effort than work. Plunder will cease only when it becomes more painful or dangerous than work. The proper function of law is to protect property and punish plunder. Unfortunately, law often has just the opposite effect; it encourages plunder and punishes labor.<sup>81</sup>

This tendency of the law to protect or even encourage plunder has perverse effects. If the plunder is organized so as to benefit those who make the law, the plundered classes make an effort to become lawmakers themselves, in

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<sup>77</sup> THE LAW, at 5. The Second Amendment of the U.S. Constitution protects the right to bear arms, for example, yet numerous laws punish individuals for owning weapons, for carrying weapons, or for using weapons in self defense. For more on this point, see ALAN GOTTLIEB AND DAVE WORKMAN, ASSAULT ON WEAPONS: THE CAMPAIGN TO ELIMINATE YOUR GUNS (2009); STEPHEN P. HALBROOK, THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT (1994); STEPHAN P. HALBROOK, THE FOUNDERS' SECOND AMENDMENT: ORIGINS OF THE RIGHT TO BEAR ARMS (2008).

<sup>78</sup> THE LAW, at 5.

<sup>79</sup> THE LAW, at 6.

<sup>80</sup> This belief is a basic tenet of utilitarianism. For discussions of utilitarianism, both pro and con, see ERNEST ALBEE, HISTORY OF ENGLISH UTILITARIANISM (1902, 1998); JEREMY BENTHAM, THE PRINCIPLES OF MORALS AND LEGISLATION (1988); RICHARD B. BRANDT, MORALITY, UTILITARIANISM, AND RIGHTS (1992); UTILITY AND RIGHTS (R.G. FREY, ED. 1984); ROBERT E. GOODIN, UTILITARIANISM AS A PUBLIC PHILOSOPHY (1995); GORDON GRAHAM, EIGHT THEORIES OF ETHICS (2004); JOHN STUART MILL, ON LIBERTY AND UTILITARIANISM (1993); ANTHONY QUINTON, UTILITARIAN ETHICS (1989); WILLIAM S. SHAW, CONTEMPORARY ETHICS: TAKING ACCOUNT OF UTILITARIANISM (1999).

<sup>81</sup> THE LAW, at 6-7.

order to either stop the plundering or to be on the receiving end of the booty that is plundered. Bastiat warned us against this possibility.

Woe to the nation when this latter purpose prevails among the mass victims of lawful plunder when they, in turn, seize the power to make laws!<sup>82</sup>

Both groups – those who want their share of the booty and those who want to stop the plundering – are playing an increasingly active role in the government of the United States as the size of the federal government has increased. Various special interests, ranging from senior citizens who do not want their Social Security payments cut or their Medicare to decrease, to the auto union, whose members want to protect their jobs even though Americans have chosen not to purchase the products they make, have gone to Congress to protect their interests, at the expense of those who will be forced to pay for their benefits.

At the other end of the spectrum are the Tea Party people. They want to stop the bailouts, the subsidies and the wasteful spending and they have started to become more organized so they can play a more effective role in the legislative process.<sup>83</sup>

However, membership in these two groups is not mutually exclusive. Some of the Tea Party people are also auto union members or senior citizens or individuals who have received subsidies or bailouts by the federal government, either directly or indirectly. This tendency of government to divide people into two groups – those who pay and those who receive benefits – is not new. As Bastiat pointed out in *The Law*, this condition existed in France in the mid nineteenth century. It also exists today, to a greater or lesser extent, in every Western democracy.

The situation is bad enough when the few practice lawful plunder against the many, which is the case when the making of law is limited to a few individuals. When participation in the making of law becomes universal, people tend to balance their conflicting interests by engaging in universal plunder.<sup>84</sup>

Rather than using the law to eliminate injustices, they use the law to make injustice universal. When the plundered classes gain political power they use their

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<sup>82</sup> THE LAW, at 7.

<sup>83</sup> For expositions of the Tea Party philosophy and movement, see DICK ARMEY AND MATT KIBBE, GIVE US LIBERTY: A TEA PARTY MANIFESTO(2010: BRUCE BEXLEY, THE TEA PARTY MOVEMENT: WHY IT STARTED, WHAT IT'S ABOUT, AND HOW YOU CAN GET INVOLVED (2009); JOSEPH FARAH, THE TEA PARTY MANIFESTO: A VISION FOR AN AMERICAN REBIRTH (2010).

<sup>84</sup> THE LAW, at 7.

power to plunder others. One of the unwelcome side effects of this universal plunder is the elimination of the distinction between justice and injustice.<sup>85</sup>

Bastiat points out that the health of society declines as respect for the law declines. For examples one need only look at the former Soviet republics and the various African, Asian and Latin American countries where corrupt governments have eroded the rule of law to the point of nonexistence.<sup>86</sup> Where the law contradicts morals, individuals have the option of either losing their moral sense or losing their respect for the law.<sup>87</sup> In a good regime, law and justice should mean the same thing in the minds of the people. But where the law is perverted, this cannot be the case.

Where the law is confined to its proper functions – the protection of life, liberty and property – there are no conflicts among individuals or various groups because their interests are equally protected. Conflicts arise when the law goes beyond these legitimate functions and takes from some and gives to others. When that happens, there is no longer a harmony of interests because the law can be used to enrich some at the expense of others.<sup>88</sup> Bastiat refers to this legal plunder as a fatal idea because of the negative unintended consequences that flow as a result of extending the law beyond its legitimate functions.

... imagine that this fatal principle has been introduced: Under the pretense of organization, regulation, protection, or encouragement, the law takes property from one person and gives it to another; the law takes the wealth of all and gives it to the few – whether farmers, manufacturers, shipowners, artists, or comedians. Under these circumstances, then certainly every class will aspire to grasp the law, and logically so.<sup>89</sup>

We have reached this point in America. Every year Congress passes billions of dollars in subsidies for farmers. They are paid to plant. They are paid not to plant. They are protected from foreign competition by tariffs, quotas and

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<sup>85</sup> THE LAW, at 8.

<sup>86</sup> There are a number of publications on government corruption. Global Integrity publishes books on corruption. See [www.globalintegrity.org/toolkits/books.cfm](http://www.globalintegrity.org/toolkits/books.cfm). (accessed September 21, 2010). Transparency International publishes a Corruption Index that ranks countries in terms of corruption. See [www.transparency.org/](http://www.transparency.org/). (Accessed September 21, 2010). NationMaster.com publishes a graph showing government corruption by country. See [www.nationmaster.com/graph/gov\\_cor-government-corruption](http://www.nationmaster.com/graph/gov_cor-government-corruption). (Accessed September 21, 2010).

<sup>87</sup> THE LAW, at 8.

<sup>88</sup> In another work, Bastiat expounds upon these harmonies of interests. See FRÉDÉRIC BASTIAT, *ECONOMIC HARMONIES* (1964).

<sup>89</sup> THE LAW, at 13.

antidumping laws.<sup>90</sup> When criticized for these subsidies, President George W. Bush justified the subsidies because they were less than the subsidies the European Union provides for its farmers, which is not much of a justification.

Manufacturers are subsidized,<sup>91</sup> as are union workers. When General Motors was bailed out, union pension funds were given priority over other creditors,<sup>92</sup> an act which weakened the rule of law and partially unraveled contract law.

U.S. ship owners and ship builders are protected from foreign competition. One particularly outrageous negative externality of this protection is the additional environmental damage that was caused because foreign ships were not permitted to assist in the BP oil spill cleanup because the Jones Act<sup>93</sup> restricts non-US built ships from cruising in the Caribbean. Actually, some foreign ships were permitted to assist in the cleanup eventually but their participation was delayed because of the Jones Act.

Calls for the repeal of the Jones Act<sup>94</sup> have been made for decades but all such calls have been rejected because the shipbuilding union and U.S. ship

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<sup>90</sup>JAMES BOVARD, *THE FARM FIASCO* (1989); JAMES BOVARD, *THE BUSH BETRAYAL* 95-107 (2004). For studies on protectionism in general, which include agricultural protectionism, see JAMES BOVARD, *THE FAIR TRADE FRAUD* (1992); ROBERT W. MCGEE, *A TRADE POLICY FOR FREE SOCIETIES: THE CASE AGAINST PROTECTIONISM* (1994).

<sup>91</sup> JAMES BOVARD, *THE FAIR TRADE FRAUD* (1992); ROBERT W. MCGEE, *A TRADE POLICY FOR FREE SOCIETIES: THE CASE AGAINST PROTECTIONISM* (1994); JAMES BOVARD, *THE BUSH BETRAYAL* 47-58 (2004).

<sup>92</sup> Henry Payne, *UAW Bailout: White House Kneecapped White-collar pensioners*. NATIONAL REVIEW ONLINE, September 17, 2010. <http://www.nationalreview.com/planet-gore/246934/uaw-bailout-white-house-kneecapped-white-collar-pensioners-henry-payne>. Accessed September 25, 2010.

