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Discretion to Disobey: A Study of Lawful Departures from Legal Rules (Classics of Law & Society)

Mortimer R. Kadish, Sanford H. Kadish

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Beyond civil disobedience and the citizen's power to protest and defy law, this book looks at rule departures actually sanctioned by law. This acclaimed study by philosophy professor Mortimer Kadish and law professor Sanford Kadish is a truly interdisciplinary inquiry into the idea of departing from the strict letter of the law in a way that, they argue, actually comports with both law and morality. An instant classic and source of debate when first published by Stanford University Press in 1973, this book still resonates on questions of rule violations for the greater good, jury nullification, police and prosecutor discretion not to arrest or charge, civil disobedience, and the very concept of rules. Both citizens and government actors, they write, hold the power and the right to deviate from law in certain contexts and yet not act illegally in a sense -- because law itself contains strands of adaptations to its own departures that the authors weave into a sustained jurisprudential point. As one reviewer soon wrote, "the paradoxical idea that a citizen or official may lawfully break the law" will surely "raise the hackles" of any legal positivist. Yet it remains a challenging idea well worth considering. This book, despite its reputation in the fields of law and philosophy, is actually accessible to fields and scholars beyond, and to citizens who are finding their rightful place among the powers of governmental institutions. Part of the Classics of Law & Society Series from Quid Pro, includes 2010 Notes by the series editor and is available in new high-quality digital formats as well.

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