

## **LAW 524, LEGISLATION: LAW & POLITICS (FALL 2018)**

**Mon. & Wed., 2:50-4:20, Rm. 215; [Prof. Anthony Johnstone](#), Rm. 312 (x6711)**

This course concerns how law is written and read by lawyers, judges, legislators, and the public, from campaign to capitol to court. The course begins with an introduction to the system of representation, legislation, and interpretation. Then it takes each function in turn: first, the regulation of the electoral process including voting rights, campaign finance, and direct democracy; second, the structure of the legislative process including ethics, lobbying and deliberative rules; and third, the interpretation and implementation of resulting statutes. Students will synthesize the material in a paper or legislative project.

**Learning outcomes.** *Law:* Explain and apply the leading doctrines of election law, legislative procedure, and statutory interpretation with an emphasis on Montana law; distinguish legislative, executive, and judicial roles in law and policy-making. *Skills:* identify, research, and analyze issues under the doctrines above, persuasively argue those issues in writing and orally, draft basic legislation. *Values:* Demonstrate excellence in role as an advocate, an officer of the court, and a citizen; develop a practice of self-reflection in argumentation.

**Readings.** The primary text is Eskridge, Frickey, Garrett, & Brudney, *Legislation & Regulation*, 5th Ed. (West 2014) (“L”) & 2018 Supplement (West 2018) (“S”), plus materials available online (\*). Prepared to engage your classmates’ presentations for each week.

**Questions.** Stop by any time my door is open or email for an appointment. Please post questions on Moodle rather than emailing so your colleagues can benefit from them.

**Assessment.** Your grade has three components: *discussion* (20%), *presentation* (30%), *bill drafting* (10%), and *project* (40%). Consult the rubric for details.

*Discussion* measures constructive engagement in class discussion, including engagement as legislators or judges in classmates’ presentations (5 minimum for each half of course).

*Presentation* measures the research, analysis, and presentation of two briefs or bills posted on Moodle (500-1000 words, no attachments or footnotes) and presented in class as oral argument or testimony (5 minutes plus questions): an opening on an issue related to a day’s topic (15%, posted by 72 hours before class, one per day), and a response in opposition to or amending a classmate’s opening from a different day (15%, posted 24 hours before class, one response per opening). Selections are final. Self-assess after arguing each brief or bill.

*Bill drafting* measures the proposal of a policy and drafting of a classmate’s policy in a bill; your bill draft will be assessed for adherence to the bill drafting manual.

*Project* measures the legal research, analysis, and writing of a 2500-word (5000-word for AWR) paper, or a similarly substantial project such as a proposed bill with supporting testimony, draft judicial opinion and dissent, political practices complaint, or other memorandum, due by e-mail (with self-assessment) no later than 5pm Friday, December 22.

**Non-Law Students.** Welcome to you and your perspectives! We will discuss how to adapt some of the technical elements of the course content and assessment to your disciplinary skill set (e.g., research, citation, briefs and arguments, and logistics including term deadlines).

