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 and ratification of a new constitution, 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 ratification, amendment, and interpretation of the constitution over time.

Objectives. Students should develop a practical understanding of: 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 emphasized:** problem solving, legal analysis, legal research, communication, and litigation.

Readings. Montana cases and materials will be supplemented by Holland et al.'s *State Constitutional Law: The Modern Experience* (West 2010) (denoted SCL: chapter and section). Also be prepared to engage your classmates' arguments for that week.

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%), *argument* (20%), *page* (10%), and *opinion* (50%). *Discussion* measures ongoing constructive engagement in class discussion, including engagement as judges in classmates' arguments. *Argument* measures the research, analysis, and presentation of two briefs posted on Moodle (500 wds.) and argued in class (3-5 mins.): an opening brief arguing a case related to a day’s topic (10%, posted 72 hours before class, limit two per day), and a response in opposition to a classmate’s brief from a different day (10%, posted 24 hours before class, one response per presentation); the case may be real (from Montana or other courts) or possible (e.g., from bills or other proposals). Select one day from the first half (classes 3-14) and one day from the second half (classes 15-26); selections are final (unless a classmate will swap). *Page* measures the legal research into the legislative history of a section of the constitution posted on the MonConWiki (details to be announced). *Opinion* measures the legal research, analysis, and writing of a 2500-word minimum (5000-word minimum for AWR) judicial opinion and dissent, due by email no later than 5pm May 22.

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.
PART I: INTRODUCTION

1. History, Drafting, and Ratification of the Montana Constitution
   1/27 Mont. Const. Preamble
   (39) SCL: I (Introduction)
      *Part 1, The Montana State Constitution, Larry M. Elison and Fritz Snyder
      *For This and Future Generations ... (57 min. video)
      In re Graybill, 159 Mont. 549 (1972); Burger v. Judge, 364 F. Supp. 504 (1973)

2. Introduction to State Constitutions
   1/29 Mont. Const. Art. I (Compact with the United States)
   (61) SCL: II (Framing and History of State Constitutions)

3. Constitutional Revision
   2/3 Mont. Const. Art. II, § 1 (Popular sovereignty)
   (53) Mont. Const. Art. II, § 2 (Self-government)
      Mont. Const. Art. XIV (Constitutional Revision)
      SCL: XVI.A-D (Amendment and Revision)

4. The Independence of State Constitutional Law
   2/5 Mont. Const. Art. II, § 10 (Right of privacy)
   (54) Mont. Const. Art. II, § 11 (Searches & seizures)
      SCL: IV (Theories of State Constitutional Distinctions)

PART II: POWERS

5. Executive Power
   2/10 Mont. Const. Art. III, § 1 (Separation of powers)
   (49) Mont. Const. Art. VI, § 4 (Executive duties)
      Mont. Const. Art. X, § 9 (Boards of education)
      SCL: XV.A-B.1, C.1, E (Organization of State Governments)
      Board of Regents v. Judge, 168 Mont. 433 (1975); MEA-AFT v. McCulloch, 2012 MT 211; Petition to Transfer Territory v. Lame Deer SD, 2000 MT 342

6. Legislative Power: Bill Titles
   2/12 Mont. Const. Art. III, § 4 (Initiative)
   (37) Mont. Const. Art. V, § 11 (Bills)
      SCL: XIV.A-B (Single Subject Rules)

7. Legislative Power: Special Legislation
   2/17 Mont. Const. Art. V, § 11 (Bills)
   (43) Mont. Const. Art. V, § 12 (Local and Special Legislation)

8. Legislative Power: Taxing & Spending
   (48) Mont. Const. Art. VIII, § 1 (Tax purposes)
      SCL: XIV.C [25] (Public Purpose Requirements)
9. Judicial Power
2/24 Mont. Const. Art. VII, § 2 (Supreme court jurisdiction)
(49) Mont. Const. Art. XI, § 7 (Terms and pay)
Mont. Const. Art. XI, § 9 (Qualifications)
SCL: XV.D.1 (Judicial Power)

