In the practice of law, according to Karl Llewellyn, “Ideals without technique are a mess. But technique without ideals is a menace.” This course aims to provide a vocabulary of ideals to help answer a question that arises throughout the practice of legal technique: What is Law? The course begins with a short history of the rule of law as an ideal in the United States. It then turns to the development of various theories of law, framed as a continuing debate among competing conceptions of law. Theories considered include natural law, legal positivism, legal realism, critical legal theory, law and economics, and legal pragmatism. It integrates the application of legal theory to legal practice in several areas including constitutional law, contract law, criminal law, property law, and tort law, depending on student interest. The course is conducted as a seminar and is discussion-focused.

Objectives. Students should develop a practical understanding of: the leading theories of American jurisprudence, their role in structuring the development of American law, and the use and misuse of theory in legal practice. Skills emphasized: problem solving, legal analysis and reasoning, legal research, communication, and ethics. Values emphasized: promotion of justice and improvement of the profession.

Readings. The readings include a reader and weekly comments by classmates. The reader is [TBD].

Questions. I am generally available in my office except mornings prior to class. Stop by any time my door is open or email for an appointment. Otherwise, please post questions on Moodle rather than emailing so your colleagues can benefit from them.

Assessment. Your grade has two components: discussion (40%) and comments (60%). Discussion measures ongoing constructive engagement in class discussion. Comments measures the research, analysis, and communication of two comments: an opening (30%) and a response to a classmate’s opening (30%), posted to Moodle (500-1000 wds.). Each opening should identify a particular law, case, or legal controversy that poses one or more questions directly related to that week’s reading. Each response should engage and critique the opening.

Academic Honesty. All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University. All students need to be familiar with the Student Conduct Code of the University of Montana. Law students should also be familiar with the Law School Honor Code in the Law Student Handbook.

Disabilities. The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors, and Disability Services for Students (“DSS”). If you think you may have a disability adversely affecting your academic performance, and you have not already registered with DSS, please contact DSS in Lommasson 154. The Law School will work with you and DSS to provide an appropriate accommodation.
The syllabus is subject to change depending on course and legal developments.

1. **The Origins of the Rule of Law in a Liberal State**  
   1/26 John Rawls, *A Theory of Justice* § 38  
   Reader Ch. 1 (Fuller, Waldron, Hart)

2. **Natural Law**  
   2/2 Reader Ch. 2 (Bentham, Fuller, Aquinas, Finnis)

3. **Positivism**  
   2/9 Reader Ch. 3 (Austin, Hart, Dworkin, Coleman)

4. **Realism**  
   2/18 Reader Ch. 4 (Holmes, Frank, Llewellyn)

5. **Interpretivism**  
   2/25 Reader Ch. 5 (Dworkin, Scalia)

6. **Critical Legal Theory**  
   3/4 Reader Ch. 6 (Gordon, West, Harris)

7. **Law and Economics**  
   3/11 Reader Ch. 15 (Kaplow & Shavell, Coleman)

8. **Pragmatism / Postmodernism**  
   3/18 Readings (Rorty, Posner, Farber & Frickey)

9. **Putting Theory into Practice: Rights**  
   3/25 Reader Ch. 10 (Feinberg, Hart, Waldron)

10. **Putting Theory into Practice: Civil Liability**  
    4/8 Reader Ch. 16 (Feinberg, Kutz, Nagel)

11. **Putting Theory into Practice: Punishment**  
    4/15 Reader Ch. 17 (Kant, Feinberg, Morris)

12. **Putting Theory into Practice: Criminal Liability**  
    4/22 Reader Ch. 18 (*M’Naghten Rules*, Morse, Yaffe, Murphy)

13. **Putting Theory into Practice: Contract**  
    4/29 Reader Ch. 19 (Waldron, Fried, Kronman, Shiffrin, Coleman)