<sup>93</sup> Section 27 of The Merchant Marine Act of 1920 (P.L. 66-261) is sometimes referred to as the Jones Act. It protects the domestic industry from foreign competition by requiring that goods transported by water between U.S. ports be shipped on U.S. ships constructed in the United States that are owned by U.S. citizens and crewed by U.S. citizens and permanent residents. [http://en.wikipedia.org/wiki/Merchant\\_Marine\\_Act\\_of\\_1920](http://en.wikipedia.org/wiki/Merchant_Marine_Act_of_1920). Accessed September 25, 2010. These requirements have been criticized and have caused a number of commentators to call for repeal of the Act. See Daniel Griswold, *Protectionist Shipping Law Hinders Gulf Clean Up*. June 23, 2010. Cato @ Liberty. [www.cato-at-liberty.org/protectionist-shipping-law-hinders-gulf-clean-up/](http://www.cato-at-liberty.org/protectionist-shipping-law-hinders-gulf-clean-up/) Accessed September 25, 2010; Chris Moody, *Gulf coast senators introduce bill to allow foreign ships to help with BP oil spill clean-up*. THE DAILY CALLER, June 22, 2010. <http://dailycaller.com/2010/06/22/gulf-coast-senators-introduce-bill-to-allow-foreign-ships-to-help-with-bp-oil-spill-clean-up/> Accessed September 25, 2010; Joseph Bonney, *McCain Seeks Jones Act Repeal*, The Journal of Commerce, June 25, 2010. [www.joc.com/government-regulation/mccain-seeks-jones-act-repeal](http://www.joc.com/government-regulation/mccain-seeks-jones-act-repeal). Accessed September 25, 2010.

<sup>94</sup> Jesse S. Reeves, *The Jones Act and the Denunciation of Treaties*, 11 AM. J. INT'L L. 33 (1921).

builders convinced Congress that they needed protection from foreign competitors.<sup>95</sup>

The U.S. government also subsidizes artists. One particularly outrageous example is the “Piss Christ” exhibition in New York City, which was subsidized by taxpayers.<sup>96</sup> The 1987 *Piss Christ* exhibit consisted of a photograph of a crucifix submerged in a glass of artist Andres Serrano’s urine. It won the Southeastern Center for Contemporary Art’s Awards in the Visual Arts competition and also stirred outrage in some quarters, partly because it was offensive to some Christians and partly because one of the funders of the exhibition was the National Endowment of the Arts, a taxpayer funded organization.

After President Obama’s election various artists organized to offer their services as propaganda tools of the Obama administration. They would create art that showed the Obama administration in a positive light, much like the propaganda ministers of Stalinist Russia and Nazi Germany did to show their leaders in a favorable light in the 1930s and 1940s.<sup>97</sup>

Bastiat warned us that these abuses and perversions of the law would result if the law were allowed to stretch beyond its legitimate functions of protecting life, liberty and property. He cited the French and British governments as examples of how various segments of the populace rush to the legislature to either protect themselves from plunder or enrich themselves by using the legislature to enrich themselves at the expense of the general public.<sup>98</sup>

### **A Comment on the U.S. Legal System**

Bastiat viewed the legal system of the United States quite favorably, although it should be pointed out that the system he admired was the system in existence in 1850.

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<sup>95</sup> C. Todd Jones, *The Practical Effects on Labor of Repealing American Cabotage Laws*, 22 *TRANSP. L. J.* 403 (1994-1995).

<sup>96</sup> Wikipedia [http://en.wikipedia.org/wiki/Piss\\_Christ](http://en.wikipedia.org/wiki/Piss_Christ). Accessed September 25, 2010.

<sup>97</sup> Inevitable: NEA Pushes Artists to Begin Making Obama Propaganda. *Ace of Spades HQ* <http://minx.cc/?post=291398> Accessed September 25, 2010; NEA Assembling Artists for Propaganda Machine? *Gawker*, <http://gawker.com/5345773/nea-assembling-artists-for-propaganda-machine> Accessed September 25, 2010; Ben Smith, NEA Communications Director Resigns, *Politico*, September 24, 2009. [www.politico.com/blogs/bensmith/0909/Another\\_conservative\\_target\\_resigns.html](http://www.politico.com/blogs/bensmith/0909/Another_conservative_target_resigns.html). Accessed September 25, 2010; NEA Promotes Obama Propaganda, *Rush Limbaugh transcript*, September 8, 2009. [www.rushlimbaugh.com/home/daily/site\\_090809/content/01125111.guest.html](http://www.rushlimbaugh.com/home/daily/site_090809/content/01125111.guest.html). Accessed September 25, 2010.

<sup>98</sup> *THE LAW*, at 14.

... look at the United States [in 1850]. There is no country in the world where the law is kept more within its proper domain: the protection of every person's liberty and property. As a consequence of this, there appears to be no country in the world where the social order rests on a firmer foundation. But even in the United States, there are two issues – and only two – that have always endangered the public peace.<sup>99</sup>

He goes on to identify these two issues as slavery and tariffs, both of which he labels as plunder.<sup>100</sup> He points out that slavery is a legal violation of liberty and tariffs are a legal violation of property. He was deeply concerned that these two issues could lead to the ruin of the Union.<sup>101</sup>

He was nearly correct. Although slavery was a contentious issue in the United States during the 1840s and 1850s, an even bigger issue was northern hegemony. The northern states had majority control of Congress, which meant that Northern interests took precedence over Southern interests.

One major Northern interest that enraged Southerners was the policy of economic protectionism, which the federal government enforced by large tariffs. The north was becoming increasingly industrial whereas the south was primarily agricultural. American history books do not spend much time discussing this issue, but recent scholarship has shown that the high tariffs imposed by the federal government caused a great deal of animosity in the south, whose residents felt abused and exploited by the dominant northern states.<sup>102</sup>

### **The Law Defends Plunder**

There are two kinds of plunder for Bastiat, legal and illegal. Illegal plunder is committed by those who commit theft and fraud. One reason governments are formed is to protect the people against this form of plunder.

Legal plunder is committed by government.<sup>103</sup> Bastiat equates legal plunder with socialism.<sup>104</sup> Briefly stated, legal plunder occurs when the apparatus of government – judges, police, prisons and gendarmes – are placed at the service of the plunderers – while the victims are treated as criminals when they attempt to

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<sup>99</sup> THE LAW, at 14-15.

<sup>100</sup> THE LAW, at 15.

<sup>101</sup> THE LAW, at 15.

<sup>102</sup> THOMAS J. DILORENZO, *THE REAL LINCOLN* 236-245 (2002); THOMAS J. DILORENZO, *LINCOLN UNMASKED: WHAT YOU'RE NOT SUPPOSED TO KNOW ABOUT DISHONEST ABE* (2006).

<sup>103</sup> THE LAW, at 16. Bastiat provides numerous examples of legal plunder in his other works. For examples, see *ECONOMIC SOPHISMS* (1964); *SELECTED ESSAYS ON POLITICAL ECONOMY* (1964); *THE BASTIAT COLLECTION*, 2 VOLS. (2007).

<sup>104</sup> THE LAW, at 16.

defend themselves.<sup>105</sup> Bastiat gives us some guidelines for identifying this kind of legal plunder.

See if the law takes from some persons what belongs to them, and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime.

Then abolish this law without delay, for it is not only an evil itself, but also it is a fertile source for further evils because it invites reprisals. If such a law – which may be an isolated case – is not abolished immediately, it will spread, multiply, and develop into a system.<sup>106</sup>

Bastiat correctly points out that the individuals who benefit from such laws do so because of acquired rights, what modern theorists label as positive rights,<sup>107</sup> or rights that come from government. These positive rights are to be contrasted with negative rights, such as life, liberty and property, which existed prior to government.

A major difference between positive and negative rights is that negative rights do not conflict, whereas positive rights must always conflict. My right to property does not conflict with your right to property. But my right to government subsidized housing must necessarily conflict with the taxpayers' right not to be forced to part with a portion of their income to subsidize my living expenses. My right to live in a rent controlled apartment must necessarily conflict with the landlord's right to charge the market rate for the property. My gain comes at the expense of someone else in the case of positive rights. In order for me to enjoy the benefits of the apartment in which I live, either some taxpayers must be forced to part with a portion of their income or some landlord must be forced to part with a portion of the rent that would otherwise be received by renting the apartment at its full value.

Numerous other examples could be given to illustrate Bastiat's point. Taxpayers must pay for bank bailouts, for auto company bailouts, for insurance company bailouts, and so forth. Those who are healthy are forced to pay for those who are not. Those who work are forced to pay for the support of those who do not work.

In Sunny Isles Beach, Florida, taxpayers are forced to pay for free bus service so that retired millionaires can get convenient rides to the local shopping

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<sup>105</sup> THE LAW, at 16-17.

<sup>106</sup> THE LAW, at 17.

<sup>107</sup> For a discussion of the difference between positive and negative rights that takes an approach similar to that of Bastiat, see TIBOR MACHAN, INDIVIDUALS AND THEIR RIGHTS (1989), at 91-138.



mall. All residents are forced to pay for free concerts that only a small fraction of the local population cares to attend. All taxpayers are forced to pay for the education of children in the public schools, even if they do not have any children of their own or even if they send their own children to private schools.

Those who stand to benefit by the plunder often offer arguments in support of their plunder. Children must be educated; therefore the government has to do it. The sick or elderly have to be taken care of; therefore, the government has to do it. The people must have pensions; therefore, the government has to provide them. These arguments are all non sequiturs. Even if the first part of these statements is true, it does not follow that the government must solve the problem. Nonprofit organizations, charities and the individuals who stand to benefit can also pay for these activities and benefits.

The steel, auto, textile, orange juice or sugar industry must be protected from unfair competition lest workers lose their jobs. Governments all over the world protect their domestic industries from foreign competition by a variety of trade laws, including tariffs, quotas and antidumping laws, not to mention domestic content laws, labor laws and environmental laws. Numerous studies have shown that protectionist trade legislation destroys more jobs than they save,<sup>108</sup> which violates basic utilitarian ethics, not to mention property, contract and association rights. Yet such laws continue to be passed.

