



Political Science 337 Y1Y 2017-18
The Canadian Constitution
UNIVERSITY OF TORONTO – St. George Campus

Lectures: 6-8 pm Tuesday, Rm 163 in University College

Instructor: Professor David Pond

E-Mail: david.pond@utoronto.ca; **Phone:** 647-515-1957

Office Hour: Woodsworth College, main floor lobby the hour before class; & after class as needed

Grading:

First-Term Essay (due November 28): 20%

First Test (December 5 in classroom): 25%

Second-Term Essay (due March 20): 30%

Note: penalty for late essays is a deduction of 2 marks per calendar day from your essay mark out of 100

Second Test (April 3 in classroom): 25%

Final Drop Date: February 20

The rules and policies set out in this course outline apply to all students taking this course.

Readings:

There is no textbook for you to purchase. Instead, all of the readings are available on the Blackboard site.

Blackboard:

This course employs a Blackboard website (also known as the Portal), where you will find the course outline, course readings, and supplementary material. To access the Pol 337Y website, go to <http://portal.utoronto.ca> and log in using your UTORid and password. If you need information on how to activate your UTORid and set your password for the first time, please go to www.utorid.utoronto.ca. Once you have logged in to the portal, look for the My Courses box, where you will find the link to the Pol 337Y website.

Contacting your professor:

I welcome e-mail queries and comments. All UofT students are required to have a valid UTOR e-mail address. It is your responsibility to maintain your UofT e-mail address in good working order. The University expects you to correspond with me through your official UofT e-mail address, and not through a commercial e-mail account. For clarification see the University's *Policy on Official Correspondence with Students*, available on the website: <http://www.governingcouncil.utoronto.ca/policies> (under "C").

Failure to receive important class announcements and messages from me because of a faulty e-mail account (for example, an account which screens out my e-mails as junk mail; bounced messages because of overloaded caches; a virus on your computer) are not legitimate excuses.

Forwarding utoronto.ca emails to Hotmail, Gmail, Yahoo or other types of non-academic e-mail accounts is common practice among students and professors. However, be advised: in some cases, messages from utoronto.ca addresses sent to Hotmail, Gmail, Yahoo or other non-academic accounts are filtered as junk mail, which means that e-mails from me may end up in your spam or junk mail folder. Therefore, if it is your practice to forward your UofT e-mails to a non-academic account, it is advisable to regularly check your spam and junk mail folders.

It is strongly advised that you load your two essays onto TurnItIn using your UofT e-mail account, and not a commercial e-mail account. (The essay assignments are discussed below and in separate hand-outs).

Feel free to phone me if needed. If you are going to leave a message on my cellphone, please identify yourself and the course you are taking.

Accessibility:

Students with diverse learning styles and needs are welcome in this course. In particular, if you have a disability/health consideration that may require accommodations, please feel free to approach me, and/or Accessibility Services which can be reached at 416-978-8060 or at: <https://www.studentlife.utoronto.ca/as>. The sooner you let us know your needs the quicker we can assist you in achieving your learning goals in this course. It is important to note that the rules and policies set out in this course outline apply to all students taking this course.

TurnItIn.com:

Normally, students will be required to submit their course essays to TurnItIn.com for a review of textual similarity and detection of possible plagiarism. In doing so, students will allow their essays to be included as source documents in the TurnItIn.com reference database, where they will be used solely for the purpose of detecting plagiarism. The terms that apply to the University's use of the TurnItIn.com service are described on the TurnItIn.com web site. A short guide on how to use TurnItIn.com is posted on the Blackboard site.

If a student does not wish to participate in TurnItIn, the student **MUST** advise me immediately, as you will be required to agree to alternate arrangements for vetting your work, as well as to an alternate method for submitting your essays for marking. Such arrangements could include some or all of the following: submission of your drafts, rough work and notes; submission of photocopies of the sources you used; submission of the URLs of all sources you used in your research.