10. Open Courts
2/26 Mont. Const. Art. II, § 16 (The administration of justice)
(74) SCL: XII (The Right to a Remedy and Open Courts)

11. Local Government
3/3 Mont. Const. Art. XI, § 4 (General powers)
(30) Mont. Const. Art. XI, § 6 (Self-government powers)
Mont. Code Ann. § 7-1-111 (Powers denied)
(Issue 2)

12. Education
3/5 Mont. Const. Art. X, § 1 (Educational goals and duties)
(37) SCL: XI.A, C, E (School Funding Litigation)

PART III: RIGHTS

13. Background of State Constitutional Rights
3/10 Mont. Const. Art. II, § 3 (Inalienable rights)
(37) Mont. Const. Art. XII, § 3 (Institutions and assistance)
SCL: VI.A (Due Process Introduction)

(57) Mont. Const. Art. II, § 15 (Rights of persons not adults)
SCL: V.A (Equality Introduction), V.D (Age), & V.F (Economic Rights)
*Stratemeyer v. Lincoln Co.*, 276 Mont. 67 (1993); *Caldwell v. MACO Workers Comp Trust*, 2011 MT 162

15. Dignity, Equal Protection, & Nondiscrimination: Race & Sex
(38) V.B-C (Racial & Gender Equality)
*Dupuis v. Bd. of Trustees*, 2006 MT 3; *In re Cram*, 186 Mont. 37 (1980)

(99) SCL: V.E (Sexual Orientation)
17. Privacy: Introduction
3/24 Mont. Const. Art. II, § 10 (Right of privacy)
(47) SCL: XIII.A (Privacy & VI.C (Intimate Association))

18. Right to Know and Right to Participate
3/26 Mont. Const. Art. II, § 8 (Right of participation)
(42) Mont. Const. Art. II, § 9 (Right to know)
   Yellowstone Co. SD, 2002 MT 264; Billings Gazette v. City of Billings, 2013
   MT 334

19. Privacy: Reproductive Autonomy
4/7 Mont. Const. Art. II, § 10 (Right of privacy)
(70) SCL: VI.B (Reproductive Autonomy)
   Armstrong v. State, 1999 MT 261

20. Privacy: Bodily Integrity (Dignity, revisited)
4/9 Mont. Const. Art. II, § 10 (Right of privacy)
(36) SCL: VI.E (Bodily Integrity)

21. Freedom of Religion
(63) Mont. Const. Art. X, § 6 (Aid prohibited to sectarian schools)
   SCL: X (Religion Clauses)
   Big Sky Colony v. Dept. Labor & Industry, 2012 MT 320

22. Freedom of Expression
4/16 Mont. Const. Art. II, § 6 (Freedom of assembly)
(41) Mont. Const. Art. II, § 7 (Freedom of expression)
   XIII.B (Free Speech & Expression)
   State v. Dugan, 2013 MT 38; (review Montana Auto. Ass’n v. Greely)

23. Due Process
4/21 Mont. Const. Art. II, § 17 (Due process of law)
(37) SCL: VLF (Procedural Due Process)

24. Economic Rights
4/23 Mont. Const. Art. II, § 29 (Eminent domain)
(60) SCL: IX.A-C (Property Rights)
   Buhmann v. State, 2008 MT 465 (Issues 3-5)

25. Right to a Clean and Healthful Environment
4/28 Mont. Const. Art. IX, § 1
(39) Kadillak v. Anaconda Co., 184 Mont. 127 (1979) (Issue 1); MEIC v. DEQ,
   1999 MT 248; Cape-France Enterprises v. Estate of Peed, 2001 MT 139;

26. Implied Constitutional Remedies & Attorneys Fees
4/30 Mont. Const. Art. II, § 34 (Unenumerated rights)
(49) SCL: XV.D.4 (Implied Constitutional Remedies)
   Dorwart v. Caraway, 2002 MT 240; Sunburst SD v. Texaco, 2007 MT 183
   (Issue 3); Western Tradition Partnership v. Atty Gen., 2012 MT 271