Legal plunder has many names, as Bastiat pointed out. It can be committed in many ways. So-called progressive taxation is another example. It is based on the belief that those who are best able to pay should be the ones who pay. In substance it is no different than the Marxist belief, "From each according to his ability, to each according to his needs."<sup>109</sup>

This mentality existed in mid- nineteenth century France. Bastiat could see through the sophistry and he warned his countrymen as well as future generations against it.

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; to make plunder universal under the pretense of organizing it.<sup>110</sup>

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<sup>108</sup> Many of these studies are summarized in ROBERT W. MCGEE, A TRADE POLICY FOR FREE SOCIETIES: THE CASE AGAINST PROTECTIONISM (1994).

<sup>109</sup> KARL MARX, CRITIQUE OF THE GOTHA PROGRAM (1875).

<sup>110</sup> THE LAW, at 17-18.

...if you wish to be strong, begin by rooting out every particle of socialism that may have crept into your legislation. This will be no light task.<sup>111</sup>

### **The Choices We Face**

As Bastiat points out, we have only three choices:

1. The few plunder the many;
2. Everybody plunders everybody; and
3. Nobody plunders anybody.<sup>112</sup>

The first option is clearly untenable. Allowing the few to plunder the many goes against all democratic theory. This option can only be used successfully by kings and despots. The second option – everybody plunders everybody – if followed to its logical conclusion, would lead to the destruction of society. It would lead to a war of all against all, which Hobbs discussed several generations before Bastiat.<sup>113</sup> The reason governments were formed was to protect us from this situation.

Which leaves us with the third option – nobody plunders anybody. This is the view held by America's Founding Fathers as well as John Locke.<sup>114</sup> It is also the view preferred by Bastiat.

One might list a fourth option – the many plunder the few. One might label this possibility untrammelled majoritarianism if taken to an extreme. Perhaps Bastiat overlooked this possibility, although he did refer to it in other places in his writings. It is a view that is present in twenty-first century America. It appears whenever a politician argues that taxes should be increased on the rich.<sup>115</sup> Those who oppose this view are often portrayed in negative terms, the underlying premise being that the rich are somehow not worthy of protection when in fact many people who oppose increasing taxes on the rich do so because they oppose

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<sup>111</sup> THE LAW, at 18.

<sup>112</sup> THE LAW, at 19.

<sup>113</sup> THOMAS HOBBS, LEVIATHAN (1651).

<sup>114</sup> JOHN LOCKE, TWO TREATISES OF GOVERNMENT (1689). Thomas Jefferson, the author of the U.S. DECLARATION OF INDEPENDENCE (1776), was heavily influenced by John Locke. See GARRY WILLS, INVENTING AMERICA: JEFFERSON'S DECLARATION OF INDEPENDENCE (1979).

<sup>115</sup> The view exists that the rich do not pay their fair share of taxes. For literature on this point, see DAVID CAY JOHNSTON, PERFECTLY LEGAL (2003); DAVID CAY JOHNSTON, FREE LUNCH (2007); CHARLES LEWIS AND BILL ALLISON, THE CHEATING OF AMERICA (2002); EDWARD J. MCCAFFERY, FAIR NOT FLAT: HOW TO MAKE THE TAX SYSTEM BETTER AND SIMPLER (2002).

the forcible redistribution of wealth, either for utilitarian<sup>116</sup> or rights-based reasons.<sup>117</sup>

Perhaps the reason Bastiat did not mention the option of the many plundering the few is because, as a practical matter, the many, if given the opportunity and the authority, would not limit their plunder to the few. They would plunder the many. The few (rich) would also try to plunder the many, not necessarily out of greed but in order to retrieve some of what has been taken from them, or to protect what they have not yet had taken from them.

Bastiat pointed out that the limited legal plunder option prevailed when the right to vote was restricted.<sup>118</sup> Those who cannot vote cannot elect politicians who promise them the sky and the kitchen sink in exchange for their vote.

While restricting the vote to property owners or taxpayers might have been an option in Bastiat's day, the cat is out of the bag, so to speak, in the developed economies. Once the vote is given to the vast majority, it is practically impossible to take it back. Politicians who are brave enough to advocate restricting the vote will be voted out of office by the groups who would lose their franchise. Restricting the vote to those who are paying the taxes would be more feasible in a country where democracy is new, where the populace was not previously permitted to vote, but even in these cases it is unlikely that restricted voting would be adopted because even new democracies expect the franchise to be given to everyone.

Bastiat states that we have been threatened with the universal legal plunder option ever since the vote became universal.<sup>119</sup> He advocates the no legal plunder option.<sup>120</sup>

The voting system in mid-nineteenth century France was basically one person, one vote, although there were some restrictions on which persons could vote. Most modern democracies also use this system. However, it is not the only option. A country could minimize the possibility of plunder by the majority by adopting a voting system along the lines corporations use – one vote per share.

Taxpayers do not own shares in the country, of course, but they do pay taxes and some people pay more taxes than others, both in total and as a percentage of income. If a country allowed its citizens to cast one vote for each dollar of taxes paid since the last election, the people who contribute the most toward the public treasury would also have the most say about which politicians

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<sup>116</sup> WALTER J. BLUM AND HARRY J. KALVEN, *THE UNEASY CASE FOR PROGRESSIVE TAXATION* (1953).

<sup>117</sup> BERTRAND DE JOUVENEL, *THE ETHICS OF REDISTRIBUTION* (1952); ROBERT NOZICK, *ANARCHY, STATE AND UTOPIA* (1974).

<sup>118</sup> *THE LAW*, at 20.

<sup>119</sup> *THE LAW*, at 20.

<sup>120</sup> *THE LAW*, at 20.

get to decide how the money is spent. If welfare recipients were not able to vote because they did not pay any taxes, they would not be able to vote for politicians who promise to increase their benefits. People who receive tax-free Social Security benefits would not be able to vote to increase those benefits unless they also earned taxable income.

Bastiat did not suggest this option but it has been suggested in the philosophical and public finance literature.<sup>121</sup> The policy of granting voting rights on the basis of monetary contributions to the system could be viewed as an extension of Bastiat's view on this topic.

### **The Proper Function of the Law**

Bastiat asks whether anything more than the absence of plunder can be required of the law.<sup>122</sup> He asks whether the law, which depends on force, can justifiably be used for any purpose other than to protect the rights of all. In fact, he defied anyone to extend the law beyond this purpose without perverting it. When one turns might against right, the result is perversion of the law. "Law is organized justice."<sup>123</sup>

When justice is organized by law it precludes the possibility of using force to organize any kind of human activity, such as labor laws that prevent employers and employees from entering into contracts under the terms of their choice, forcing some people to pay for the education of other people's children, subsidizing art or religion, and so forth.<sup>124</sup> Force cannot be used against the liberty of the citizenry without also being used against justice. Laws that do so are acting against the purpose of law, which is to do justice rather than to pervert it.<sup>125</sup>

The U.S. Constitution takes a similar approach,<sup>126</sup> or at least it did until a series of U.S. Supreme Court cases<sup>127</sup> expanded the General Welfare Clause<sup>128</sup> to include practically any kind of spending for any purpose. In *Helvering v. Davis*,<sup>129</sup> for example, the Supreme Court upheld the constitutionality of the

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<sup>121</sup> ROBERT W. MCGEE, *THE PHILOSOPHY OF TAXATION AND PUBLIC FINANCE* (2004), at 270-271.

<sup>122</sup> *THE LAW*, at 20.

<sup>123</sup> *THE LAW*, at 20.

<sup>124</sup> *THE LAW*, at 21.

<sup>125</sup> *THE LAW*, at 21.

<sup>126</sup> JOSEPH STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* (1833).

<sup>127</sup> Two cases that stand out are *United States v. Butler*, 297 U.S. 1 (1936) ["... the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution." *Butler*, at 66] and *Helvering v. Davis*, 301 U.S. 619 (1937) [upheld the Social Security system as a legitimate expenditure for the general welfare.].

<sup>128</sup> U.S. CONST., ART. I, SEC. 8.

<sup>129</sup> *Helvering v. Davis*, 301 U.S. 619 (1937). For more on this case, as well as on other cases that have turned the law into a system of legalized plunder, see ROBERT A. LEVY AND WILLIAM

Social Security system, even though only a small fraction of the general population qualifies for the benefit at any given time and even though Social Security is a lousy investment that would fail any utilitarian economic test.<sup>130</sup> In structure and form, it is little more than a Ponzi scheme, except that, in the case of Social Security it is forced, whereas in the case of private sector Ponzi schemes, participation is voluntary. Needless to say, Bastiat would disapprove of forcing anyone to provide for the pensions of others. It is a form of legalized plunder.

Bastiat considers the most popular fallacy of his time to be the view that the law must not only be just; it must also be philanthropic.<sup>131</sup> It is not enough that the law must guarantee citizens the free and inoffensive use of their facilities for intellectual, physical and moral self-improvement. Socialists would also have the law take on the task of extending welfare, education and morality.<sup>132</sup> Bastiat points out that these two uses of the law are contradictory. He argues that we must choose between the two options. “A citizen cannot at the same time be free and not free.”<sup>133</sup>

The socialist approach applies positive law to achieve this false philanthropy. Such rights to welfare do not exist unless the legislature passes a law that gives the right to someone. In order to give to one it must also take from another. Giving one person a right to free education, for example, means that another person is required to part with some property to pay for it. The right of the student is offset by a property rights violation to another – the one who is forced to pay.

