



**Political Science 337 Y1Y 2019-20
The Canadian Constitution**

Lectures: 6-8 pm Monday, Rm 161 in University College

Instructor: Professor David Pond

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

Grading:

First-Term Essay (due November 25): 20%

First Test (December 5 in classroom): 25%

Second-Term Essay (due March 16): 30%

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

Second Test (March 30 in classroom): 25%

Final Drop Date: February 17

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 Quercus site.

Quercus:

This course employs a Quercus website where you will find the course outline, essay assignments, lecture slides, and supplementary material. To access the Pol 337 website, go to <http://portal.utoronto.ca> and log in using your UTORid and password.

Contacting me:

I welcome e-mail queries and comments. It is your responsibility to maintain your UofT-issued e-mail address in good working order. Forwarding your utoronto.ca email to a Hotmail, Gmail, Yahoo, Outlook or any other type of commercial e-mail account is not advisable. In some cases, messages from utoronto.ca addresses sent to Hotmail, Gmail, Yahoo, Outlook or similar 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 commercial account, it is advisable to regularly check your spam and junk mail folders.

Remember: official communications and announcements from the University will always be sent to students' official UofT-issued e-mail addresses.

Failure to receive important class announcements and messages from me because of a faulty non-UofT 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.

It is strongly advised that you load your 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 or text me, 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 Quercus 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:

- "Student Academic Integrity" at <https://www.artsci.utoronto.ca/academic-advising-and-support/student-academic-integrity-osai>
- "Academic Integrity at the University of Toronto" & "Code of Behaviour on Academic Matters" at <https://www.academicintegrity.utoronto.ca/>
- "Academic Misconduct" at <https://www.artsci.utoronto.ca/student-academic-integrity-osai/academic-misconduct>

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. 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.

The University of Toronto provides a process that faculty members must initiate when they suspect a case of plagiarism. See “Process and Procedures” at the University’s Academic Integrity website (<https://www.academicintegrity.utoronto.ca/process-and-procedures/>). 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 Chair of the Department, 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.
- Purchasing an essay and submitting it as your own work.

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.

Consult:

- “How Not to Plagiarize” at <http://www.writing.utoronto.ca/advice/using-sources/how-not-to-plagiarize>
- “How can I cite properly?” at <https://sidneysmithcommons.artsci.utoronto.ca/how-can-i-cite-properly>

You can also consult one of the Writing Centres on campus (<http://www.writing.utoronto.ca/writing-centres>).

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

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 essays may be submitted after the deadlines, with the late penalty outlined in the grading scheme on page one applying.

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 medical documentation approved by the University. This documentation includes any of the following: 1) an original medical note (not a photocopy) on U of T's Verification of Student Illness or Injury form; 2) a Student Health or Disability Related Certificate; 3) a College Registrar's letter; and/or 4) an Accessibility Services Letter.

For more information see <http://www.illnessverification.utoronto.ca>. Consult "Frequently Asked Questions" (<http://www.illnessverification.utoronto.ca/Frequently-Asked-Questions.php>).

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. The medical note must clearly specify you were ill on the day the essay was due. If you submit a falsified or altered medical note you are liable to penalty.

You cannot get a medical excuse for an affliction that starts *after* the essay was due. 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* or *on* the due date of the essay. Only under this condition, will I entertain an application for an extension after the due date for the 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 policy applies to all students taking this course.

Handing in Your Essays:

In this course, essays are submitted through TurnItIn. You should use your UofT e-mail address to mount your essay on TurnItIn. When you upload your essay to TurnItIn.com, the program automatically records the time and date you do this.

- The first essay is due November 25. You have until 11.59 PM on this day to mount your essay on TurnItIn without incurring a late penalty.
- The second essay is due March 16. You have until 11.59 PM on this day to mount your essay on TurnItIn without incurring a late penalty.

You do not submit a paper copy. Papers will not be accepted by fax, e-mail or other electronic means, unless specifically permitted by me beforehand. Do not submit your essays to the TA, in either paper form or via e-mail. The TA is not authorized to formally accept essays.

TurnItIn Password Information:

Website: <http://turnitin.com>

Class ID: 22188975

Enrolment Key: jazz99fusion

Note: you cannot “cut & paste” this data into the TurnItIn website. It must be inputted directly.

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.

In this course, students are not permitted to mount multiple versions of an essay on TurnItIn in order to see their TurnItIn Originality Report. So do not mount more than one version of your essay on TurnItIn, using different e-mail addresses. If you encounter problems mounting your essay, do not keep trying! Instead, contact me immediately.

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 digital 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.

The essay submission process is summarized as follows:

Submitting your Essays

- Review the *TurnItIn Guide* mounted on the course Quercus site under the “Essays” heading. This can be found in the “Pages” section.
- Create your essay as a single Word document, not PDF or ‘txt.’ Follow the formatting instructions contained in the essay assignment hand-out on Quercus under the “Pages” heading.
- Go to <http://turnitin.com>, and directly input the enrolment key & Class ID.
- Use your UofT e-mail address to mount your essay on TurnItIn, NOT a commercial e-mail account.
- After you have mounted your essay, make sure you received a digital receipt at your UofT e-mail address. This receipt is your proof that you successfully mounted an essay. You will need this receipt if there is a subsequent dispute about whether I received your essay.
- I will announce in class when the essay marks will be mounted on Quercus. When the

marks are mounted, check to make sure you got a mark. Do NOT wait until weeks later or the end of term to inquire about your essay mark.

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 essays, 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 a 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 *2019-20 Academic Calendar*, on p. 34. The *Calendar* is available at: <https://fas.calendar.utoronto.ca/pdf-version-current-calendar>.