Students who do not wish to participate in TurnItIn are *strongly advised* to carefully read the section below headed "Handing In Your Essays."

Plagiarism:

Plagiarism is a serious offence and will be dealt with accordingly.

It is important that you familiarize yourself with U of T's policies and procedures. Consult:

- "How Not to Plagiarize" at <http://www.writing.utoronto.ca/advice/using-sources/how-not-to-plagiarize>

- “Academic Honesty” at <http://life.utoronto.ca/get-smarter/academic-honesty.htm>
- “Rights + Responsibilities” at <http://life.utoronto.ca/get-help/rights-responsibilities.htm>
- “Code of Behaviour on Academic Matters” at <http://www.utoronto.ca/academicintegrity>

Your essays will be marked on the assumption you have read this section of the outline. Plagiarism is cheating. It is considered a serious offence against intellectual honesty and intellectual property. Penalties for an undergraduate can be severe. At a minimum, a student is likely to receive a “0” mark for the assignment or test in question. But a further penalty is often assessed, such as a further reduction from the course mark or placing a permanent notation of the incident on an academic record.

It is essential that you understand what plagiarism is and that you do not commit it. Under the University of Toronto policy, ignorance of the nature and consequences of plagiarism is not a valid defence.

In essence, plagiarism is the theft of the thoughts or words of others, without giving proper credit. You must put others’ words in quotation marks and cite your source(s). You must give citations when using others’ ideas, even if those ideas are paraphrased in your own words. Plagiarism is unacceptable in a university.

The University of Toronto provides a process that faculty members must initiate when they suspect a case of plagiarism. A faculty member may not mark an assignment or assess a penalty if he or she finds evidence of plagiarism – the matter must be reported. The Department Chair, or Dean, will assess the penalty.

The following are some examples of plagiarism:

- Submitting as your own an assignment written by someone else.
- Quoting an author without indicating the source of the words.
- Using words, sentences, or paragraphs written by someone else and failing to place quotation marks around the material and reference the source and author. Using either quotation marks or reference alone is not sufficient. Both must be used!
- Adapting an author’s ideas or theme and using it as your own without referencing the original source. All sources used must be properly cited.
- Using false citations or references.
- Seeking assistance from a friend or family member in respect to work you claim as your own.

It is also unacceptable to hand in the same essay in two different courses in the same academic term. You cannot submit an essay in this course for which you have already obtained credit in a previous course, without my express permission ahead of time.

If you are not sure whether you have committed plagiarism, it is better to consult me rather than risk discovery and be forced to accept an academic penalty. You can also consult the Academic Success Centre (<http://www.asc.utoronto.ca/index.htm>), and one of the Writing Centres on campus (<http://www.writing.utoronto.ca/writing-centres>).

As the passage above indicates, there are many forms of plagiarism. In my experience, the most common form of plagiarism is the failure to use quotation marks. So to repeat: all wording in your essays which is copied from another source must be in quotation marks.

Extensions on the Essay Deadlines:

The fall essay may be submitted after the deadline, with the late penalty outlined in the grading scheme on page one applying.

The last day of classes in all Y courses on the St. George campus next spring is Wednesday April 4. This course ends on April 3. There is no final exam in this course. Therefore, all late spring essays **MUST** be submitted by the last day of term, Wednesday April 4.

I emphasize: no essays will be accepted after April 4. The second essay in this course is due March 20: from March 20 to April 4 is 15 days. This is ample time to submit a late essay!

In order to submit a late essay without a penalty, an extension from me must be obtained. Extensions will be granted for the essays only in cases of *documented* medical problems or of *documented* family emergencies.

If you need an extension you must ask me for it as soon as possible. I am very unlikely to grant a request long after the due date for an essay.

Feel free to approach me in class or during office hours to request an extension. However, all requests must be formally submitted in writing (by e-mail). An extension is formally granted by me in writing, with the time-period indicated. Extensions are for fixed time periods. There is no such thing as an open-ended extension.