Plunder takes place when wealth is transferred from the person who owns it, without consent and without compensation, to someone who does not own it.

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MELLOR, *THE DIRTY DOZEN: HOW TWELVE SUPREME COURT CASES RADICALLY EXPANDED GOVERNMENT AND ERODED FREEDOM* (2008).

<sup>130</sup> The Cato Institute website includes a number of critical papers and studies on the Social Security system and offers solutions to the problems that lie ahead for Social Security. See [www.cato.org/social-security](http://www.cato.org/social-security) [accessed September 22, 2010]. Most of these studies are based on utilitarian ethics and economics, although rights are sometimes discussed in passing. For other critical studies of Social Security, see HENRY J. AARON, BARRY P. BOSWORTH AND GARY BURTLESS, *CAN AMERICA AFFORD TO GROW OLD? PAYING FOR SOCIAL SECURITY* (1989); CHARLES P. BLAHOUS, III, *REFORMING SOCIAL SECURITY FOR OURSELVES AND OUR POSTERITY* (2000); MARTHA DERTHICK, *AGENCY UNDER STRESS: THE SOCIAL SECURITY ADMINISTRATION IN AMERICAN GOVERNMENT* (1990); ABRAHAM ELLIS, *THE SOCIAL SECURITY FRAUD* (1996); SOCIAL SECURITY: PROSPECTS FOR REFORM (PETER J. FERRARA, ED., 1985); PETER J. FERRARA, *SOCIAL SECURITY: THE INHERENT CONTRADICTION* (1980); DORCAS R. HARDY AND C. COLBURN HARDY, *SOCIAL INSECURITY: THE CRISIS IN AMERICA’S SOCIAL SECURITY SYSTEM AND HOW TO PLAN NOW FOR YOUR OWN FINANCIAL SURVIVAL* (1991); SOCIAL SECURITY AND ITS DISCONTENTS (MICHAEL D. TANNER, ED., 2004).

<sup>131</sup> THE LAW, at 21.

<sup>132</sup> THE LAW, at 21.

<sup>133</sup> THE LAW, at 21.

Such redistribution of wealth necessarily violates property rights.<sup>134</sup> In a just society, the law suppresses or prevents this involuntary transfer from taking place. When the law supports or requires such transfers it is nothing more than legal plunder. The person who receives the benefits is receiving stolen property, although he or she is not responsible for the act of plundering. The legislator and those who voted for the legislator are the guilty parties. In a just society, they would be punished for violating the property rights of another. But when the law perpetrates the involuntary transfer, there is no recourse.

Bastiat sees law as a negative concept, much like *real* rights are negative. Just laws are based on negative rights. They prevent us from aggressing on the life, liberty and property of others. Rather than arguing that the purpose of the law is to cause justice to reign, Bastiat argues that “the purpose of the law is to prevent injustice from reigning.”<sup>135</sup> Justice can be achieved only in the absence of injustice.

Law is force.<sup>136</sup> Law results in justice when it prevents injustice, such as confiscating the property of others. Law results in injustice when it imposes regulations on labor, education, religion, etc. When the law becomes positive rather than negative it substitutes the will of the legislator for the will of individuals. The opportunity to choose is taken away. There is no longer any need to discuss, compare options or plan for the future because the law does that for them. Intelligence becomes useless. The citizens cease to be men, they lose their personality, their liberty and their property.<sup>137</sup> It is not possible to imagine a labor regulation that does not violate liberty. It is not possible to imagine a forcible wealth transfer that does not violate property. Since these contradictions cannot be reconciled, one must conclude that “the law cannot organize labor and industry without organizing injustice.”<sup>138</sup>

### **The Political Approach**

Bastiat’s writing on the political approach to problem solving is one of the factors that attracts members of the Tea Party movement. Politicians, while sitting in the comfort of their office, far away from “the people,” are struck by the spectacle of inequality.<sup>139</sup> They deplore the conditions that so many people have to face and they think about passing legislation to improve their lot. But before

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<sup>134</sup> THE LAW, at 22.

<sup>135</sup> THE LAW, at 25.

<sup>136</sup> President George Washington viewed government as force. “Government is not reason; it is not eloquent; it is force. Like fire, it is a dangerous servant and a fearful master.” Attributed to George Washington. An internet search failed to find a proper citation for this quote.

<sup>137</sup> THE LAW, at 25.

<sup>138</sup> THE LAW, at 26.

<sup>139</sup> THE LAW, at 26.

passing such legislation, perhaps they should think about how the people arrived at their present state or condition, which they seldom do.

There are reasons for the present conditions of the people. Perhaps before passing legislation to help the people, which always results in unintended consequences, politicians should first ask themselves how the present condition came to be. Perhaps their present condition was caused by past legislation, lootings and legal plunder. Then they should ponder on human nature and the effect it has on human progress.

Since it is part of human nature to try to improve one's condition, perhaps a condition of justice would best facilitate the move toward improving the human condition and would create the greatest possible equality that is compatible with individual responsibility.<sup>140</sup> Bastiat speculates that this approach would be in accord with the concept of individual responsibility that God has willed so that mankind would have a choice between virtue and vice, which results in reward or punishment.<sup>141</sup>

Bastiat points out that the politicians never give this approach any thought. Instead, their minds turn to organizations, arrangements and combinations. Their attempts at solutions merely increases and perpetuates the very thing that caused the present situation – legal plunder.<sup>142</sup>

Nothing can enter the public treasury for the benefit of one citizen or one class unless other citizens and other classes have been *forced* to send it in...the laws can be an instrument of equalization only as it takes from some persons and gives to other persons. When the law does this, it is an instrument of plunder.<sup>143</sup>

When law is used to provide charity it engages in legal plunder. As Bastiat points out, "...the law is not a breast that fills itself with milk. Nor are the lacteal veins of the law supplied with milk from a source outside the society."<sup>144</sup> If everyone receives from government exactly the same amount that they give to government in the form of taxes there is no plunder. But such a system does not

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<sup>140</sup> THE LAW, at 26.

<sup>141</sup> THE LAW, at 26. The view of individual responsibility permeates Bastiat's writings and is one of the pillars of the Tea Party philosophy. For more on this point, see DICK ARMEY AND MATT KIBBE, GIVE US LIBERTY: A TEA PARTY MANIFESTO (2010); BRUCE BEXLEY, THE TEA PARTY MOVEMENT: WHY IT STARTED, WHAT IT'S ABOUT, AND HOW YOU CAN GET INVOLVED (2009); JOSEPH FARAH, TAKING AMERICA BACK: A RADICAL PLAN TO REVIVE FREEDOM, MORALITY AND JUSTICE (2003); DAVID LIMBAUGH, CRIMES AGAINST LIBERTY: AN INDICTMENT OF PRESIDENT BARACK OBAMA (2010).

<sup>142</sup> THE LAW, at 26-27.

<sup>143</sup> THE LAW, at 27.

<sup>144</sup> THE LAW, at 27.

help the people who have no money. Since they contribute nothing, they also receive nothing.

Politicians who use their power to tap the treasury to help the poor are engaging in legal plunder. For Bastiat, it is not a legitimate function of government to use the treasury to assist the poor or any other group. The purpose of government is to increase justice, which can only be achieved by having a rule of law that protects life, liberty and property. Coming to the aid of any group, whether it is the poor, the farmers, artisans, labor, industrialists, bankers, children, the aged or any other group must necessarily result in injustice, since assets are being confiscated from the people who own them and transferred to people who do not own them.<sup>145</sup>

That is not to say that the poor should not be helped. They merely cannot be helped by government, since doing so results in forcible redistribution of wealth. The underlying philosophy behind Bastiat's view is that forcible redistribution of wealth can never be a moral act. Charity can result only in cases where the act is voluntary. Charity, like other virtues, can only be present where there is choice.<sup>146</sup> To be virtuous there must exist the possibility of not being virtuous. Private individuals and private charitable organizations that received their wealth from voluntary donations are capable of aiding the poor without creating injustice because the assets they are transferring to the poor were received as a result of voluntary wealth transfers. In order to be virtuous, choice must exist. Forcible transfers of assets for charitable purposes cannot be a virtuous act because there is no choice. The fact that the transfer may be for a seemingly noble cause is irrelevant.

A *gift* needs no definition. It is essentially voluntary and spontaneous. It depends exclusively upon the giver, and the receiver cannot be said to have any right to it. Without a doubt, morality and religion make it a duty for men, especially the rich, to deprive themselves voluntarily of that which they possess in favor of their less fortunate brethren. But this is an entirely moral obligation. If it were to be asserted on principle, admitted in practice, sanctioned by law, that every man has a right to the property of another, the gift would have no merit – charity and gratitude would no longer be virtues.<sup>147</sup>

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<sup>145</sup> Another French scholar, elaborated on this point a few generations after Bastiat. See BERTRAND DE JOUVENEL, *THE ETHICS OF REDISTRIBUTION* (1952).

<sup>146</sup> TIBOR MACHAN, *GENEROSITY: VIRTUE IN CIVIL SOCIETY* (1998), especially ix-xii, 1-26 and 53-66.

<sup>147</sup> FREDERIC BASTIAT, *THE BASTIAT COLLECTION*, vol. 1 (2007), at 142.



Bastiat expounds upon his view of forced charity, which might be called false philanthropy, in several of his works.<sup>148</sup>

When we oppose subsidies, we are charged with opposing the very thing that it was proposed to subsidize and of being the enemies of all kinds of activity, because we want these activities to be voluntary and to seek their proper reward in themselves. Thus, if we ask that the state not intervene, by taxation, in religious matters, we are atheists. If we ask that the state not intervene, by taxation, in education, then we hate enlightenment. If we say that the state should not give, by taxation, an artificial value to land or to some branch of industry, we are the enemies of property and of labor. If we think that the state should not subsidize artists, we are barbarians who judge the arts useless.