**Laptops.** To improve learning outcomes, laptop use is discouraged during class.

**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.

**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**

<b>Excellent:</b> Substantially exceeds standards.	<b>Good:</b> Fully satisfies course standards; normal.	<b>Satisfactory:</b> Substantially satisfies standards.	<b>Poor:</b> Partially satisfies course standards.	<b>No Credit:</b> Does not satisfy course standards.
<b>Discussion: 20 pts.</b> (10 responses x 2 pts., throughout semester*) <i>*Includes posted responses to relevant events during semester; contact me to nominate an event.</i>				
<b>2. Insightful engagement.</b> Well-prepared, engaged in materials, advances discussion.		<b>1. Basic engagement.</b> Makes basic effort to understand, respond to discussion.		<b>0. Disengaged.</b> Absent / disruptive.
<b>Presentations: 2 x 15 pts.</b> (5 pts. research, 5 pts. analysis, 5 pts. communication)				
<b>5. Deep research.</b> Applies law to novel issue; concise background; cites on-point cases beyond leading cases, and secondary sources where appropriate.	<b>4. Good research.</b> Applies law to relevant court case on issue; covers key background; cites leading cases, including cases outside the readings.	<b>3. Basic research.</b> Applies law to relevant case; covers basic background; cites appropriate leading cases from the readings.	<b>2. Poor research.</b> Applies law to obvious case without apparent research; cites few other cases; apparently no significant outside research.	<b>0-1. No research.</b> Reiterates existing case; no original case citations; no indication of research beyond the readings.
<b>5. Compelling analysis.</b> Synthesizes law persuasively; headings caption each step; engages strongest arguments and counter-arguments.	<b>4. Good analysis.</b> Applies law accurately; clearly structured with headings; fully-supported claims; addresses strongest arguments in support of position.	<b>3. Basic analysis.</b> States law accurately; basically structured argument section; covers core argument but missing points.	<b>2. Poor analysis.</b> Misstates law; lacks structure or basic headings; misses core argument or makes irrelevant argument.	<b>0-1. No analysis.</b> Conclusory or adopts underlying case analysis without demonstrating comprehension of applicable law.
<b>5. Lucid Writing. &amp; Argument.</b> Winning intro; clear structure; nearly flawless prose. Punchy delivery with roadmap; conversational; clear responses to ct, opp.	<b>4. Good writing. &amp; Argument.</b> Clear introduction, well-organized; minor errors, typos. Confident delivery; well-paced, little reading; draws questions.	<b>3. Basic writing. &amp; Argument.</b> Basic introduction and organization; some errors. Tentative delivery; too fast or too long; relying on brief; basic responses.	<b>2. Poor writing. &amp; Argument.</b> Poorly organized throughout; many errors. Halting delivery; mostly reading from brief; missed chances to respond.	<b>0-1. Writing fail. &amp; Argument.</b> Incomplete; lacking organization; not proofread. Unprepared; nonresponsive or distracting responses.
<b>Project: 40 pts.</b> (15 pts. research, 15 pts. analysis, 10 pts. writing)				
<b>14-15. Deep research.</b> (Above)	<b>12-13. Good research.</b> (Above)	<b>10-11. Basic research.</b> (Above)	<b>8-9. Poor research.</b> (Above)	<b>0-7. Lacks research.</b> (Above)
<b>14-15. Compelling analysis.</b> (Above)	<b>12-13. Good analysis.</b> (Above)	<b>10-11. Basic analysis.</b> (Above)	<b>8-9. Poor analysis.</b> (Above)	<b>0-7. Lacks analysis.</b> (Above)
<b>9-10. Lucid Writing.</b> (Above)	<b>8. Good writing.</b> (Above)	<b>7. Basic writing.</b> (Above)	<b>5-6. Poor writing.</b> (Above)	<b>0-4. Writing fail.</b> (Above)
<b>Self-Assessment (100 words)</b> (each brief, after response; discussion and exam optional)				
Email me a reflection on your performance for the relevant assignment. (Please include <a href="#">Leg18</a> in the subject.) Consider <i>whether</i> your performance met expectations, <i>what</i> choices you could have made differently, <i>why</i> you made the choices you did (for yourself, for others involved, and for social/institutional reasons), and <i>how</i> your thinking process changed as a result of the performance.				

**AWR Planning Guide (see handbook; suggested for projects):** (1) Topic selection, September; (2) Bibliographic Essay, October; (3) First Draft, November; (4) Classmate reviews draft, December; (5) Oral presentation, 12/4; (6) Final Draft, 12/22

**Syllabus**

*The syllabus is subject to change depending on course and legal developments.*

Note: readings seem shorter than they appear due to commentary (which you can skim); page counts for cases are “casebook equivalent,” not the full page count from the reporter.

