Law seems to be everywhere, ordering the most minute details of daily life while at the same time making life and death judgments. Law can be and is many things at once—majestic and ordinary, monstrous and merciful, concerned with morality and yet often righteously indifferent to moral argument. It is thus central and important in social life and, at the same time, elusive and mysterious. What law is and can be, as well as the nature of law's presence in society, is, however, more than a matter of moral maxims, philosophical aspirations, or adroitness in manipulating legal texts. Law's power and mystery is reflected in, and made possible by, its institutional arrangements and social organization.

Law is a complex and often cumbersome apparatus which makes itself present in concrete and visible ways. For this apparatus to work it must be able to translate words into deeds and rhetorical gestures into social practices. Yet law's social organization does more than translate, it makes its own "law" and, in so doing, insures that law speaks with many voices. The problems and possibilities of social organization mark the limits of law's capacity to make its many values work in the world, and they define the realities of legal justice. Thus legal thought is haunted by the specter of an impenetrable and unresponsive bureaucratic apparatus, or of an apparatus out of control. To understand the way that the specter works in legal thought as well as the nature of law's social organization we will examine the practices of police, lawyers, judges and those who administer law's complex bureaucratic apparatus. *THE SOCIAL ORGANIZATION OF LAW* is a course in applied legal theory, a course more concerned with law's everyday practices than with its abstract promises.

The following books, marked with a (P) on the syllabus, are available at the Amherst Books:

- George Fletcher, *A Crime of Self Defense: Bernhard Goetz and The Law on Trial*
- Peter Huber, *Liability: The Legal Revolution and Its Consequences*
- Austin Sarat, *Mercy on Trial: What it Means to Stop an Execution*
- Gresham Sykes, *The Society of Captives: A Study of a Maximum Security Prison*

All other readings are available on line through the CMS Course Listings for our course.

There are six films scheduled for this course. Those films are also available on line and should be viewed prior to the class in which they will be discussed.
Syllabus

I. WHEN LAW FAILS

*People v. Ceballos* 526 P.2d 241

A. The Limits of Legal Protection

*DeShaney v. Winnebago*, 87-154 (1989)

B. Deadly Consequences: Private Justice, Revenge or Self-Defense?

**F I L M:** *Adam's Rib*

George Fletcher, *A Crime of Self Defense: Bernhard Goetz & The Law on Trial* (P)

C. Responding to Law’s Failure: Toward a New Understanding of Rights

Tracey Meares and Dan Kahan, “When Rights Are Wrong,” Boston Review (1999), 4-8
Alan Dershowitz, “Rights and Interests,” Boston Review (1999), 10

II. THE SEARCH FOR LAW: THREE DILEMMAS OF SOCIAL ORGANIZATION

Franz Kafka, "Before the Law" in *The Trial*, 1982
Douglas Hay, "Property, Authority and the Criminal Law," in *Albion's Fatal Tree*
III. ACCESS TO JUSTICE: THE DEMAND FOR LAW AND LAW'S DEMANDS

A. Lining Up At the Door of Law

FILM: The Sweet Hereafter

Peter Huber, Liability: The Legal Revolution and Its Consequences, chs. 1-8, 13 & 14 (3-132, 207-232) (P)
William Haltom and Michael McCann, Distorting the Law: Politics, Media, and the Litigation Crisis, chapter 1, p. 1-10, 13-25

B. Whose Law Is It Anyway?

Rusk v. State, 406 A2d 624 (1979)
Director of Public Prosecutions v. Morgan, 2 All E.R. 347 (1975), 347-362

FILM: The Accused


IV. SEVERITY AND LENIENCY: ADMINISTERING A SYSTEM OF DISCRETIONARY JUSTICE

A. The Severity of Procedure

1. Rules and Persons

John Noonan, Persons and Masks of the Law, chs. 1 and 4

2. Is Discretion Mandatory?

State v. Pettitt, 609 P2d 1364 (1964)

B. From Severity to Leniency

Plea Bargaining and the Possibility of Justice
Scott v. United States, 419 F2d 264 (1969)
Abraham S. Blumberg, "The Practice of Law As A Confidence Game," 1 Law and Society Review (1967)

V. ORGANIZING LAW'S VIOLENCE

A. Policing and the Policing of Police

1. The Police and their Environment

FILM: Serpico

Jerome Skolnick, Justice Without Trial, pp. 1-17, 42-67

2. Doing the 'Dirty Business' of Coping With Crime


B. The Pleasures of Punishment

Herbert Morris, "Persons and Punishment," in Human Rights, pp. 111-134
Lorna Rhodes, Total Confinement: Madness and Reason in the Maximum Security Prison, pp. 21-60
VI. DEALING IN DEATH

FILM: Twelve Angry Men


Dahlia Lithwick, “The Crying Game: Should We Decide Capital Punishment with Our Hearts or Our Heads?” (December 2, 2004)

George Ryan, “I Must Act” (January 11, 2003)
*Callins v. Collins*, 62 USLW 3546 (2-22-94)