I protest with all my power against these inferences. Far from entertaining the absurd thought of abolishing religion, education, property, labor, and the arts when we ask the state to protect the free development of all these types of human activity, without keeping them on the payroll at one another's expense, we believe, on the contrary, that all these vital forces of society should develop harmoniously under the influence of liberty and that none of them should become, as we see has happened today, a source of trouble, abuses, tyranny, and disorder.<sup>149</sup>

For Bastiat, justice must necessarily involve private charity. Politicians who believe that there is a role for the state in the distribution of wealth for charity are not aware that allowing state involvement must necessarily result in injustice.<sup>150</sup>

This false philanthropy is not limited to giving to the poor. It involves a number of other wealth transfers from those who own the assets to those who do not own the assets. Examples include protective tariffs, subsidies of all kinds, guaranteed profits, guaranteed jobs, various relief and welfare schemes, public education, progressive taxation, free credit and public works. All such schemes involve legal plunder and constitute organized injustice.<sup>151</sup>

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<sup>148</sup> For examples, see FREDERIC BASTIAT, *ECONOMIC HARMONIES* (1964), at 94, 351, 391, 440, 458 and 509; FREDERIC BASTIAT, *SELECTED ESSAYS ON POLITICAL ECONOMY*(1964), at 53, 64, 120, 268, 327-328; FREDERIC BASTIAT, *THE BASTIAT COLLECTION*, vol. 1 (2007), at 52, 62, 142, vol. 2 (2007), at 118-119, 476-478.

<sup>149</sup> FREDERIC BASTIAT, *SELECTED ESSAYS ON POLITICAL ECONOMY* (1964), at 12-13.

<sup>150</sup> FREDERIC BASTIAT, *THE BASTIAT COLLECTION*, vol. 2 (2007), at 119. Also see *Id.*, at 476-478.

<sup>151</sup> *THE LAW*, at 27.

Those who argue against Bastiat's view might well say that there must be redistribution in order to have a just society, but such arguments begin with a false definition of justice. Walter Williams defines justice in a way that encapsulates Bastiat's view.

But you might say, if government didn't do all that it's doing we wouldn't have a *just* society. What's *just* has been debated for centuries but let me offer my definition of social justice: I keep what I earn and you keep what you earn. Do you disagree? Well then tell me how much of what I earn *belongs* to you – and why?<sup>152</sup>

Socialists confuse the distinction between society and government. Because of this confusion they think that those who oppose government intervention into some area are therefore against the activity, while in fact those who oppose such intervention might actually support private involvement. For example, those who oppose government involvement in education might be accused of being against education. Those who oppose state support of religion might be viewed as atheists. Those who object to state enforced equality might be accused of being against equality.<sup>153</sup>

This line of argumentation is used in twenty-first century America to disparage the views of those who advocate reducing or eliminating government involvement in various activities. Those who advocate abolishing the U.S. Department of Education are accused of being against education. Those who advocate abolishing the government's Social Security system and replacing it with a privately funded system are accused of being against the aged, who supposedly need government provided pensions.

Such a view usually involves a non sequitur – Something needs to be done, therefore government must do it. Even if one concedes that something must be done, which is not always the correct premise, it does not follow logically that government must be the entity to do what needs to be done. If people are hungry, using the force of government to feed them is only one of several options. Other options include assistance by individuals and assistance by charitable and nonprofit institutions, including, but not limited to churches and synagogues.

When one compares and evaluates the options, applying Bastiat's rule that the use of force must necessarily result in injustice, one must conclude that the other options are morally superior to the option of government intervention because those other choices – individual or voluntary organization assistance – do not involve the forcible taking of property and transferring it to those to whom it does not belong.

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<sup>152</sup> WALTER WILLIAMS, *ALL IT TAKES IS GUTS: A MINORITY VIEW* (1987), at 62.

<sup>153</sup> *THE LAW*, at 29.

Politicians who think that they can create prosperity by passing laws are arrogant. They get these ideas from socialist writers, who advocate government intervention in all areas of life in the mistaken belief that such laws are part of the legitimate function of government. They do not see that the passage of such laws, which necessarily transfer wealth from those who have earned it to those who have not, must necessarily constitute injustice even if the motive seems noble.

These socialist writers believe that people have no discernment. They assume that people are inert matter, passive articles, a kind of vegetation that can be molded and that they, the socialist writers, are the proper sculptors to do the job.<sup>154</sup> They would substitute their will for the will of individuals...for their own good, of course. The underlying premise, both on the part of the legislators and the socialist writers who influence them, is that they are better able to make decisions that affect the citizenry than are the citizens themselves. This mode of thinking is condescending, of course, but it is prevalent in twenty-first century America, which is why the intellectual wing of the Tea Party movement holds Bastiat in such high regard, because he clearly expressed this phenomenon.

This view that politicians are somehow better able to make decisions for the people than the people themselves is not new. It has been in existence for thousands of years. One of the underlying premises in Plato's *Republic*<sup>155</sup> is that philosopher kings could do a better job of running society than individuals acting in their own self interests.<sup>156</sup> The socialists want to play God. They think that individuals, if left to their own devices, would ruin themselves.<sup>157</sup> These socialist writers of the nineteenth century view society as being an artificial creation of the legislator's genius.<sup>158</sup>

The socialists want to be dictators.<sup>159</sup> Individuals are incapable of willing their own improvement. Dictators are needed to force individuals into the correct mold. These molders of society are the legislators, according to Saint-Just.<sup>160</sup>

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<sup>154</sup> THE LAW, at 30.

<sup>155</sup> PLATO, THE REPUBLIC. Bastiat considered classical studies to be the mother of socialism and socialist ideas, since various classical authors espoused the view that society is merely inert matter, to be molded by the legislator. See THE LAW, at 33. Bastiat singles out the Egyptians, the Persians and the Greeks for holding this view, although they are not the only groups and civilizations that could be cited. See THE LAW, at 34-35.

<sup>156</sup> One might also mention Adam Smith here, who pointed out that individuals, acting in their own interests, tend to do a better job of organizing society and creating wealth than do those who try to plan and organize economic activity. It is as though an invisible hand (the market) were directing activity so as to maximize human welfare. See ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (1776/1937).

<sup>157</sup> THE LAW, at 31.

<sup>158</sup> THE LAW, at 32.

<sup>159</sup> THE LAW, at 53-58.

<sup>160</sup> THE LAW, at 53.

Bastiat also cites Robespierre and Rousseau as among those who hold this view.<sup>161</sup>

...Robespierre's request for dictatorship is not made merely for the purpose of repelling a foreign invasion or putting down the opposing groups. Rather he wants a dictatorship in order that he may use terror to force upon the country his own principles of morality. He says that this act is only to be a temporary measure preceding a new constitution. But in reality, he desires nothing short of using terror to extinguish from France *selfishness, honor, customs, manners, fashion, vanity, love of money, good companionship, intrigue, wit, sensuousness, and poverty*. Not until he, Robespierre, shall have accomplished these *miracles*, as he so rightly calls them, will he permit the law to reign again.<sup>162</sup>

Bastiat goes on to comment about the view of the so-called do-gooders, whom he calls miserable creatures who would rule mankind. He suggests that if they want to reform everything they should start by reforming themselves.<sup>163</sup>

These do-gooders of Bastiat's time have been replaced with a new set of do-gooders, those who advocate using the force of government to cram their personal agendas down the throats of all of us.<sup>164</sup> If they do not eat meat, they would try to outlaw the sale of meat. If they do not eat hamburgers or French fries, they would try to either outlaw McDonald's and other fast-food restaurants outright or force them to make low-calorie, tasteless hamburgers and fries.<sup>165</sup> If they do not smoke, they would use the force of government to outlaw smoking in public places,<sup>166</sup> which necessarily violates the rights of the individuals who own the property where smoking is prohibited. If they want to protect the people from

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<sup>161</sup> THE LAW, at 53-54.

<sup>162</sup> THE LAW, at 55-56.

<sup>163</sup> THE LAW, at 56.

<sup>164</sup> David Harsanyi discusses some of these issues and the mentality behind such policies. See DAVID HARSANYI, NANNY STATE: HOW FOOD FASCISTS, TEETOTALING DO-GOODERS, PRIGGISH MORALISTS, AND OTHER BONEHEADED BUREAUCRATS ARE TURNING AMERICA INTO A NATION OF CHILDREN (2007).

<sup>165</sup> Joanne Hay, New York to Outlaw Trans Fats in 24,000 Restaurants, Nourished Magazine, December, 2008, online at <http://editor.nourishedmagazine.com.au/articles/new-york-to-outlaw-trans-fats-in-24000-restaurants>. Accessed September 25, 2010.