<b>THEORETICAL BACKGROUND (OPTIONAL)</b>	
<p><b>Introduction to Legislation: Theories of Law &amp; Politics</b>  <b>Ch. 1, § 2: Descriptive and Normative Theories of Legislation</b>                      A. Pluralist (Political) Theories of Legislation (L 38-40)                      B. Public Choice (Economic) Theories of Legislation (L 40-52)                      C. Proceduralist (Institutional) Theories of Legislation (L 53-60)  <b>Q1:</b> Which descriptive theory (what Legislation <i>is</i>) is most accurate? Why?  <b>Q2:</b> Which normative theory (what Legislation <i>should be</i>) is most attractive? Why?  <b>Q3:</b> Do your answers here change your answers to Q1.1, above? Why?</p>	
<b>INTRODUCTION</b>	
<p><b>1.</b> Mon 8/27 (36)</p>	<p><b>Introduction to Legislation: The Practice of Law &amp; Politics</b>  <b>Ch. 1, § 1: The Civil Rights Act of 1964</b>                      A. How a Bill Becomes a Federal Law: A Classic Story (L 1-36)  <b>Q.1.1:</b> How can the legislative and political process inform statutory interpretation?                      Consider disparate impact, affirmative action, gender identity under Title VII, § 703(a)</p>
<p><b>2.</b> Wed 8/29 (23)</p>	<p><b>Introduction to Legislation: Theories of Law &amp; Politics</b>  <b>Ch. 1, § 1: Descriptive and Normative Theories of Legislation</b>                      B. How a Bill Becomes a Federal Law: A Contemporary Story (S 1-8, 128-43)                      1. <i>King v. Burwell</i> (2015)  <b>Q.2.1:</b> Should unorthodox lawmaking change what laws mean?</p>
<b>PART I: REPRESENTATION</b>	
<p><b>3.</b> Wed 9/5 (25)</p>	<p><b>Voting &amp; Equality</b>  <b>Ch. 2, § 1: Electoral Structures and Equality Values</b>                      A. One Person, One Vote: Formal Equality in Representation (L 117-26, S 9-12)                      1. [<i>United States Dept. of Commerce v. Montana</i> (1992), p 123]                      2. [<i>Evenwel v. Abbott</i> (2016)]  <b>Q.3.1:</b> What are the limits to electoral equality under “one person, one vote”?                      B. Race and Electoral Structures (L 126-32; S 13-15)                      1. <i>City of Mobile v. Bolden</i> (1980)                      2. *<i>United States v. Blaine County</i>, 363 F.3d 897 (9th Cir. 2004) [8 pp]  <b>Q.3.2:</b> Does the VRA cover voting barriers beyond denial &amp; dilution (e.g. voter I.D.)?  <b>Q.3.3:</b> Can the law disentangle partisan laws from their racial impacts?</p> <p><b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>

<p>4. Mon 9/10 (26)</p>	<p><b>4. Voting &amp; Partisanship</b>  <b>Ch. 2, § 1: Electoral Structures and Equality Values</b>                  C. Political Gerrymandering (L 156-58; S 21-25)                  1. *Mont. Const. Art. V, § 14 [1 p]                  2. [Gill v. Whitford (2018)]                  3. [Arizona State Legislature v. Arizona Indep. Redist. Comm’n (2015)]  <b>Q4.1:</b> Can courts police entrenchment by incumbents?  <b>Ch. 2, § 2: Eligibility to Serve in the Legislature [&amp; Political Parties]</b>                  B. Term Limits: Notes (L 183-84, 194-99)  <b>Q4.2:</b> Do term limits prevent entrenchment by incumbents?                  C. Ballot Access [&amp; the Two-Party System] (L 199-205)                  1. [Timmons v. Twin Cities Area New Party (1997)]                  2. [Munro v. Socialist Workers Party (1986)]                  3. *Ravalli Reprs. v. McCulloch, 154 F.Supp. 3d 1063 (D. Mont. 2015) [7 pp]  <b>Q4.3:</b> What (or Who) determines what is a political party?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p>5. Wed 9/12 (23)</p>	<p><b>5. Campaign Regulation: Candidates &amp; Contributions</b>  <b>Ch. 2, § 3: Structures of Campaign Finance</b>                  A. The Constitutional Foundation for Regulating Campaigns (L 207-17, 220-28, 234-35)                  1. Buckley v. Valeo (1976)                  2. [Bipartisan Campaign Reform Act of 2002]  <b>Q5.1:</b> What are permissible ends (interests) for limiting campaign contributions?  <b>Q5.2:</b> What are permissible means (levels) of limiting campaign contributions?                  C. State Reforms &amp; Public Financing (L 255-59)                  1. [Arizona Free Enterprise Club’s Freedom Fund v. Bennett (2011)]  <b>Q5.3:</b> What other means permissibly serve anti-corruption ends?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p>6. Mon 9/17 (32)</p>	<p><b>6. Campaign Regulation: Independent Expenditures &amp; Disclosure</b>  <b>Ch. 2, § 3: Structures of Campaign Finance</b>                  B. The Roberts Court’s Change of Course (L 235-55; S 25-29)                  1. Citizens United v. Federal Election Comm’n (2010)  <b>Q6.1:</b> How does “money, like water, always find an outlet” in campaigns?  <b>Q6.2:</b> What is Citizens United’s primary holding?                  2. *MCD v. Motl, 216 F.Supp.3d 1128, <u>Background &amp; Part II</u> (D. Mont. 2016) [8]  <b>Q6.3:</b> Which actors and actions permissibly trigger disclosure after Citizens United?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>

