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Commonsense Justice: Jurors' Notions Of The Law



Synopsis

For the first time in our history, U.S. prisons house over a million inmates, enough to populate a city larger than San Francisco. Building prisons is the new growth industry, as the American public reacts to a perceived increase in violence and politicians take a hard line toward crime. But this eagerness to construct more prisons raises basic questions about what the community wants and will tolerate and what the Supreme Court will sanction. In this timely book, Norman Finkel looks at the relationship between the "law on the books," as set down in the Constitution and developed in cases and decisions, and what he calls "commonsense justice," the ordinary citizen's notions of what is just and fair. Law is an essentially human endeavor, a collection of psychological theories about why people think, feel, and behave as they do, and when and why we should find some of them blameworthy and punishable. But is it independent of community sentiment, as some would contend? Or, as Finkel suggests, do juries bring the community's judgment to bear on the moral blameworthiness of the defendant? When jurors decide that the law is unfair, or the punishment inappropriate for a particular defendant, they have sometimes nullified the law. Nullification represents the jury's desire not to defeat but "to perfect and complete" the law. It is the "no confidence" vote of commonsense justice refusing to follow the path the law has marked out--and pointing to a new path based on what seem to be more just grounds. Finkel brings to life the story behind the jury and judicial decisions, interweaving anecdotes, case law, and social science research to present a balanced and comprehensive view of important legal and social policy issues.

Book Information

File Size: 5073 KB

Print Length: 400 pages

Publisher: Harvard University Press (August 25, 1998)

Publication Date: August 25, 1998

Sold by:Ã Â Digital Services LLC

Language: English

ASIN: B006OZ69TQ

Text-to-Speech: Enabled

X-Ray: Not Enabled

Word Wise: Enabled

Lending: Not Enabled

Enhanced Typesetting: Not Enabled

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Until recently, jury nullification, and the role of jury discretion, were relatively obscure topics. Although there were literally hundreds of law review articles and other academic writings on the topic, almost none of them were available outside of the larger law libraries. The newspapers discussed the topic - inaccurately and sensationalistically - and the general public had no reliable source of information. Today, however, there are several books on the topic. Godfrey Lehman's "We, the Jury" looks at the subject from a historical perspective. Jeffrey Abramson's "We the Jury" (now, sadly, out of print) and my own "Jury Nullification: The Evolution of a Doctrine" look at jury nullification from a historical perspective. Norman Finkel looks at how juries work - and when and why they nullify - from a psychological and sociological perspective, using legal cases to highlight when the law fails, and how. This wonderful work shows how jurors - and other citizens - view the law, and how the law SHOULD work, and contrast those views with those of judges and legislators. If anything, this book shows that jurors should be less shy about standing up for what they consider just. Chances are, if the jury believes the law is wrong - most of the rest of society would agree.

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