This course considers the history, development, and future of the Montana Constitution from a comparative perspective. Beginning with the forces that led to the Constitutional Convention of 1972, it surveys the structure of Montana state government and key provisions in the Declaration of Rights. It pays particular attention to distinctive provisions such as the right of privacy, the right to know, and the right to a clean and healthful environment. Throughout, the course considers the role of popular sovereignty in the interpretation of the constitution over time. Students will synthesize the material in short moot courts, an online research project, and a research paper or draft judicial opinion.

**Learning Outcomes.** *Law:* the primary distinctions between state and federal constitutional texts and practices in general; the origins and development of individual rights and governmental powers in the Montana Constitution; and the dynamics of formal and informal constitutional change through amendment and interpretation. *Skills:* problem solving, legal analysis, legal research, communication, and litigation. *Values:* Excellence in role as a representative of clients, an officer of the court, and a public citizen responsible for the quality and availability of justice; diversity & equality of opportunity in the practice of law.

**Readings & Class.** Montana cases and materials are provided in a draft reader that will be posted online throughout the course, and outside readings denoted with an *asterisk. In addition to the assigned reading, read your classmates’ briefs in preparation for arguments that week. *Laptop use in class is discouraged to facilitate class engagement.*

**Questions.** I am generally available in my office except immediately before 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 four components: *discussion* (20%), *arguments* (30%), *opinion / wiki* (25% each). *Discussion* measures ongoing constructive engagement in class discussion and classmates’ arguments. *Argument* measures the research, analysis, and presentation of two briefs posted on Moodle (750 wds. max.) and argued in class (5 mins.): an opening brief arguing a case related to a day’s topic (15%, posted 72 hours before class), and a response to a classmate’s brief from a different day (15%, posted 24 hours before class); the case may be real (from Montana or other courts) or possible (e.g., from bills or other proposals). Selections are final unless a classmate will swap. Please post, rather than attach, your brief on Moodle. *Opinion / Wiki* measures the legal research, analysis, and writing of: a research paper (3000 wds. min.); or a short judicial opinion and dissent (1500 wds.) and the equivalent legal research and reporting of a *wiki* entry on a section of the Montana Constitution posted to the MonConWiki (25% each); or two wiki entries (25% each), due by e-mail (or posted on wiki) by 5pm May 10. Students may satisfy the *Advanced Writing Requirement* instead, subject to the Student Handbook; see me by Feb. 8.

**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.** Students with disabilities may request reasonable modifications by contacting me. The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors, and Disability Services for Students. “Reasonable” means the University permits no fundamental alterations of academic standards or retroactive modifications.
### Course Rubric

<table>
<thead>
<tr>
<th>Excellent:</th>
<th>Good:</th>
<th>Satisfactory:</th>
<th>Poor:</th>
<th>No Credit:</th>
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</table>

**Discussion: 20 pts. (10 responses x 2 pts., throughout semester*)**

*Includes posted responses to relevant events during semester; contact me to nominate an event.

|--------------------------------------------------|-------------------------------------------------|-------------------------------|

**Arguments: 2 x 15 pts. (5 pts. research, 5 pts. analysis, 5 pts. communication)**

<table>
<thead>
<tr>
<th>5. Deep research. Applies law to novel issue; concise background; cites on-point cases beyond leading cases, and secondary sources where appropriate.</th>
<th>4. Good research. Applies law to relevant court case on issue; covers key background; cites leading cases, including cases outside the readings.</th>
<th>3. Basic research. Applies law to relevant case; covers basic background; cites appropriate leading cases from the readings.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Poor research. Applies law to obvious case without apparent research; cites few other cases; apparently no significant outside research.</td>
<td>2. Poor research. States law accurately; basically structured argument section; covers core argument but missing points.</td>
<td>0-1. No research. Reiterates existing case; no original case citations; no indication of research beyond the readings.</td>
</tr>
<tr>
<td>5. Compelling analysis. Synthesizes law persuasively; headings caption each step; engages strongest arguments and counter-arguments.</td>
<td>4. Good analysis. Applies law accurately; clearly structured with headings; fully-supported claims; addresses strongest arguments in support of position.</td>
<td>3. Basic analysis. States law accurately; basically structured argument section; covers core argument but missing points.</td>
</tr>
<tr>
<td>2. Poor analysis. Misstates law; lacks structure or basic headings; misses core argument or makes irrelevant argument.</td>
<td>2. Poor analysis. Tentative delivery; too fast or too long; relying on brief; basic responses.</td>
<td>0-1. No analysis. Conclusory or adopts underlying case analysis without demonstrating comprehension of applicable law.</td>
</tr>
<tr>
<td>&amp; Argument. Tentative delivery; too fast or too long; relying on brief; basic responses.</td>
<td>2. Poor writing. Poorly organized throughout; many errors. &amp; Argument. Halting delivery; mostly reading from brief; missed chances to respond.</td>
<td>2. Poor writing. Poorly organized throughout; many errors.</td>
</tr>
<tr>
<td>0-1. Writing fail. Incomplete; lacking organization; not proofread. &amp; Argument. Unprepared; nonresponsive or distracting responses.</td>
<td>0-1. Writing fail. Incomplete; lacking organization; not proofread. &amp; Argument. Unprepared; nonresponsive or distracting responses.</td>
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</table>