<p><b>7.</b> Wed 9/19 (26)</p>	<p><b>Direct Democracy</b>  <b>Ch. 4, § 1: An Overview of Direct Democracy</b>                  A. The Importance of Money in Direct Democracy (L 367-75, S 51)                      1. <i>Buckley v. American Constitutional Law Foundation</i> (1999)  <b>Q7.1:</b> Can initiatives solve problems of money in politics?                  B. Voter Competence, Voter Confusion, and Voting Cues (L 375-84)                      1. <i>Doe v. Reed</i> (2010)  <b>Q7.2:</b> How can laws make the initiative process more democratic?                  C. Interaction Between Direct &amp; Representative Democracy (L 384-87)  <b>Ch. 4, § 2: Statutory Interpretation of Initiatives</b> (L 388-89, S 55-58)                      1. [<i>Briggs v. Brown</i> (Cal. 2017)]  <b>Q7.3:</b> How can the initiative process make the legislative process more democratic?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
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PART II: LEGISLATION	
<p><b>8.</b> Mon 9/24 (29)</p>	<p><b>Ethics: Bribery, Gifts, &amp; Conflicts</b>  <b>Ch. 3, § 1: Regulating Deliberation to Combat “Corruption”</b>                  A. Bribery and Extortion (L 261-66; S 25-39)                      1. <i>McDonnell v. United States</i> (2016)  <b>Q8.1:</b> (How) Can criminal law draw a line between corruption and politics as usual?                  B. Conflicts of Interest: Gift Bans &amp; Other Ethics Laws (L 272-80)                      1. *Mont. COPP, “Montana’s Code of Ethics and the ‘gift ban’” (2011) [2]  <b>Q8.2:</b> What other preventative measures can protect against corruption?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p><b>9.</b> Wed 9/26 (28)</p>	<p><b>Lobbying</b>  <b>Ch. 3, § 1: Regulating Deliberation to Combat “Corruption”</b>                  C. Lobbying (L 280-91, 298-304, 306)                      1. *<i>State Bar v. Krivec</i>, 632 P.2d 707 (Mont. 1981) [5 pp]                      2. *<i>Peters v. Confederated Salish &amp; Kootenai Tribes</i> (Mont. COPP 2018) [5 pp]  <b>Q9.1:</b> (How) does lobbying regulation work?  <b>Q9.2:</b> How far should lobbying regulation expand beyond the legislative lobby?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p><b>10.</b> Mon 10/1 (29)</p>	<p><b>Legislative Deliberation &amp; Structural Due Process</b>  <b>Ch. 3, § 3: Rules Facilitating Legislative Deliberation</b>                  A. Substantive Limitations on the Legislative Process (L 306-20, S 46-47)                      1. *Mont. Const. Art. V, § 11                      2. <i>Department of Education v. Lewis</i> (Fla. 1982)  <b>Q10.1:</b> Should courts police the process rather than substance of legislation?  <b>Ch. 3, § 3: Structural Due Process of Lawmaking</b>                  A. Federal Structural Due Process (L 346-51)                  C. Requiring Lawmaking by the Most Inst’ly Competent Branch (L 356-65)                      1. <i>Hampton v. Mow Sun Wong</i> (1976)  <b>Q10.2:</b> How can courts police the process rather than substance of legislation?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>

