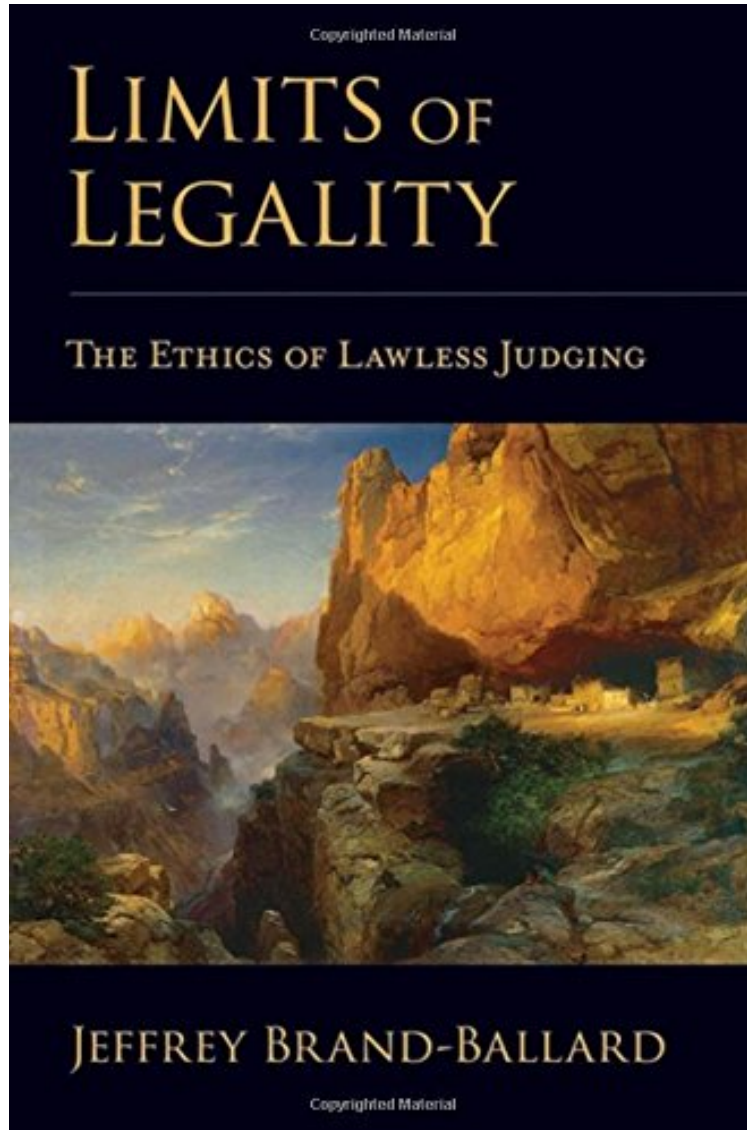


[Mobile book] Limits of Legality: The Ethics of Lawless Judging

## Limits of Legality: The Ethics of Lawless Judging

*Jeffrey Brand-Ballard*

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**Jeffrey Brand-Ballard : Limits of Legality: The Ethics of Lawless Judging** before purchasing it in order to gage whether or not it would be worth my time, and all praised Limits of Legality: The Ethics of Lawless Judging:

2 of 2 people found the following review helpful. In Defense of Judicial NullificationBy theottersdenLet me preface my comments w/ the caveat that I'm only half way through (and have been trying to read it as carefully as possible) but so far this is by far one of the most interesting books about legal theory that I've read in the past few years. I would recommend it highly and no one will charge the author with not being meticulous in drawing important distinctions

and making numerous qualifications in laying out his theory and elaborating on its strengths and weaknesses. In it, Dr. Brand-Ballard offers the first comprehensive theory of judicial nullification --i.e.- the circumstances under which a judge would be justified in ignoring the law, even when it is crystal clear, and instead deciding the case on the basis of moral reasons. For example, when, if ever, is a judge justified in not imposing or affirming a death sentence when the law clearly requires it? The book appears to have radical implications for how we should understand the roles of judges in a democracy. For a work of legal theory penned by an analytical philosopher, it is not intolerably abstract. In the appropriate places, B-B uses real cases as examples. This will appeal to people who would describe themselves as interested in real-world legal problems. Despite the accusation by conservatives (and these days, liberals) that real judges do this all of the time, the reader will find that B-B's thesis as original as it is provocative and that it challenges the consensus that judges are always supposed to follow the law at least when it is clear enough to follow. Although it is written for an audience with some familiarity w/ both Analytical Philosophy and Jurisprudence, it is admirably jargon-free and the author goes to great lengths in both the text and the footnotes to explain the technical terms that he employs. As such, it is accessible to a wider readership than is typical of a work in this genre. A part of me suspects that this book should be titled In Defense of Judicial Anarchism, as this is due to the fact that I have some conservative instincts (not of the Rehnquist or Scalia kind) when it comes to the law and judging. But as I said earlier, I'm only halfway through and am eagerly waiting to see how Dr. B-B will respond to some of the worries about his theory of judicial nullification is bound to provoke. I cannot say w/ confidence that he will be able to answer them to the satisfaction of most critics (but this isn't a criticism). I can say w/ complete confidence that this is a book that has to be read by anyone who is interested in adjudication. It has so much to offer so many readers w/ different interests and makes me think that ultimately, too many legal philosophers and judges are working under the false assumption that our legal and political system is reasonably just, which encourages us to think about judging in, unfortunately, a less imaginative manner than would be the case if we lived in a society with blatant injustices written into the law. I of 2 people found the following review helpful. A fine addition to any community or college library collection on the ethics of law

