Current Research: *Limits of Legality*

Jeffrey Brand-Ballard, J.D., Ph.D.
Assistant Professor of Philosophy
Associate Director, Graduate Program in Philosophy and Social Policy
The George Washington University
Washington, DC  20052
(202) 994-6911
jbb@gwu.edu

One of the most severe accusations one can make against a public official is that she has deviated from the rule of law in her official capacity. Consider the scorn directed at the justices of the California Supreme Court following their 2003 ruling that public schools sponsoring recitation of the Pledge of Allegiance thereby violate the Establishment Clause of the U.S. Constitution. Correctly or not, many perceived this ruling as an act of judicial deviation, and condemned it as such.

How should we think about and respond to acts of bona fide judicial deviation? This is a question of great public importance. It is central to our conception of the rule of law, an ideal which the United States aspires to export on a global scale. But legal philosophers have not addressed the question of judicial deviation in much depth. When they have addressed it at all, they have tended to employ philosophically contested normative premises, without acknowledging the contested nature of those premises or considering reasonable alternatives.

For the past eighteen months, I have been preparing a monograph that aspires to do better. My working title is *Limits of Legality: Practical Reason and the Rule of Law*. *Limits of Legality* speaks to the questions raised above, among others. It resides at the intersection of ethics and legal philosophy, defending an original theory of the rule of law and judicial deviation. Mine is among the first research programs to bring to bear the resources of contemporary normative ethics on central questions concerning the rule of law and judicial obligation. I model the normative presuppositions of existing theories of the rule of law in terms that take into account developments in ethical theory over the past two decades. My analysis supports a new theory of the rule of law that specifies, with unprecedented precision, the conditions under which public officials may deviate from the letter of the law without neglecting their professional duties or abusing the public trust. My work contributes significantly to ongoing debates involving such scholars as Larry Alexander, Joseph Raz, Frederick Schauer, Alan H. Goldman, Cass R. Sunstein, Heidi Hurd, and Stephen J. Burton.

I have defended the basic lines of argument that will comprise *Limits of Legality* in a series of interrelated presentations at national and regional conferences, in the fields of philosophy, law, and political science. These papers have been refereed and presented at seven such conferences, nationally and overseas, since February 2004. A submission of mine was recently selected, from over four hundred papers, as one of a dozen finalists for the Jean Hampton Prize of the American Philosophical Association.

Aided by useful feedback obtained at these events, I am refining and expanding the papers into monograph chapters and journal submissions. I expect the book to attract the interest of lawyers, philosophers, graduate students, and advanced undergraduates studying law, philosophy, and political science. It will be suitable for submission to a publisher with an established reputation for publishing analytical philosophy and jurisprudence. I anticipate soliciting a contract, on the basis of several chapters, within the next year.