For a medical excuse I need the original medical note (not a photocopy) on U of T's Verification of Student Illness or Injury form. This form is available at: <http://www.illnessverification.utoronto.ca>. It is also available on the Blackboard site.

Remember, I am not under any obligation to grant an extension. I am not under any obligation to accept automatically any medical note you submit as valid. The medical note should establish that the physician examined and diagnosed you at the time of your illness, not after the fact. If you submit a falsified or altered medical note you are liable to penalty.

You cannot get a medical excuse after an essay is due and you have already missed the due date. The purpose of the extension policy is to assist students facing an imminent deadline. Once the essay deadline has passed, the rationale for an extension expires.

There is only one exception to this rule: if your medical note is dated *before* the due date of the essay. Only under this condition, will I entertain an application for an extension after the due date for an essay has passed.

If your extension runs out and you still have not submitted your essay, your extension has expired. Your late penalty will resume on the day after your extension expired, and will continue until the date you do submit your essay.

This extension policy applies to all students taking this course.

Handing in Your Essays:

In this course, your essay is formally submitted by mounting it on TurnItIn. The essays are due by 11.59 PM on the due date indicated in the grading scheme on page one. The TurnItIn program automatically records the time you submit. If you decline to use TurnItIn (*and* warned me well in advance), you submit your essay directly to me via e-mail by this deadline.

If you created your essay in separate files on your computer, make sure you merge them into a single file before uploading your essay to TurnItIn.com. Please upload your essay in ‘doc’ format, not ‘txt.’ Do not use PDF to mount your essay on TurnItIn. Instead, use Word.

Do not mount more than one version of an essay on TurnItIn. If you have problems mounting an essay, do not keep trying! Instead, contact me immediately. Do not wait to contact me for days or weeks later. Students who wait to contact me about a failed submission risk incurring a late penalty.

Some common sense is in order here. If you do not receive your essay mark back when everybody else does, the time to inquire as to what happened to your essay is right then, not weeks later. When you mount your essay on TurnItIn, you should receive a receipt via e-mail. If you do not, the time to look into this omission is right NOW, not at the end of the course.

You are strongly advised to keep your essay drafts and notes until essay marks are returned. You should always retain your own copy of your submitted essay. Students are also strongly advised to back up the electronic version of their essay, to disks, an online storage system, or to an external hard drive. You should keep any storage devices separate from your laptop.

Please be advised that computer malfunctions, computer theft or failure to connect to the Internet are not legitimate excuses for handing in an essay late. Never leave your laptop or other electronic device unguarded anywhere on campus.

Missing a Test:

Students who miss one of the in-term tests because of *documented* medical problems or family emergencies *may* be entitled to write a makeup test. The standard of documentation required is the same as for essay extensions (see above).

Writing a makeup test is a privilege, not a right. There is no point showing up for a makeup test without the U of T medical certificate properly filled out. (You may of course, submit your medical certificate before the makeup test date). Without submission of the medical certificate (or other appropriate document), you will not be admitted to the makeup test.

Students should notify me as soon as possible that they will be missing the test. After the date of the missed test, you have *one week* to ask if it is possible to write a makeup test.

The Faculty of Arts & Sciences’ policy regarding makeup tests is set out in the “Rules and Regulations” section of the *2017-18 Calendar*, at p. 1072. A copy of the *Calendar* is available on the Blackboard site.

A Note on Marking:

Feel free to contact me at any time to discuss the requirements of this course. I will conduct reviews before each of the tests. These reviews will be posted on Blackboard. Once all test marks have been returned, an answer-key to the test will be posted on Blackboard.

If you are unhappy with the mark you received on an essay, feel free to approach me. You should do this as soon as possible after receiving your essay mark. However, you must have a substantive reason for appealing your essay mark.