By Midwest Book Review  
The Judge holds a lot of power, in viewing the law, and it seems in viewing past the law. "Limits of Legality: The Ethics of Lawless Judging" looks into the power of the judge and how they are used in situations where the law as written does not hold into the Judge's own opinion and world view, and the problems that can arise. Occasionally, a judge will be faced with a case that is morally objectionable to them, yet the law as written does not condemn it. Professor of Philosophy Jeffrey Brand-Ballard discusses this practice with criticism, feeling that this practice, one accepted on many levels of society, is easily corruptible and stands against a lawful society. Thoughtful with plenty of scholarly study and opinion, "Limits of Legality" is a fine addition to any community or college library collection on the ethics of law.

Judges sometimes hear cases in which the law, as they honestly understand it, requires results that they consider morally objectionable. Most people assume that, nevertheless, judges have an ethical obligation to apply the law correctly, at least in reasonably just legal systems. This is the view of most lawyers, legal scholars, and private citizens, but the arguments for it have received surprisingly little attention from philosophers. Combining ethical theory with discussions of caselaw, Jeffrey Brand-Ballard challenges arguments for the traditional view, including arguments from the fact that judges swear oaths to uphold the law, and arguments from our duty to obey the law, among others. He then develops an alternative argument based on ways in which the rule of law promotes the good. Patterns of excessive judicial lawlessness, even when morally motivated, can damage the rule of law. Brand-Ballard explores the conditions under which individual judges are morally responsible for participating in destructive patterns of lawless judging. These arguments build upon recent theories of collective intentionality and presuppose an agent-neutral framework, rather than the agent-relative framework favored by many moral philosophers. Defying the conventional wisdom, Brand-Ballard argues that judges are not always morally obligated to apply the law correctly. Although they have an obligation not to participate in patterns of excessive judicial lawlessness, an individual departure from the law so as to avoid an unjust result is rarely a moral mistake if the rule of law is otherwise healthy. Limits of Legality will interest philosophers, legal scholars, lawyers, and anyone concerned with the ethics of judging.

"Brand-Ballard's investigation of that question is impressive. His coverage of the relevant issues, and of the legal and philosophical literature bearing on them, seemed to me to be comprehensive and thorough. At many points, when his argument arrives at a fork requiring a choice between alternative resolutions of some philosophical conundrum, he chooses the path that poses the most difficulty for his thesis, to show that it can surmount even the toughest hurdles. Brand-Ballard has made an original, provocative and illuminating contribution to a more hard-headed understanding of the judicial function." --Jeffrey Goldsworthy, Tulsa Law "Jeffrey Brand-Ballard's book deals with the fascinating and understudied phenomenon of judicial nullification . . . [using] impressive argumentative firepower . . . in support of the claim that it is morally permissible for judges, on a proper conception of their role, to decide on the basis of their personal moral objections rather than the law." --Ethics "This book is a serious analysis of the problem." -- Charles Rice, Notre Dame Law School "Limits of Legality is one of the most thought-provoking books in legal theory

that has come out in the last few years. It has all the virtues that a work of analytical jurisprudence should have: it is meticulous, draws subtle but important distinctions, anticipates and responds to objections carefully, does not overstate points for rhetorical effect, and never papers over empirical uncertainty." --Res Publica "I consider *Limits of Legality* an excellent, challenging, and thought-provoking book. In fact, I regard it as mandatory reading for anyone interested in the judicial role, the distinction and relationship between morality and the law, and the nature of the rule of law itself." --*The Law and Politics Book* About the Author Jeffrey Brand-Ballard is Associate Professor of Philosophy and Public Policy at George Washington University.