**Opinion/Wiki: 25 pts. (10 pts. research, 10 pts. analysis, 5 pts. writing); double for paper**

|------------------------------|---------------------------|-------------------------------|--------------------------|-----------------------------|

**Self-Assessment (100 words) (optional, if you want an assessment of the assignment)**

Email me a reflection on your performance for the relevant assignment. (Please include Mon19 in the subject, no spaces.) Consider whether your performance met expectations, what choices you could have made differently, why you made the choices you did (for yourself, for others involved, and for social/institutional reasons), and how your thinking process changed as a result of the performance.

**AWR Planning Guide (see handbook; suggested for projects):** (1) Topic selection, January; (2) Bibliographic Essay, February; (3) First Draft, March; (4) Classmate reviews draft, April; (5) Oral presentation at Lawlapalooza, April 24; (6) Final Draft, May 10.
The syllabus is subject to change depending on course and legal developments.

PART I: INTRODUCTION

1. **Introduction to State Constitutions (62)**
   1/15 Mont. Const. Art. I (Compact with the United States)
   **Casebook Ch. 1: Why State Constitutional Law?**
   **Casebook Ch. 2: The State Constitutional Tradition**

2. **History, Drafting, and Ratification of the Montana Constitution (39)**
   1/17 Mont. Const. Preamble
   **Casebook Ch. 3: The Framing of the 1972 Montana Constitution**
   Montana Enabling Act (1889)

3. **Constitutional Revision**
   1/22 Mont. Const. Art. II, § 1 (Popular sovereignty)
   Mont. Const. Art. II, § 2 (Self-government)
   Mont. Const. Art. XIV (Constitutional Revision)
   **Casebook Ch. 4: Constitutional Revision**

   Opening: ___________________________ Response: ___________________________

4. **The Independence of State Constitutional Law**
   1/24 Mont. Const. Art. II, § 10 (Right of privacy)
   Mont. Const. Art. II, § 11 (Searches & seizures)
   **Casebook Ch. 5: State Constitutional Distinctions**

   Opening: ___________________________ Response: ___________________________

PART II: POWERS

5. **Legislative Power: Limits on Legislation**
   Mont. Const. Art. V, § 11 (Bills)
   Mont. Const. Art. V, § 12 (Local and Special Legislation)
   Mont. Const. Art. VIII, § 1, 3 (Tax purposes)
   **Casebook Ch. 6: Legislative Powers, Duties, and Limits**

   Opening: ___________________________ Response: ___________________________
6. **Executive Power & Separation of Powers**
   
   1/31 Mont. Const. Art. III, § 1 (Separation of powers)
   Mont. Const. Art. VI, § 4 (Executive duties)
   Mont. Const. Art. X, § 9 (Boards of education)

   **Casebook Ch. 7: Executive Powers**
   *MEA-AFT v. McCulloch*, 2012 MT 211

   Opening: ______________________ Response: ______________________

7. **Judicial Power**
   
   2/5 Mont. Const. Art. VII, § 2 (Supreme court jurisdiction)
   Mont. Const. Art. VII, § 7 (Terms and pay)
   Mont. Const. Art. VII, § 9 (Qualifications)

   **Casebook Ch. 8: Judicial Power**

   Opening: ______________________ Response: ______________________

8. **Local Government & Preemption**
   
   2/7 Mont. Const. Art. XI, § 4 (General powers)
   Mont. Const. Art. XI, § 6 (Self-government powers)
   Mont. Code Ann. § 7-1-111 (Powers denied)

   **Casebook Ch. 9: Local Government**

   Opening: ______________________ Response: ______________________

9. **Education**
   
   2/12 Mont. Const. Art. X, § 1 (Educational goals and duties)

   **Casebook Ch. 10: Education**
   Equity: *Vincent v. Voight* (Wis. 2000); Adequacy: *Abbott v. Burke* (N.J. 2009);

   Opening: ______________________ Response: ______________________

10. **Elections and Voting**
    
    2/14 Mont. Const. Art. II, § 13 (Right of Suffrage)
    Mont. Const. Art. IV, § 3 (Elections)

    **Casebook Ch. 11: Elections**
    *Weinschenk v. State* (Mo. 2006); *League of Women Voters v. Rokita* (Ind. 2010);

    Opening: ______________________ Response: ______________________

**PART III: RIGHTS**
11. **Background of State Constitutional Rights**  
2/19 Mont. Const. Art. II, § 3 (Inalienable rights)  
Mont. Const. Art. XII, § 3 (Institutions and assistance)  
**Casebook Ch. 12: Inalienable Rights**  
*Butte Community Union v. Lewis*, 219 Mont. 426 (1986); *Wadsworth v. Department of Revenue*, 275 Mont. 287 (1996); *Wiser v. State*, 2006 MT 20

