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Liberalism & the law

by [Hadley Arkes](#)

The fifth in a series titled The betrayal of liberalism

Before there was a law under the American Constitution, there was an argument about the law. It was an argument, that is, about the ends of the law, and the framework of a lawful government. This was, of course, the argument over the Constitution, and it seems remarkably to have escaped recognition these days that an argument of this kind is itself a dramatic illustration of “natural law.” After all, the very appeal to first principles as the ground of a constitution is itself a move into natural law. If a constitution is to make sense, it must presuppose that there are certain principles of lawfulness that existed, as truths commanding our respect, even before a constitution was framed and enacted.

As John Locke pointed out, the legislature would be the source of the “positive law,” the law that was enacted or *posited*. But what, he asked, would be the source of the legislature? From wha ...

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