The foundational role that moral reason—thought. From moral philosophy to verse yet intertwined strains of Arkes’s new book, Anchoring Truths: The Touchstone of the Natural Law, written as the culmination of many di-

ments of natural-law jurisprudence. His 1966, Arkes is one of the leading propo-
sions of some of the trickiest cases of constitutional law. Arkes argued that both conservatives and anti–new Deal Supreme Court justice, Sutherland elaborated this natural-rights jurispru-
dence with The Return of George Sutherland (1994). Through a detailed treatment of the jurisprudence of this anti–New Deal Supreme Court justice, Arkes argued that both conservatives and liberals failed to grasp the moral ground-
ing of Sutherland’s legal opinions and thereby lost sight of key principles of interpreta-
tion.

aturally. In Beyond the Constitution, published in 1990 to the acclaim of political and legal theorists, Arkes made his most extensive case that interpreting the Constitu-
tion requires going beyond the written text to the principles that informed its drafting. With a particular focus on the Bill of Rights, Arkes showed how only a philosophical understanding of what was deserving of protection could identify which rights we possess by nature (and, thus, which ones the Framers sought to protect in the Constitution). He further elaborated this natural-rights jurispru-
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tion.

These points all converged in Arkes’s most penetrating analysis, Natural Rights and the Right to Choose (2002). This book included a detailed history of the “Born-
Alive Infants Protection Act,” an act that Arkes drafted and defended through pas-
sage in Congress, to establish the “most modest first step” in explaining the logic against abortion “rights.” As Arkes showed in this book, the entire system of natural rights falls to pieces if a so-called natural right to choose abortion—i.e., to choose to kill another innocent human being—is upheld. Once, in the name of “privacy” or “autonomy,” a right to kill one’s child is established in law, the moral logic that explains the entirety of our other (real) rights is eviscerated. Having pointed out in this modest way that surely the child who survives an abortion attempt and is born alive deserves the protection of the law, Arkes worked this premise back-
wards to show that the same protection of law is deserved by the child in the process of being born (refuting justifications of partial-birth abortion), along with the child waiting to be born.

Constitutional Illusions, published this summer, builds on Arkes’s insistence that moral judgment pervades all politics, that it relies upon standards of judgment that are rationally accessible, and that understand-
ing our Constitution requires grasping these moral standards. Provocatively, he challenges the conventional wisdom on issues such as “prior restraint,” sub-
stantive due process, and ex post facto laws.

Arkes opens the book with a defense of the natural-law foundations of our positive-law rights. Are the rights protected in our written laws bestowals on us lowly citizens by beneficent earthly rulers? Are some constitutional regimes better than others, and, if so, why? An-
swering these questions, Arkes insists, requires appeal to the natural law. He argues, for example, that the Founders understood that our right to speech comes not from the First Amendment that enshrines it, but from nature. Under-
standing the amendment’s protections, then, requires a philosophical grasp of its underlying moral principle.

While much contemporary work in nat-
ural law—especially the legal theories of John Finnis and Robert George—relies heavily on Aristotle and Aquinas, Arkes finds his main inspiration in Kant’s phi-
losophy and in his own teachers’ seminal

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works: Leo Strauss’s *Natural Right and History* and Harry Jaffa’s *Crisis of the House Divided*. From the fact that we are rational animals who can give—and demand—reasons for action (and thus justifications of state coercion), Arkes develops the groundwork for a categorically imperative to act on a universalizable maxim. Failure to do so, Arkes argues, forces one into contradiction: “To the extent that we would govern our acts by principles of judgment that are true, the standards that are grounded in this way, in propositions that must be true of necessity, have an unsurpassed claim on us.” Arkes sees something like this at play in Lincoln’s insistence that “there was nothing one could cite to disqualify the black man as a human being, and the bearer of rights, that would not apply to many whites as well.” Force the principle of your judgment to apply to all similar cases, and bad reasons for action drop out of the picture.