<sup>166</sup> SEE SMOKING AND THE WORKPLACE (ROGER BLANPAIN AND GORDON ANDERSON, EDs., 2005); ANNE M. LAVACK AND GRAHAM TOTH, REDUCING THE SOCIAL ACCEPTABILITY OF SMOKING: A ROLE FOR GOVERNMENT? (2004) [A Canadian study]. The American Nonsmokers' Rights Foundation is one organization that pushes the anti-smoking agenda even in cases where doing so involves the violation of property, contract and association rights. See [www.no-smoke.org](http://www.no-smoke.org).

high blood pressure, they would outlaw the use of salt in restaurants.<sup>167</sup> There is no limit to the restrictions these do-gooders would impose on us if given the opportunity and the power to do so.<sup>168</sup>

## Liberty and the Law

...what is the political struggle that we witness? It is the instinctive struggle of all people toward liberty. 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?<sup>169</sup>

To Louis Blanc, a socialist and contemporary of Bastiat's, liberty is a right that is granted by government.<sup>170</sup> It is not an inherent right that comes before government, as Bastiat would assert. For Blanc, everyone has a claim on *society* for an education and the tools of production.<sup>171</sup> The problem is that *society* does not exist apart from the individuals who compose it. In effect, what Blanc is saying is that some individuals have an obligation to provide an education and the tools of production to other individuals. Rather than liberty, Monsieur Blanc is advocating the universal violation of property rights.

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<sup>167</sup> Democrats to Outlaw Salt in Restaurants. CAPITALIST INFIDEL, posted March 11, 2010. <http://capitalistinfidel.blogspot.com/2010/03/democrats-to-outlaw-salt-in-restaurants.html> accessed September 25, 2010; Samuel Goldsmith, Brooklyn Dem Felix Ortiz wants to ban use of salt in New York restaurants, N.Y. Daily News Online, March 11, 2010, [www.nydailynews.com/ny\\_local/2010/03/11/2010-03-11\\_assault\\_on\\_salt\\_an\\_insult\\_chefs.html](http://www.nydailynews.com/ny_local/2010/03/11/2010-03-11_assault_on_salt_an_insult_chefs.html). Accessed September 25, 2010.

<sup>168</sup> For a book-length exposition on this theme, SEE MONA CHAREN, DO-GOODERS: HOW LIBERALS HURT THOSE THEY CLAIM TO HELP (AND THE REST OF US) (2004). Her approach is often utilitarian, in the sense that she points out that do-gooders often harm the very people they are trying to help. Bastiat, if he had written the book, would have emphasized that any such attempts to alter non-rights violating behavior must necessarily violate some right, such as the right to property, to contract, or to associate, none of which are legitimate functions of government.

<sup>169</sup> THE LAW, at 51-52.

<sup>170</sup> THE LAW, at 58.

<sup>171</sup> THE LAW, at 59.

There is widespread confusion between justice and what is referred to as social justice. Justice by its very nature is individual and so is injustice. Those who advocate social justice overlook this fact. F.A. Hayek has written on this confusion extensively.<sup>172</sup>

For the socialists of Bastiat's time, liberty inevitably leads to monopoly.<sup>173</sup> Bastiat and the other French liberals of his day viewed liberty as including competition.<sup>174</sup>

For Louis Blanc, competition ruins businessmen and exterminates the people. Thus, "free people are ruined and exterminated in proportion to their degree of freedom."<sup>175</sup> Bastiat suggests that Monsieur Blanc study the results that competition has had in countries such as England, Holland, Switzerland and the United States, which seems to conclusively refute this assertion.<sup>176</sup>

Louis Blanc also believes that competition leads to monopoly, that low prices lead to high prices, that production leads to destruction and a decrease in consumption,<sup>177</sup> all of which history has proven to be false. The bottom line is that it is not safe to permit the people to be free. They must be ruled by the legislators,<sup>178</sup> a concept that both Bastiat and the Tea Party members reject.

Bastiat takes the position that people and property existed before the legislator and that the proper function of the legislator is only to guarantee their safety.<sup>179</sup> The function of the law is to protect the free exercise of rights and to prevent anyone from interfering with this free exercise.<sup>180</sup> Since the enforcement of the law requires the use of force, its only lawful domain is in areas where the use of force is necessary. Where this force is limited to the protection of life, liberty and property, justice reigns. In all other cases the result is injustice.<sup>181</sup>

Every individual has the right to use force for lawful self-defense. It is for this reason that the collective force – which is only the organized combination of the individual forces – may lawfully be used for the same purpose; and it cannot be used legitimately for any other purpose.

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<sup>172</sup> See F.A. HAYEK, *THE MIRAGE OF SOCIAL JUSTICE*, Volume 2 OF *LAW, LEGISLATION AND LIBERTY* (1976). Chapter 9 of this book, '*Social' or Distributive Justice*, is reprinted in *THE ESSENCE OF HAYEK* (CHIAKI NISHIYAMA AND KURT R. LEUBE, EDS., 1984), at 62-113.

<sup>173</sup> *THE LAW*, at 61.

<sup>174</sup> *THE LAW*, at 61.

<sup>175</sup> *THE LAW*, at 61.

<sup>176</sup> *THE LAW*, at 61.

<sup>177</sup> *THE LAW*, at 61.

<sup>178</sup> *THE LAW*, at 63-64.

<sup>179</sup> *THE LAW*, at 68.

<sup>180</sup> *THE LAW*, at 68.

<sup>181</sup> *THE LAW*, at 68-69.

Law is solely the organization of the individual right of self-defense which existed before the law was formalized. Law is justice.<sup>182</sup>

### RELEVANCE FOR TODAY

Bastiat's ideas continue to have relevance. His legal treatise, *The Law*, is required reading among the decision-maker faction of the American Tea Party.<sup>183</sup> It is also recommended reading among Tea Party members and is used as a supplementary text in many university courses.

Bastiat's arguments and methodology can be used to determine the just solution to many problems that are plaguing the United States and Western Europe. The basic rule to determine justice is quite simple and straightforward.

See if the law takes from some persons what belongs to them, and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime.<sup>184</sup>

Any forcible redistribution is automatically unjust because force is used to take property from those who own it so that it can be distributed to those who have done nothing to earn it.

In France,<sup>185</sup> people have taken to the streets to protest the government policy that increases the retirement age from 60 to 62. Is it just that the government should not start paying pensions to French workers until they reach age 62? They have earned it, or so they would argue. If they have earned it, they are entitled to it and they should get their pensions, or so the argument goes.

The problem with this argument is that their pensions would be paid by those who are still working, the younger generation. It is an example of generational warfare.<sup>186</sup> The money the 60 or 62 year-olds paid into the pension

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<sup>182</sup> THE LAW, at 69.

<sup>183</sup> Kate Zernike, *Shaping Tea Party Passion Into Campaign Force*, NEW YORK TIMES, August 25, 2010 at A1, 16. Published online at [www.nytimes.com/2010/08/26/us/politics/26freedom.html](http://www.nytimes.com/2010/08/26/us/politics/26freedom.html) [accessed August 27, 2010].

<sup>184</sup> THE LAW 17 (1998).

<sup>185</sup> *French protest retirement age in their millions*. CHANNEL 4 NEWS, September 23, 2010. <http://www.channel4.com/news/french-protest-retirement-age-in-their-millions> (accessed November 17, 2010).

<sup>186</sup> For discussions of generational warfare regarding Social Security or pensions, see Thomas Grady, *Social Security Sets the Stage for Generational Warfare*, ST. LOUIS POST-DISPATCH, July 30, 2006, <http://www.trinitywealth.com/doc/SocialSecurity.pdf> (accessed November 18, 2010); WILLIAM STERLING AND STEPHEN WAITE, BOOMERNOMICS: THE FUTURE OF YOUR MONEY IN THE

fund over the years is not sitting there waiting for them to use in their retirement years. Those funds were long ago paid out to individuals who were retired when the present generation was working. The younger generation is being forced to pay the pensions of the older generation. It is a forcible redistribution of wealth. The 60 year-olds have no legitimate claim on a portion of the wages earned by the younger generation.

Such government pension systems are inherently unjust because they forcibly take funds from one group and distribute it to another group. It is little more than a Ponzi scheme. Yet the generation that is of retirement age somehow thinks that they are entitled to a portion of the salaries of those who are still working. Philosophically, it is no more than a non sequitur. To structure the argument in statement format, one might say: "I paid into the system for 40 years to support the older generation; therefore, you must pay into the system to support me in my retirement." It is an illogical argument. One might just as easily say that since Peter was robbed for 40 years (1970 – 2010) to pay other people's pensions, Paul must now be robbed so that Peter can have a pension. Since Peter was robbed for 40 years, he is now entitled to rob Paul.

As Bastiat pointed out, we have three options: the few can plunder the many; everybody can plunder everybody; or no one plunders anybody.<sup>187</sup> Bastiat advocated the third option, since that is the only option that does not involve plunder. The only way to end the plunder is to stop confiscating a part of the wages of those who are still working. The result would be that the older generation would no longer be able to claim a government pension, but that is not unjust, since they are not morally entitled to the wages of the younger generation. It is a travesty, but it is a travesty perpetrated by government. It would be false philanthropy<sup>188</sup> to argue that the government has a moral obligation to pay

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UPCOMING GENERATIONAL WARFARE (1998); David J. Ekerdt, *Entitlements, Generational Equity, and Public-Opinion Manipulation in Kansas City*, 38 *THE GERONTOLOGIST* 525-537 (1998); Stephen Moore, *Social Security: A Ticking Time Bomb*, Cato Institute, February 13, 1997, [http://www.cato.org/pub\\_display.php?pub\\_id=6199](http://www.cato.org/pub_display.php?pub_id=6199) (accessed November 18, 2010).

<sup>187</sup> THE LAW, at 19.