<p><b>11.</b> Wed 10/3 (32)</p>	<p><b>Legislative Drafting Workshop I</b> <i>Imagine a simple policy and post a one-paragraph summary of it on Moodle; read:</i></p> <ol style="list-style-type: none"> <li>1. *Mont. Leg., <i>Bill Drafting Manual</i>, Ch. 4 (2018)</li> <li>2. *How a Bill Becomes a Law in Montana</li> </ol>
<p><b>12.</b> Mon 10/8</p>	<p><b>Legislative Drafting Workshop II</b> <i>Draft a bill to implement your assigned classmate's policy and post it on Moodle; come to class prepared to discuss your drafting choices.</i></p>

<b>PART III: INTERPRETATION</b>	
<p><b>13.</b> Wed 10/10 (26)</p>	<p><b>Midterm Review &amp; Outlook: Introduction to Legisprudence</b> <b><i>Ch. 5, § 1: Statutes as a Source of Public Policy and Legal Principle</i></b></p> <p>A. Common Law and Statutes, 1890-1940 (L 417-24)</p> <ol style="list-style-type: none"> <li>1. [<i>International News Service v. Associated Press</i> (1918)]</li> </ol> <p>B. The Legal Process Era, 1940-1973 (L 424-27)</p> <p>C. The New Legal Process: Positivism, Pragmatism, Principles (441-42, S 100-15)</p> <ol style="list-style-type: none"> <li>1. <i>Hively v. Ivy Tech Community College</i> (7th Cir. 2017)</li> <li>2. [<i>Zarda v. Altitude Express, Inc.</i> (2d Cir. 2018)]</li> </ol> <p><b>Q13:</b> What social and political factors may drive changes in statutory adjudication?</p>
<p><b>14.</b> Mon 10/15 (26)</p>	<p><b>Theories of Statutory Interpretation</b> <b><i>Ch. 6, § 1: From Eclecticism to Systematic Theory, 1789-1938</i></b> (L 477-97)</p> <ol style="list-style-type: none"> <li>1. Hart &amp; Sacks, <i>The Legal Process</i> (<i>Heydon's Case, River Wear, Vacher &amp; Sons</i>)</li> <li>2. Lieber, <i>Legal and Political Hermeneutics</i> (1880)</li> <li>3. <i>Rector, Holy Trinity Church v. U.S.</i> (1892)</li> <li>4. [<i>Caminetti v. United States</i> (1917)]</li> <li>5. [<i>Fishgold v. Sullivan Drydock &amp; Repair Corp.</i> (2d. Cir. 1946)] <i>Holy Trinity</i> now (545-51)</li> <li>6. <i>Public Citizen v. Dept. of Justice</i> (1989)</li> <li>7. Fuller, <i>Law in Quest of Itself</i> (1940)</li> <li>8. Dworkin, <i>Law as Interpretation</i> (1982) &amp; <i>Law's Empire</i> (1986)</li> </ol> <p><b>Q14:</b> Which interpretative methods are traditional? Which are defended now?</p> <p><b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p><b>15.</b> Wed 10/17 (25)</p>	<p><b><i>Ch. 6, § 2: Legal Process [Purposive] Theories</i></b></p> <p>A. The Legal Process Classics, 1940s-50s (L 497-506)</p> <ol style="list-style-type: none"> <li>1. Fuller, <i>The Case of the Speluncean Explorers</i> (4299!)</li> <li>2. Hart &amp; Sacks, <i>The Legal Process</i> (1957)</li> </ol> <p>B. Implications of / Debates within Legal Process Theory, 1950s-1980s (506-507)</p> <p>B.1 Correcting Legislative "Mistakes"? (L 512-14)</p> <ol style="list-style-type: none"> <li>1. <i>United States v. Locke</i> (1985)</li> </ol> <p>B.2 Changed Circumstances (L 514-25, 527-29)</p> <ol style="list-style-type: none"> <li>1. <i>In the Matter of Jacob</i> (N.Y. 1995)</li> </ol> <p><b>Q15:</b> What does it mean for a judge to be a "faithful agent" of the legislature?</p> <p><b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>