With this theory of practical judgment in place, Arkes turns to a series of puzzling cases to pursue “the thread that runs through them and connects everything,” that is, “the move back to first principles and the moral ground of the law.” He begins by defending what has become viewed as indefensible economically conservative judicial activism: the major- ity opinion in 1905’s *Lochner v. New York*. Arkes argues that the Supreme Court, in striking down a New York law that limited the number of hours one could work in a bakery, simply protected “the ‘natural right’ of the worker to his own labor,” labor that “did not belong, in the first instance, to the state.” Of course, one could not contract one’s labor for immoral or otherwise unlawful or un- healthful acts. But Arkes sees in the Court’s opinion the sound judgment that the New York statute was ultimately an arbitrary regulation, and thus an infringement of liberty. As the Court said, “No trade, no occupation, no mode of earning one’s living, could escape this all- pervading power.” And as Arkes notes, the Court “seemed to recognize that even people in prosaic callings may find it quite as useful to have the freedom that we are quicker to attribute to the professional classes.”

Arkes also reconsiders the question of “prior restraint,” arguing that the Supreme Court doctrine against laws allowing the government to review and prohibit the publication of dangerous information is wrong, and incoherent: The reasoning in *Snepp v. U.S.* (1980)—which allowed the CIA to redact writings by Agency members before publication—contradicts precedents in the *Pentagon Papers* case (1971) and *Near v. Minnesota* (1931) without actually overturning these faulty cases. As Arkes sees it, to bring criminal or civil suit after the fact against someone who has recklessly published unjustifiably harmful information—e.g., classified documents that reveal undercover agents’ locations to an enemy, or reckless defamations—is to get the moral logic of responsibility backwards. Criminal or civil sanctions cannot repair one’s unjustly damaged reputation, to say nothing of one’s unjustly taken life. Instead, Arkes argues, the Court should allow the government to seek “prior restraint” in the publishing of such sensitive information, subjecting it to Court review before the damage is done. Granting that a suit seeking reparations after the fact is a valid legal action shows that the Court understands the wrong committed, but fails to see that once there are valid grounds for suspicion, the burden of proof should lie on the would-be publishers to justify their intended action.

Those familiar with Arkes’s work will find much to praise in *Constitutional Illusions*. But the standard criticisms will be made by the standard critics. The Aristotelians and Thomists will think his account of natural law is too Kantian, and thus too thin because in- sufficiently grounded in an understanding of human flourishing. Conservative jurists who think our constitutional regime leaves questions of the natural law entirely to elected legislators will think Arkes allows too broad a role for judges’ moral judgments—and his con- cluding “good word on behalf of the legal positivists” will do little to assuage their worries. All of these criticisms have some merit.

But none is fatal. Though Arkes does not claim the charm of infallibility, he has proven over his long academic career that he, too, is a truth-telling institution. For those who only now have recognized this truth about Arkes, reading *Constitutional Illusions* may prove to be a critical step in their own intellectual conversion.

**Father Brown At 100**

JAMES E. PERSON JR.

BETWEEN the silver ribbon of morning and the green glittering ribbon of sea, the boat touched Harwich and let loose a swarm of folk like flies, among whom the man we must follow was by no means conspicuous—nor wished to be. There was nothing notable about him, except a slight contrast between the holiday gaiety of his clothes and the official gravity of his face.”

In this manner, on a September day 100 years ago, G. K. Chesterton (1874–1936) began his story “The Blue Cross” for readers of the English magazine *The Storyteller*. Those opening words, evoking the wings of morning and an untroubled sea—but with a hint of lurking danger—remind us that September 1910 was the twilight of a placid lull in Western history, a last breath of what scholar Bertram D. Wolfe called the “grand century of peace and progress” before the armed conflagration of 1914–18 erupted and set in motion our long time of troubles.

Chesterton could not have known it at the time, but in “The Blue Cross” he introduced one of the immortal characters of 20th-century literature. Not “the man we must follow” of the story’s opening paragraph: That would be merely Aristeide Valentin, “the head of the Paris police and the most famous investigator of the world.” But before the story concludes, Valentin and one of the most notorious thieves in Europe meet their match in an unlikely figure: a stumpy, moon-faced Roman Catholic priest and maddeningly perceptive crime-solver known as Father Brown.

This rumpled, clumsy detective-priest appeared in 52 short stories, 48 of them collected in five volumes during Chesterton’s lifetime. The strongest of the

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