<sup>188</sup> Bastiat discusses false philanthropy in several places. In one place he states: "Legal plunder has two roots: One ... is in human selfishness; the other is in false philanthropy." FREDERIC BASTIAT, *SELECTED ESSAYS ON POLITICAL ECONOMY* 64 (1964). Briefly stated, philanthropy involves giving away your own assets to worthy causes. False philanthropy involves giving away the assets of others for what some politician or group of politicians determine to be a worthy cause. One of the best explanations of why false philanthropy is morally wrong was contained in a speech Colonel Davy Crockett gave to the U.S. Congress in the nineteenth century. The title of the speech is "Not Yours To Give," a title which sums up the content of the speech. It has been reprinted in many places, including <http://www.juntosociety.com/patriotism/inytg.html>. (accessed November 17, 2010).



pensions. “Nothing can enter the public treasury for the benefit of one citizen or one class unless other citizens and other classes have been *forced* to send it in.”<sup>189</sup>

Another example of a current application of Bastiat’s legal philosophy is the Greek situation.<sup>190</sup> Thousands of workers took to the streets of Greece to protest government cutbacks of the Greek welfare state. The problem was that the Greek government ran out of money. The reason was because its redistribution policies promised more than the government could deliver. The only just solution is to stop the redistribution. One might argue that this solution is not practical, and perhaps it is not in the short-run. However, the government has run out of money, so it has to reduce the extent of redistribution whether it wants to or not.

Another example of a legal and moral issue where Bastiat has presented a solution is the case of the British government’s plan to triple university tuition as a move to cut the budget deficit.<sup>191</sup> When the plan was announced, tens of thousands of students protested, claiming that they would not be able to afford the new fees. The plan was perceived as being unjust, but the question is, “Unjust to whom?” The initial response might be “unjust to students”, the underlying premise being that students are entitled to have their tuition subsidized by the taxpayers. Bastiat’s reply would be different. Since the law transfers property from those to whom it belongs to those to whom it does not belong,<sup>192</sup> Bastiat would say that forcing taxpayers to pay for the education of other people’s children is a form of plunder.<sup>193</sup>

The same argument could be used regarding protests by students at the University of California, who were upset because of a proposal to increase tuition by 8 percent after being hit with a 32 percent increase in fees.<sup>194</sup> Students somehow seem to think that they are entitled to force the taxpayers of California to pay for their education.

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<sup>189</sup> THE LAW, at 27.

<sup>190</sup> *Greek unions protest against PM’s austerity plans*. BBC NEWS, September 11, 2010. <http://www.bbc.co.uk/news/world-europe-11271058> (accessed November 17, 2010).

<sup>191</sup> UK students protest university fees. Al Jazeera, English language edition, November 12, 2010. <http://english.aljazeera.net/news/europe/2010/11/2010111014445069753.html> (accessed November 17, 2010).

<sup>192</sup> THE LAW, at 17.

<sup>193</sup> Bastiat discusses education in several places, including THE LAW 18 [public schools], 24 [organizing education by the state destroys justice], 27 [When the law takes from some persons and gives to other persons it is plunder. Public education is an example of plunder.], 28 [forcing taxpayers to provide free instruction is plunder], 29 [opposes state education], 32 [opposes classical education], 62 [government officials fear private education because students might be taught subjects that the legislators do not approve]. He also discusses education in SELECTED ESSAYS ON POLITICAL ECONOMY (1964) and ECONOMIC HARMONIES (1964).

<sup>194</sup> Terence Chea, *Police clash with Calif. students at tuition protest*. ASSOCIATED PRESS, November 17, 2010. [http://www.msnbc.msn.com/id/40243640/ns/us\\_news-crime\\_and\\_courts](http://www.msnbc.msn.com/id/40243640/ns/us_news-crime_and_courts) (accessed November 18, 2010).

Bastiat's philosophy can also be used to determine the proper policy in the case of a financial or economic crisis. When banks get into trouble they pose a financial threat to the entire economy. When an auto company or an insurance company gets into trouble and is threatened with bankruptcy, jobs are threatened, which will lead to a ripple effect throughout the economy.<sup>195</sup> Politicians and those whose jobs are threatened are quick to appeal to government to intervene to fix the problem and save the jobs that are at risk. In philosophical statement format, one might say: "There is a problem; therefore government has to fix it." It is a non sequitur. The second statement does not follow from the first. Although a government fix is one option, it is not the only option. In fact, it is not even the best solution.

If the bank or private corporation is in financial trouble, another option is to allow it to go bankrupt. Some other corporation will pick up the pieces for 10 or 20 cents on the dollar in a bankruptcy sale, will make the investment necessary to make the company viable and will do it without taxpayer subsidies. Alternatively, the bankrupt corporation will go out of business and will stay out of business because it provides services or makes products that consumers do not want.

It might also be pointed out that the federal government of the United States is largely responsible for the financial crisis because the Federal Reserve Board<sup>196</sup> had been keeping interest rates artificially low, which distorted the debt market, Fannie Mae and Freddie Mac,<sup>197</sup> two government supported mortgage institutions, caused the mortgage market to become distorted because of below market rate loans to customers who were not credit-worthy, the federal tax system was subsidizing housing,<sup>198</sup> and the Community Reinvestment Act<sup>199</sup> pressured

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<sup>195</sup> The argument has been made that some institutions are too big to fail. For analyses of this argument, see M. Mayer, *Is Everything Too Big to Fail?* 13 THE INTERNATIONAL ECONOMY 24-27 (1999); G.H. STERN AND R. FELDMAN, *TOO BIG TO FAIL: THE HAZARDS OF BANK BAILOUTS* (2004).

<sup>196</sup> Anna J. Schwartz, *Origins of the Financial Market Crisis of 2008*, 29 CATO J. 19-23 (2009); Lawrence H. White, *How Did We Get into This Financial Mess?* Cato Institute Briefing Papers No. 110, November 18, 2008. Washington, DC: Cato Institute; Lawrence H. White, *Federal Reserve Policy and the Housing Bubble*, 29 CATO J. 115-125 (2009).

<sup>197</sup> Anna J. Schwartz, *Origins of the Financial Market Crisis of 2008*, 29 CATO J. 19-23 (2009); Allan H. Meltzer, *Reflections on the Financial Crisis*. 29 CATO J. 25-30 (2009); Lawrence J. White, *Fannie Mae, Freddie Mac, and Housing Finance: Why True Privatization Is Good Public Policy*. Policy Analysis No. 528, October 7, 2004. Washington, DC: Cato Institute.

<sup>198</sup> Erica Greulich & John M. Quigley, *Housing subsidies and tax expenditures: The case of mortgage credit certificates*. 39 REGIONAL SCIENCE & URBAN ECON. 647-657 (2009).

<sup>199</sup> PUB. L. 95-128, title VIII of the Housing and Community Development Act of 1977, Stat. 1147, 12 U.S.C. § 2901 et seq. The Federal Reserve Board summary of the Act may be found at [www.federalreserve.gov/dcca/cra/](http://www.federalreserve.gov/dcca/cra/). The Community Reinvestment Act has been criticized on a number of counts, including inherent unfairness and economic inefficiency. For discussions of the

banks to make mortgage loans to minorities who would not have qualified for mortgage loans if they had been held to the same standards as other customers, which resulted in a high default rate on mortgage loans.<sup>200</sup>

Since the federal government was largely responsible for the financial crisis,<sup>201</sup> does it make any sense to ask the federal government to intervene to fix the problem? Bastiat has a better solution. Do nothing. Allowing the government to intervene necessarily requires the transfer of assets from those who own the assets to those who have no legitimate claim on those assets. It is a form of legal plunder. It necessarily results in injustice.

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Act, see George J. Benston, *The Community Reinvestment Act: Looking for Discrimination That Isn't There*. POLICY ANALYSIS NO. 354, October 6, 1999. Washington, DC: Cato Institute; Andrew Holmes & Paul Horvitz, *Mortgage Redlining: Race, Risk and Demand*, 49 J. FIN. 81-99 (1994); Andrew Holmes & Joe F. James, *Discrimination, Lending Practice and Housing Values: Preliminary Evidence from the Houston Market*, 11 J. REAL ESTATE RES. 25-37 (1996); Jeffery W. Gunther, *Should CRA Stand for "Community Redundancy Act"?* 23(3) REGULATION 56-60 (2000); Vern McKinley, *Community Reinvestment Act: Ensuring Credit Adequacy or Enforcing Credit Allocation?* 17(4) REGULATION 25-37 (1994); Lawrence J. White, *The Community Reinvestment Act: Good Intentions Headed in the Wrong Direction*. 20 FORDHAM URBAN L.J. 281-292 (1993); Lawrence J. White, *The Community Reinvestment Act: Good Intentions Headed in the Wrong Direction*. 20 FORDHAM URBAN L.J. 281-292 (1993); Jonathan R. Macey & Geoffrey P. Miller, *The Community Reinvestment Act: An Economic Analysis*, 79 VA. L. REV. 291-348 (1993); Leonard Bierman, Donald R. Fraser & Asghar Zardkoohi, *The Community Reinvestment Act: A Preliminary Empirical Analysis*, 45 HASTINGS L.J. 383-412 (1994); Christopher A. Richardson, *The Community Reinvestment Act and the Economics of Regulatory Policy*, 29 FORDHAM URBAN L.J. 1607-1632 (2002); A. Brooke Overby, *The Community Reinvestment Act Reconsidered*, 143 U. PA. L. REV. 1431-1531 (1995); Michael Klausner, *Market Failure and Community Investment: A Market-Oriented Alternative to the Community Reinvestment Act*, 143 U. PA. L. REV. 1561-1593 (1995).