<p>16. Mon 10/22 (31)</p>	<p><b>Ch. 6, § 2-3: The Emergence of New Textualism</b>  D. Critiques of Legal Process Precepts, 1970s-80s (L 551-58, 565-67)  1. <i>TVA v. Hill</i> (1978)  A. The New Textualism (L 568-85, S 65-69)  1. <i>Green v. Bock Laundry</i> (1989)  2. Scalia, <i>A Matter of Interpretation</i> (1997)  3. [<i>Henson v. Santander</i> (2017)]  <b>Q16:</b> What problems does New Textualism solve? What problems does it create?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p>17. Wed 10/24 (20)</p>	<p><b>Ch. 6, § 3.B: Economic/Pragmatic Methods of Statutory Interpretation</b>  B.1 <i>Ex Ante</i> Approaches to Textualism v. Contextualism (L 593-607)  1. <i>United States v. Marshall</i> (7th Cir. 1990)  B.2 Economic Theories of Interpretation: Minimizing Rent-Seeking (L 607-13)  1. <i>Perez v. Wyeth Laboratories, Inc.</i> (N.J. 1999)  <b>Q17:</b> How are economic methods similar to new textualism? How do they differ?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p>18. Mon 10/29 (37)</p>	<p><b>Ch. 6: Institutional Methods of Statutory Interpretation &amp; Summary</b>  2.B.3 Coherence with Public Norms (L 530-45)  1. <i>Bob Jones University v. United States</i> (1983)  3.B.3 Economic Theories of Interpretation: Institutional Analysis (L 613-24)  1. <i>FDA v. Brown &amp; Williamson Tobacco</i> (2000)  3.C. Pragmatic Theories and Summary (L 625-33, 638-41)  1. Eskridge &amp; Frickey, <i>Statutory Interpretation as Practical Reasoning</i> (1990)  <b>Q18.1:</b> How should courts assume the other branches work? Do they work that way?  <b>Q18.2:</b> How should a judge (or law student) choose an interpretative method?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p>19. Wed 10/31 (26)</p>	<p><b>Tools of Statutory Interpretation: Textual Canons</b>  <b>Ch. 7, § 1: Ordinary Meaning Rules &amp; Textual Canons</b>  Intro: <i>Babbitt v. Sweet Home Chapter of Communities for a Great Oregon</i> (L 878-90)  A. Ordinary Meaning and Dictionaries (L 643-57)  1. <i>Taniguchi v. Kan Pacific Saipan, Ltd.</i> (2012)  2. <i>United States v. Costello</i> (7th Cir. 2012)  <b>Q19:</b> How should text and dictionary meaning inform statutory interpretation?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p>20. Mon 11/5 (37)</p>	<p><b>Ch. 7, § 1: Ordinary Meaning Rules &amp; Textual Canons</b>  B. Textual Canons (L 657-74)  1. <i>Ali v. Federal Bureau of Prisons</i>  C. The Whole Act Rule and its Corollaries (L 674-79)  1. <i>Yates v. United States</i> (2015) (S 84-99)  <b>Q20:</b> How should grammar and statutory context inform statutory interpretation?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>