Complaining to me about an essay mark simply because you do not like it and want a higher mark is a waste of your time.

You are entitled to the mark your work merits. You are not entitled to the mark you think you personally deserve, or you need in order to achieve your personal goals such as getting into a professional program or graduate school, staying in university, raising your mark in the course to the next letter grade level, maintaining your GPA at a certain level, retaining a scholarship or other funding source, etc. Do not lobby me to raise any of your marks simply because you want a higher mark. This is a waste of your time.

There is no provision for any student to do extra work or assignments to make up for low grades on any of the tests and essays. All students are evaluated under the same marking criteria on page one.

This policy applies to all students taking this course.

The Lecture Schedule:

The topics covered in the weekly lectures are listed below along with the required readings. The supplementary readings are accessible through the Blackboard site. All lecture notes will be posted on the Blackboard site after a topic has been covered. It is possible that a small number of additional required readings (for example, a recent newspaper article) will be added to the Blackboard site as the course progresses.

Of course, attendance at lectures is not mandatory. However, please remember that it is in the lectures that I prepare students for the tests, respond to student questions and concerns, and make important announcements. Students who regularly miss lectures do so at their own risk.

WEEKLY LECTURE SCHEDULE

FIRST TERM:

Class One, September 12: Introduction to the Course & What is a Constitution?

Reading:

- Mark Dickerson, et al., "Constitutionalism" (chapter 7), in *An Introduction to Government & Politics* (9th ed., 2014)

Class Two, September 19: Confederation *started* & Review of Fall Essay

Readings (for Classes #2 & #3):

- Rainer Knopff & Anthony Sayers, "Canada," in John Kincaid & Alan Tarr, eds., *Constitutional Origins, Structure, and Change in Federal Countries* (2005), pp. 104-142
- Garth Stevenson, "Origins and Objectives of Canadian Confederation" (chapter 2), in *Unfulfilled Union* (5th ed., 2009)
- Gregory Inwood, "The Political Economy of Post-Confederation Canada" (chapter 3), in *Understanding Canadian Federalism* (2013)

Class Three, September 26: Confederation *continued*

Class Four, October 3: The *BNA Act*

Readings:

- Adam Dodek, "A Short History of the Canadian Constitution," in *The Canadian Constitution* (2nd ed., 2016), pp. 20-34
- Dara Lithwick, "A pas de deux: The Division of Federal and Provincial Legislative Powers in Sections 91 and 92 of the *Constitution Act, 1867*" (Parliamentary Library, 8 Dec. 2015)

Class Five, October 10: Responsible Government

Reading:

- Peter Aucoin et al., *Responsible Government* (2004), Part 1 (pp. 17-24)

Class Six, October 17: Responsible Government *continued*

Readings:

- Paul Romney, "Oliver Mowat," *Dictionary of Canadian Biography*
- Christopher Armstrong, "The Mowat Heritage in Federal-Provincial Relations," in Donald Swainson, ed., *Oliver Mowat's Ontario* (1972), pp. 93-118
- Ronald Cheffins, "The Royal Prerogative and the Office of Lieutenant Governor," *Canadian Parliamentary Review* (Spring 2000), pp. 14-19
- Justice Malcolm Rowe & Michael Collins, "What is the Constitution of a Province?," in Christopher Dunn, ed., *Provinces* (3rd ed., 2016), pp. 297-314

Class Seven, October 24: Federalism in the Courts *started*

Readings:

- Garth Stevenson, "Judicial Interpretation of the Constitution" (chapter 3), in *Unfulfilled Union* (5th ed., 2009)
- Gregory Inwood, *Understanding Canadian Federalism* (2013), pp. 105-113
- Adam Dodek, "The Supreme Court of Canada," in *The Canadian Constitution* (2nd ed., 2016), pp. 137-143

Class Eight, October 31: Federalism in the Courts *continued*

Readings:

- John Saywell, *The Lawmakers* (2002), chapters 10 & 11
- Peter Hogg & Wade Wright, "Canadian Federalism, the Privy Council, and the Supreme Court: Reflections on the Debate about Canadian Federalism" (2005), 38 *U.B.C. Law Review*, pp. 329-352

Fall Reading Week November 6-10

Class Nine, November 14: The Road to Patriation

Readings (for Classes #9 & #10):

- Filippo Sabetti, "The Historical Context of Constitutional Change in Canada," *Law and Contemporary Problems* (1982), pp. 11-32
- Eric Adams, "Constitutional Nationalism: Politics, Law and Culture on the Road to Patriation," in Lois Harder & Steve Patten, eds., *Patriation and Its Consequences* (2015), pp. 49-71
- Garth Stevenson, "Federalism and Constitutional Change" (chapter 10), in *Unfulfilled Union* (5th ed., 2009)
- Gregory Inwood, "Quebec" (chapter 8), in Inwood, *Understanding Canadian Federalism* (2013)
- François Rocher & Miriam Smith, "Four Dimensions of the Canadian Constitutional Debate," in Rocher & Smith, eds., *New Trends in Canadian Federalism* (1995), pp. 45-66

Class Ten, November 21: The Road to Patriation *continued*

First Essay due November 28 (20%)

Class Eleven, November 28: Test Review & Patriation *concluded*

Reading:

- Peter Russell, “The Supreme Court Decision: Bold Statecraft Based on Questionable Jurisprudence,” in *The Court and the Constitution* (1982), pp. 1-32

Class Twelve, December 5: First Test in Class (25%)

SECOND TERM:

Class Thirteen, January 9: The Charter of Rights and Freedoms

Reading:

- Barry Strayer, “The Evolution of the Charter,” in Lois Harder & Steve Patten, eds., *Patriation and its Consequences* (2015), pp. 72-92

Class Fourteen, January 16: The Charter *continued*

Reading:

- Peter McCormick, “The Dickson Court” (chapter 3), in *The End of the Charter Revolution* (2015)

Class Fifteen, January 23: The Charter *continued*

Reading:

- Peter McCormick, “The Lamer Court” (chapter 4), in *The End of the Charter Revolution* (2015)

Class Sixteen, January 30: The Charter *continued*

Reading:

- Peter McCormick, “The McLachlin Court” (chapter 5), in *The End of the Charter Revolution* (2015)

Class Seventeen, February 6: The Charter *concluded*

Readings:

- Raymond Bazowski, “The Judiciary and the Charter,” in J. Bickerton & A.G. Gagnon, eds., *Canadian Politics* (6th ed., 2014), pp. 199-226
- Robert Martin & Philip Bryden, “Is the Charter of Rights Antidemocratic? Yes or No,” in Mark Charlton & Paul Barker, eds., *Crosscurrents* (8th ed., 2015), pp. 59-72
- Kent Roach, “Judicial Activism in the Supreme Court of Canada,” in Brice Dickson, ed., *Judicial Activism in Common Law Supreme Courts* (2007), pp. 69-119

Class Eighteen, February 13: Indigenous People and the Constitution

Readings (for Classes #18 & #19):

- Gregory Inwood, “Aboriginal Governance and Federalism” (chapter 9), in *Understanding Canadian Federalism* (2013)
- Roger Townshend & Tom Flanagan, “Can Native Sovereignty Co-Exist with Canadian Sovereignty? Yes or No,” Mark Charlton & Paul Barker, eds., *Crosscurrents* (8th ed., 2015)
- Martin Papillon, “The Rise (and Fall?) of Aboriginal Self-Government,” in James Bickerton & Alain-G. Gagnon, eds., *Canadian Politics* (6th ed., 2014)

Class Nineteen, February 27: Indigenous People and the Constitution *continued*

Winter Reading Week February 19 –23

Class Twenty, March 6: Agenda for Reform (1): Constraining Executive Power

Reading:

- Peter Russell, “A Project to Reduce Canadians’ Constitutional Illiteracy,” *Constitutional Forum* (2016), vol. 25, pp. 91-99

Class Twenty-One, March 13: Agenda for Reform (2): Constraining Judicial Power**Readings:**

- Standing Committee on Justice and Human Rights, *The New Process for Judicial Appointments to the Supreme Court of Canada* (February 2017)
- John Whyte, “Political Accountability in Appointments to the Supreme Court of Canada,” *Constitutional Forum* (2016), vol. 25(3), pp. 109-118

Second Essay due March 20 (30%)

Class Twenty-Two, March 20: Agenda for Reform (3): Senate Reform**Reading:**

- Adam Dodek, “The Politics of the Senate Reform Reference: Fidelity, Frustration, and Federal Unilateralism,” *McGill Law Journal* (2015), vol. 60(4), pp. 623-672

Class Twenty-Three, March 27: Test Review & Agenda for Reform (4): Why is Canada still a monarchy?**Readings:**

- Philippe Lagassé, “Prince Charles will stand in for the Queen in Ottawa this Canada Day, even though she already has an official representative – the Governor General,” *Policy Options*, May 9, 2017
- David Smith, “Canada’s Republican Silence,” in David Headon & Linda Cardinal, eds., *Shaping Nations: Constitutionalism and Society in Australia and Canada* (2002), pp. 276-286
- Rob Nicholson, “Changing the Line of Succession to the Crown,” *Canadian Parliamentary Review* (Summer 2013), pp. 8-9

Class Twenty-Four, April 3: Second Test in Class (25%)

A WARNING ABOUT PLAGIARISM

Plagiarism is an academic offence with a severe penalty.

It is essential that you understand what plagiarism is and that you do not commit it. In essence, it is the theft of the thoughts or words of others, without giving proper credit. You must put others' words in quotation marks and cite your source(s). You must give citations when using others' ideas, even if those ideas are paraphrased in your own words. Plagiarism is unacceptable in a university. What the university calls "plagiarism", non-university institutions might call "fraud". The University of Toronto provides a process that faculty members must initiate when they suspect a case of plagiarism. In the Department of Political Science, suspected evidence of plagiarism must be reported to the Chair; in most cases, the Chair passes the case on to the Dean.

A faculty member may not mark an assignment or assess a penalty if he or she finds evidence of plagiarism – the matter must be reported. Penalties are assigned by the Chair, by the Dean or by the University of Toronto Tribunal.

The following are some examples of plagiarism:

1. Submitting as your own an assignment written by someone else.
2. Quoting an author without indicating the source of the words.
3. Using words, sentences, or paragraphs written by someone else and failing to place quotation marks around the material and reference the source and author. **Using either quotation marks or reference alone is not sufficient. Both must be used!**
4. Adapting an author's ideas or theme and using it as your own without referencing the original source.
5. Seeking assistance from a friend or family member in respect to work you claim as your own.

Ignorance of the rules against plagiarism is not a defence; students are presumed to know what plagiarism is and how to avoid it. Students are especially reminded that material taken from the web **must** be quoted and cited in the same manner as if it came from a book or printed article.

If you are not sure whether you have committed plagiarism, it is better to ask a faculty member or teaching assistant than risk discovery and be forced to accept an academic penalty.

Plagiarism is **cheating**. It is considered a **serious offence** against intellectual honesty and intellectual property. Penalties can be **severe**, ranging from a mark of "0" for the assignment or test in question, **up to and including expulsion from the university**.

Some websites on avoiding plagiarism:

--'How to Use Sources and Avoid Plagiarism' - available at:

<http://www.writing.utoronto.ca/advice/using-sources/how-not-to-plagiarize>

--Other Advisory Material available at: <http://www.writing.utoronto.ca/home>