<sup>200</sup> M. Vadum, *Financial affirmative action*, THE AMERICAN SPECTATOR, online edition, September 29, 2008; M. Minton, *The Community Reinvestment Act's Harmful Legacy: How It Hampers Access to Credit*, CEI ON POINT, No. 132, March 20, 2008, Washington, DC: Competitive Enterprise Institute; D.F. Vitaliano and G.P. Stella, *The Cost of Corporate Social Responsibility: The Case of the Community Reinvestment Act*, 26 JOURNAL OF PRODUCTIVITY ANALYSIS 235-244 (2006); John Carney, *Here's How the Community Reinvestment Act Led to the Housing Bubble's Lax Lending*, Business Insider, June 27, 2009, <http://www.businessinsider.com/the-cra-debate-a-users-guide-2009-6> (assessed November 18, 2010).

<sup>201</sup> A. Moroney, *Government must look in mirror when fixing blame*, WALL STREET JOURNAL, Eastern edition, September 24, 2008, at A28.

The injustice is readily apparent in the bailout of General Motors.<sup>202</sup> The company went bankrupt for a number of reasons. Over a period of decades, the unions made exorbitant wage demands and the union contracts established work practices that made the manufacturing process inefficient. General Motors became uncompetitive from an economic standpoint because its costs of production were too high and it was not able to pass along those costs to consumers because consumers had other options. They could buy their cars from other producers.

It might also be pointed out that General Motors made cars that consumers did not want. Aside from price considerations, they preferred other cars for reasons of taste, style, quality and fuel efficiency. Because of these factors it could reasonably be said that General Motors has no moral claim on the resources of American taxpayers. Taxpayers, who are also consumers, should not be forced to pay to subsidize General Motors when they have already decided not to buy General Motors products. Yet bailing out General Motors results in forcing consumers (taxpayers) to transfer a portion of their assets to a company that they have already decided they do not want to do business with. It is an inherently unjust policy.

Bastiat also addressed the issue of economic stimulus packages. The idea behind economic stimulus packages is that an injection of money into one sector of the economy will spread throughout the economy and will increase wealth by some multiple of the original investment. The Keynesian Multiplier Theory<sup>203</sup> begins with this premise. However, this idea was not new. It was circulating in France during Bastiat's time.

The flaw in the multiplier theory is that it ignores the concept of opportunity cost.

Bastiat's greatest contribution to subjective value theory was how he rigorously applied the theory in his essay, "What is Seen and What is Not Seen." In that essay, Bastiat, by relentlessly focusing on the hidden opportunity costs of governmental resource allocation, destroyed the proto-Keynesian notion that government spending can create jobs and wealth.<sup>204</sup>

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<sup>202</sup> Lynn Sweet, *General Motors bailout details*, CHICAGO SUN-TIMES, June 1, 2009, [http://blogs.suntimes.com/sweet/2009/06/general\\_motors\\_bailout\\_over\\_vi.html](http://blogs.suntimes.com/sweet/2009/06/general_motors_bailout_over_vi.html) (accessed November 18, 2010); Tracy Corrigan, *The General Motors bailout only delays an inevitable crash*, THE TELEGRAPH (UK), June 1, 2009, <http://www.telegraph.co.uk/finance/comment/tracycorrigan/5423684/The-General-Motors-bailout-only-delays-an-inevitable-crash.html> (accessed November 18, 2010).

<sup>203</sup> See JOHN MAYNARD KEYNES, *THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY* (1936), especially chapter 10.

<sup>204</sup> Thomas J. DiLorenzo, *Frédéric Bastiat: Between the French and Marginalist Revolutions*, in *15 GREAT AUSTRIAN ECONOMISTS* (Randall G. Holcombe, ed., 1999), 59-69, at 62-63. Note:

Simply stated, those who advocate injecting money into the economy forget to take into account the fact that the funds have to come from somewhere before they can be injected. As Bastiat has said,

Nothing can enter the public treasury for the benefit of one citizen or one class unless other citizens and other classes have been *forced* to send it in.<sup>205</sup>

He applied this idea to a number of situations to show that increasing government spending as a means of stimulating economic activity is doomed to failure.<sup>206</sup> If 100,000 francs are injected into some public works project, for example, there are 100,000 fewer francs that French taxpayers will have available to spend on the products and services of their choice. While employment in the public works project is being expanded, employment in other industries shrinks because the funds that are being pumped into the public works projects first had to be sucked out of other sectors of the economy.<sup>207</sup>

One might also use the analogy of a pebble being thrown into a lake, an analogy that was used in Bastiat's time to illustrate how economic activity expands with an injection of cash. Tossing a pebble into a lake "will cause an infinite number of concentric circles to radiate great distances in every direction."<sup>208</sup> Likewise, an injection of cash into the economy will cause jobs to be created in every direction, or so the story goes. However, as Bastiat points out, the stone has been thrown into one part of the lake only because it was not thrown

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Members of the Austrian School of Economics consider Bastiat to be an Austrian economist in spite of the fact that he was French because of his contributions to marginal utility theory, a theory that was developed by Carl Menger (1840-1921) a generation after Bastiat's death. See CARL MENGER, *PRINCIPLES OF ECONOMICS* (1871). The marginal utility theory was also developed at about the same time by William Stanley Jevons in England and by Léon Walras in the French speaking part of Switzerland. See WILLIAM STANLEY JEVONS, *THE THEORY OF POLITICAL ECONOMY* (1871) and LÉON WALRAS, *ELEMENTS OF PURE ECONOMICS* (1874). Although Bastiat's contribution to marginal utility theory was not as fully developed as those of Menger, Jevons and Walras, he made his contribution a generation earlier than their contributions.

<sup>205</sup> THE LAW, at 27.

<sup>206</sup> For discussions on the structural deficiencies of Keynesian economic theory, see HENRY HAZLITT, *THE FAILURE OF THE "NEW ECONOMICS": AN ANALYSIS OF THE KEYNESIAN FALLACIES* (1959); *THE CRITICS OF KEYNESIAN ECONOMICS* (HENRY HAZLITT, ED. 1960); *DISSENT ON KEYNES: A CRITICAL APPRAISAL OF KEYNESIAN ECONOMICS* (MARK SKOUSEN, ED. 1992); W.H. HUTT, *KEYNESIANISM – RETROSPECT AND PROSPECT* (1963).

<sup>207</sup> For a discussion of this point, see FREDERIC BASTIAT, *SELECTED ESSAYS ON POLITICAL ECONOMY* 16-19 (1964).

<sup>208</sup> *Id.*, at 27.

into another part.<sup>209</sup> In other words, the same number of pebbles is going to be thrown into the lake regardless of whether the last pebble is thrown to the right or the left. Likewise, economic activity will increase where the funds are injected and will shrink where the funds have been taken. Overall economic activity will not change.

But actually it will change, for the worse. If some individuals are not able to spend a portion of their resources on their preferred basket of goods and services, they will have to settle for their second or third choice, with the result that their overall utility has decreased. If the government decides where their money should be spent, it means that consumers (who are also taxpayers) will not be able to spend the funds on the products or services of their choice. Thus, their overall utility must decline.

It might also be pointed out that governments spend money less efficiently than do the people who have earned the money.<sup>210</sup> Money tends to be spent more efficiently if it is your own money than if it is someone else's money. Also, the structure of government is different from the structure of the private sector. If the end of the year is approaching and some government agency has not depleted its budget, the head of the government agency will try to find ways to spend the surplus funds by year-end, lest the agency budget be reduced in the next fiscal year.<sup>211</sup> It is a perverse incentive that results in waste that does not occur in the private sector.

Also, when the government spends money, the decision of where to spend and how much to spend is determined by political rather than economic factors, which also results in inefficiency. The infamous "bridge to nowhere"<sup>212</sup> is one particularly egregious example. In this case, Senator Ted Stevens from Alaska proposed funding a bridge that would connect Gravina Island to the Alaska mainland. The problem was that the bridge would cost hundreds of millions of dollars to build and the population on the island was almost nonexistent and was already being served by regularly scheduled ferry boats. It is an example of a

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<sup>209</sup> *Id.*, at 28.

<sup>210</sup> Numerous studies have found that governments are relatively inefficient when it comes to spending. See RANDALL FITZGERALD, *WHEN GOVERNMENT GOES PRIVATE: SUCCESSFUL ALTERNATIVES TO PUBLIC SERVICES* (1988); ROBERT W. POOLE, JR., *CUTTING BACK CITY HALL* (1980); *PRIVATIZATION* (JOHN C. GOODMAN, ED., 1985); OLIVER LETWIN, *PRIVATISING THE WORLD: A STUDY OF INTERNATIONAL PRIVATISATION IN THEORY AND PRACTICE* (1988).

<sup>211</sup> This example comes from the author's experience working as a consultant for the United States Agency for International Development. Many other examples of this process could be given.

<sup>212</sup> Gravina Island Bridge, Wikipedia, [http://en.wikipedia.org/wiki/Gravina\\_Island\\_Bridge](http://en.wikipedia.org/wiki/Gravina_Island_Bridge) (accessed November 18, 2010); Ronald Utt, *The Bridge to Nowhere: A National Embarrassment*, The Heritage Foundation, Web Memo #889, October 20, 2005, <http://www.heritage.org/research/reports/2005/10/the-bridge-to-nowhere-a-national-embarrassment> (accessed November 18, 2010).

project that would never be considered in the private sector, where individuals spend their own money.

Frederic Bastiat's insights are just as relevant today as they were when he first penned them in the mid-nineteenth century. Once law goes beyond its proper function of protecting life, liberty and property it becomes a tool of plunder and injustice.