Opening: ___________________________ Response: ___________________________

12. **Due Process**  
2/21 Mont. Const. Art. II, § 17 (Due process of law)  
**Casebook: Due Process**  
*State v. Stanko*, 1998 MT 321 (7); *Matter of J.S.*, 2017 MT 214 (11);  
*In re Adoption of AWS*, 2014 MT 322 (5); *Patel v. Texas Dept. of Licensing* (Tex. 2015)

Opening: ___________________________ Response: ___________________________

13. **Dignity, Equal Protection, & Nondiscrimination: Introduction**  
Mont. Const. Art. II, § 15 (Rights of persons not adults)  
**Casebook Ch. 14: Equality**  
*Arneson v. State* (Mont. 1993)

Opening: ___________________________ Response: ___________________________

14. **Dignity, Equal Protection, & Nondiscrimination: Race**  
**Casebook Ch. 14: Equality**  
*Sheff v. O'Neill* (Conn. 1996); *Malabed v. North Slope Borough* (Alaska 2003);  
*State v. Shook*, 2002 MT 347 (6); *Dupuis v. Bd. of Trustees*, 2006 MT 3 (3);

Opening: ___________________________ Response: ___________________________

15. **Dignity, Equal Protection, & Nondiscrimination: Sexual Orientation**  
**Casebook Ch. 14: Equality**  
SCL: IV.E (Sexual Orientation): Note only (201)  
*Snetsinger v. Mont Univ*, 2004 MT 390 (35); *Donaldson v. State*, 2012 MT 288 (67)

Opening: ___________________________ Response: ___________________________

16. **Privacy: Introduction**  
3/7 Mont. Const. Art. II, § 10 (Right of privacy)  
**Casebook Ch. 15: Privacy**  

Opening: ___________________________ Response: ___________________________

17. **Privacy: Informational Privacy**  
3/12 Mont. Const. Art. II, § 10 (Right of privacy)  
**Casebook Ch. 15: Privacy**

Opening: ___________________________ Response: ___________________________
18. Privacy: Reproductive Autonomy
3/14 Mont. Const. Art. II, § 10 (Right of privacy)
Casebook Ch. 15: Privacy
In re T.W. (Fla. 1989); Planned Parenthood v. Sundquist (Tenn. 2000); Reprod. Health Sv. V. Nixon (Mo. 2006); Armstrong v. State, 1999 MT 261

Opening: ______________________ Response: ______________________

19. Privacy: Bodily Integrity (Dignity, revisited)
3/19 Mont. Const. Art. II, § 10 (Right of privacy)
Casebook Ch. 15: Privacy

Opening: ______________________ Response: ______________________

20. Right to Know and Right to Participate
3/21 Mont. Const. Art. II, §8 (Right of participation)
Mont. Const. Art. II, § 9 (Right to know)
Casebook Ch. 16: Rights to Know and Participate

Opening: ______________________ Response: ______________________

21. Freedom of Religion
Mont. Const. Art. X, § 6 (Aid prohibited to sectarian schools)
Casebook Ch. 17: Freedom of Religion

Opening: ______________________ Response: ______________________

22. Freedom of Expression
4/4 Mont. Const. Art. II, § 6 (Freedom of assembly)
Mont. Const. Art. II, § 7 (Freedom of expression)
Casebook Ch. 18: Freedom of Expression

Opening: ______________________ Response: ______________________

23. Economic Rights
4/9 Mont. Const. Art. II, § 29 (Eminent domain)
Casebook: Takings & Property Rights
*Buhmann v. State, 2008 MT 465 (Issues 3-5) (30)

Opening: ______________________ Response: ______________________
24. **Right to a Clean and Healthful Environment**

4/11 Mont. Const. Art. IX, § 1

**Casebook: Clean and Healthful Environment**

*MEIC v. DEQ*, 1999 MT 248 (13); *Robinson Tp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (41) (focus on the Section 27 environmental rights amendment claims)

Opening: ______________________ Response: ______________________

25. **Open Courts & Equal Justice**

Mont. Const. Art. II, § 16 (The administration of justice)
Mont. Const. Art. II, § 18 (State subject to suit)
Mont. Const. Art. II, § 28 (Criminal Justice Policy)

**Casebook: Rights and Remedies**

Roesler, *Defining a Right to a Remedy* (1999)
*Benson v. North Dakota* (N.D. 1979);
Mont. Const. Art. II, § 34 (Unenumerated rights)
SCL: XIV.D.4 (Implied Constitutional Remedies) (Notes) (932)


Opening: ______________________ Response: ______________________

26. **[Open Topic]**

4/18

Opening: ______________________ Response: ______________________