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 Quercus. Once all test marks have been returned, an answer-key to the test will be posted on Quercus.

Your essays will be marked either by me or the TA. If you are unhappy with the mark you received on an essay marked by me, 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.

If you are unhappy with the mark you received on an essay from the TA, your first step is to discuss it with the TA marker. You should do this as soon as possible after receiving your essay mark. It is advisable to submit to the TA marker a written response to the comments on your essay. If you are unhappy with the TA marker's reply, then you may appeal to me. However, you must have a substantive reason for appealing an essay mark. You should submit to me a written response to the TA marker's comments. Keep in mind that an appeal to me is not a request for a re-grade of your essay. Instead, you are expected to persuade me why I should adjust the mark you received from the TA marker.

Complaining to me or the TA 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 or in a particular program, raising your mark in the course to the next letter grade level, maintaining your GPA at a certain level, getting off suspension, retaining a scholarship or other funding source, etc. Therefore, please do not lobby me to raise your mark simply because you want a higher mark. Complaining to me about any of your marks in this course (including your final mark) simply because you do not like them and want a higher mark is a waste of your time. This policy applies to all students.

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 Quercus site. All lecture notes will be posted on the Quercus 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 Quercus site as the course progresses.

Students are not formally penalized for missing lectures. 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 9: Introduction to the Course & What is a Constitution? *started* **Reading (for Classes #1 & #2):**

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

Class Two, September 16: Review of Fall Essay & What is a Constitution? *concluded*

Class Three, September 23: Confederation & the BNA Act *started*

Readings (for Classes #3 to #5):

- 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)
- Robert Vipond, “1867: Confederation,” in *The Oxford Handbook of the Canadian Constitution* (2017)

Class Four, September 30: Confederation & the BNA Act *continued*

Class Five, October 7: the BNA Act & Responsible Government started

Readings (for Classes #5 to #8):

- Peter Aucoin et al., *Responsible Government* (2004), Part 1 (pp. 17-24)
- Marcella Firmini & Jennifer Smith, “The Crown in Canada,” in *The Oxford Handbook of the Canadian Constitution* (2017)

Class Six, October 21: Responsible Government continued

Class Seven, October 28: Responsible Government continued

Fall Reading Week November 4-8

Class Eight, November 11: Responsible Government concluded; the BNA Act & Federalism Reading:

- Dara Lithwick, *A pas de deux: The Division of Federal and Provincial Legislative Powers in Sections 91 and 92 of the Constitution Act, 1867* (Library of Parliament, 8 Dec. 2015)

Class Nine, November 18: the JCPC & Classical Federalism started

Readings (for Classes #9 to #11):

- Garth Stevenson, “Judicial Interpretation of the Constitution” (chapter 3), in *Unfulfilled Union* (5th ed., 2009)
- Gregory Inwood, *Understanding Canadian Federalism* (2013), pp. 105-113
- 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

First Essay due November 25 (20%)

Class Ten, November 25: the JCPC & Classical Federalism continued

Class Eleven, December 2: the JCPC & Classical Federalism concluded

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

SECOND TERM:

Class Thirteen, January 6: Review of Winter Essay & The Road to Patriation

Readings (for Classes #13 to #15):

- Filippo Sabetti, “The Historical Context of Constitutional Change in Canada,” *Law and Contemporary Problems* (1982), pp. 11-32
- Jamie Cameron, “Legality, Legitimacy and Constitutional Amendment in Canada,” in Richard Albert & David Cameron, eds., *Canada in the World* (2017), pp. 98-122
- 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 *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 Fourteen, January 13: Patriation & Quebec

Class Fifteen, January 20: Patriation & Quebec *concluded*

Class Sixteen, January 27: The Constitution Act, 1982 *concluded*

Reading:

- Robert Hawkins, “Constitutional Workarounds: Senate Reform and Other Examples,” *Canadian Bar Review* (2010), pp. 513-544

Class Seventeen, February 3: The Charter of Rights and Freedoms *started*

Readings (for Classes #17 to #21):

- Peter Russell, “The Political Purposes of the Canadian Charter of Rights and Freedoms,” *Canadian Bar Review* (1983), pp. 30-54
- Barry Strayer, “The Evolution of the Charter,” in Lois Harder & Steve Patten, eds., *Patriation and its Consequences* (2015), pp. 72-92
- 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
- Janet Hibert, “The Canadian Charter of Rights and Freedoms,” in *The Oxford Handbook of Canadian Politics* (2010)
- Peter Hogg & Ravi Amarnath, “Understanding Dialogue Theory,” in *The Oxford Handbook of the Canadian Constitution* (2017)

Class Eighteen, February 10: The Charter of Rights and Freedoms *continued*

Winter Reading Week February 17 –21

Class Nineteen, February 24: The Charter of Rights and Freedoms *continued*

Class Twenty, March 2: The Charter of Rights and Freedoms *continued*

Class Twenty-One, March 9: The Charter of Rights and Freedoms *concluded*

Second Essay due March 16 (30%)

Class Twenty-Two, March 16: Indigenous People and the Constitution *started*

Readings (for Classes #22 & #23):

- Isabelle Brideau, *The Duty to Consult Indigenous Peoples* (Library of Parliament, 12 June 2019)
- Sébastien Grammond, “Treaties as Constitutional Agreements,” in *The Oxford Handbook of the Canadian Constitution* (2017)
- 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 Twenty-Three, March 23: Test Review & Indigenous People and the Constitution *concluded*

Class Twenty-Four, March 30: 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.
6. Using false citations or references.

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 website listed below 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://advice.writing.utoronto.ca/>