<p>21. Wed 11/7 (34)</p>	<p><b>Tools of Statutory Interpretation: Substantive Canons</b>  <b>Ch. 7, § 2: Substantive Canons</b>  A. The Rule of Lenity in Criminal Cases (L 690-707, 709-11)  1. <i>Muscarello v. United States</i> (1998)  B. Substantive Canons: Constitutional Avoidance (L 712-19, 725-30)  1. <i>NLRB v. Catholic Bishop</i> (1979)  C. Substantive Canons: Other Values (L 746-49)  2. <i>Marion Energy, Inc. v. KFJ Ranch Partnership</i> (Utah 2011)  D. Debunking and Defending the Canons (<i>Skim</i> L 749-61, <i>Skim</i>:)  1. *Mont. Code Ann. § 1-2-101, <i>et seq.</i> (Statutory Construction)  2. *Mont. Code Ann. § 1-3-201, <i>et seq.</i> (Maxims of Jurisprudence)  <b>Q21.1:</b> Where (who) do the policies underlying substantive canons come from?  <b>Q21.2:</b> What do canons add to statutory interpretation?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p>22. Wed 11/14 (35)</p>	<p><b>Tools of Statutory Interpretation: Legislative History (of Enactment)</b>  <b>Ch. 7, § 3: Extrinsic Sources for Statutory Interpretation</b>  A. Introduction &amp; The Common Law as Extrinsic Evidence (761-76)  1. <i>Smith v. Wade</i> (1983)  B.1 Circumstances Surrounding Introduction and Consideration (776-86)  1. <i>Leo Sheep Co. v. United States</i> (1979)  2. [<i>Review King v. Burwell</i> (2015) (S 128-43)]  *. History and Substantive Canons, revisited: The Indian Canon (*)  1. *<i>Chickasaw Nation v. United States</i>, 534 U.S. 84 (2001) [8 pp]  <b>Q22:</b> What extra-statutory sources are “fair game” in statutory interpretation?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p>23. Mon 11/19 (32)</p>	<p><b>Ch. 7, § 3: Extrinsic Sources for Statutory Interpretation</b>  B.2 Committee Reports (the Legislative History Debate) (786-88, 792-803, 808-813)  1. <i>In re Sinclair</i> (7th Cir. 1989)  [2. <i>Review Perez v. Wyeth Laboratories, Inc.</i> (N.J. 1999)]  3. <i>Digital Realty Trust v. Somers</i> (2018) (S 144-49)  B.3 Statements by Sponsors or Drafters (L 813-15, 825-29)  1. [<i>Pepper v. Hart</i> (House of Lords 1992)]  <b>Q23:</b> What problems does legislative history solve? What problems does it create?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>



<p>24. Mon 11/26 (28)</p>	<p><b>Tools of Statutory Interpretation: Legislative Background (Non-Enactment)</b>  <b>Ch. 7, § 3.B.4-6: Legislative History, cont.</b>  B.4 Legislative Deliberation (L 829-40)  1. Review <i>FDA v. Brown &amp; Williamson</i>  2. <i>Montana Wilderness Ass'n v. U.S.F.S. I</i> (9th Cir. 1981)  B.5 Post-Enactment Legislative ‘History’ (L 840-53)  1. <i>Montana Wilderness Ass'n v. U.S.F.S. II</i> (9th Cir. 1981)  B.6 Legislative Inaction (L 853-57)  1. Review <i>Bob Jones University v. United States</i> (1983)  <b>Q24:</b> How is pre- and post-enactment history more useful than legislative history?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p>25. Wed. 11/28 (18)</p>	<p><b>Ch. 7, § 3.C: Interpretation in Light of Other Statutes</b>  C.1 Similar Statutes (The <i>In Pari Materia</i> Rule) (859-66)  1. <i>Lorillard v. Pons</i> (1978)  C.2 The Borrowed Statute Rule (866-68)  1. <i>Smith v. Bayer Corp.</i> (2011)  C.3 Statutory Clashes—The Rule Against Implied Repeals (868-77)  1. <i>Morton v. Mancari</i> (1974)  <b>Q25:</b> (How) Can a judge (or law student) make sense of inter-statutory complexity?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>
<p>26. Fri 11/30 (19)</p>	<p><b>Ch. 9, §§ 1-2, 4(C): Judicial Deference to Agency Interpretations</b>  C.1. Introduction (1073-74)  C.2. The Basic Framework (1079-87)  1. [<i>Skidmore v. Swift &amp; Co.</i> (1944)]  2. <i>Chevron, U.S.A., Inc. v. Natural Resources Defense Council</i> (1984)  C.3.A. <i>Chevron</i> Doctrinal Issues: Is the Agency Acting within its Authority? (S 192-95)  1. [<i>King v. Burwell</i> (2015)]  C.4 Quo Vadis [Where are you going?] the “<i>Chevron</i> Revolution”? (S 206-13)  1. <i>Gutierrez-Brizuela v. Lynch</i> (10th Cir. 2016) (Gorsuch, C.J., concurring)  <b>Q26.1:</b> (When or Why) Does <i>Chevron</i> deference make sense?  <b>Q26.2:</b> What interpretive method(s) should someone you disagree with use?   <b>Opening 1:</b> _____ <b>Response 1:</b> _____</p>